

(1997) 11 AHC CK 0080

In the Allahabad High Court

Case No : Criminal Revision Nos. 54 and 55 of 1984

Sripat and Another,etc

APPELLANT

Vs

State of U.P.and Another,etc

RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Evidence Act, 1872 — Section 9

Penal Code, 1860 (IPC) — Section 392, 411, 457

Citation : (1997) 11 AHC CK 0080

Hon'ble Judges : P.K.Jain, J

Final Decision : Allowed

Judgement

P. K. Jain, J.—By judgment and order dated 19379 Judicial Magistrate, Mahoba convicted Sripat and Parasuwa under Sections 457 and 392, I.P.C. and sentenced them to undergo one year's R.I. under Section 457, I.P.C. and two years' R.I. under Section 392, IPC Phullan was convicted under Section 411, I.P.C. and Sripat was also further convicted under Section 411, IPC and both of them were sentenced to undergo two years' R.I. under Section 411, IP C, Criminal Appeal Nos. 53 of 1979 filed by Sripat and Parasuwa and 56 of 1979 filed by Phullan were dismissed by the Addl. Sessions Judge, Hamirpur, by judgment and order dated 231283.

2. Aggrieved by the judgment and order of the trial Court as well as of the appellate Court the three convicts have filed the above criminal revisions.

3. An incident of robbery had taken place between the night of 19/2021977 at the house of first informant Kriparam. It was alleged that four miscreants entered his house, one of whom was flashing torch and the miscreants were armed with Lathi and Danda. They threatened the inmates of the house and committed robbery of jewellery and household goods. There was light of lantern and lamp inside the house besides the torch light in which three of the miscreants were recognized by the complainant and the witnesses. They were Deoki son of Phullan, Sripat and Parasuwa. On hue and cry a number of

witnesses assembled at the scene of occurrence, some of whom also recognized the three miscreants.

4. Report of this incident was lodged by P.W. 1 Kripa Ram at police station Mahob Kanth on 20277 at 12.15 a.m. and a case under Section 392, IPC was registered. During investigation Phullan was arrested by Sri Raj Pal Singh Chauhan in presence of witnesses on 23377 at about 11.00 a.m. From his possession six silver bangles and some other silver ornaments were recovered which were allegedly looted in the said robbery. Sripat was arrested on 21277 and from his house he produced two Lota, two Bela and three tumblers said to have been looted in the said robbery. The recovered articles were put up for test identification on 21178. The identification proceedings were conducted by Executive Magistrate Sri R.N. Misra. Kripa Ram identified all the articles correctly except one Lota and one Gilas. Smt. Sona Bai correctly identified all the articles except one Lota and two Gilas and witness Surendra Babu correctly identified all the articles except one Lota and one Gilas.

5. After usual investigation chargesheet was submitted against the present revisionists alongwith some other miscreants.

6. The trial Court framed charges under Sections 457 and 392 IPC against Parasuwa and Sripat and under Section 411, IPC against Sripat and Phullan. The revisionists denied the charges framed against them and claimed to be tried.

7. To establish the charges against the revisionists the prosecution examined P. W. 1 Kripa Ram, P. W. 2 Surendra Babu, P. W. 3 Smt. Sona Bai, P.W. 4 Man Mohan, R.W. 5 Ram Sujana, all witnesses of fact, P.W. 6 H.C. Ram Swarup Misra, scribe of the check report and relevant G.D. entries. P.W. 7 Jhandu, P.W. 9 Lallu and P.W. 10 Constable Ram Sewak with regard to the alleged recovery from the possession of Phullan, P.W. 8 Paragi Lal with regard to the arrest of and recovery from Sripat. The prosecution also examined P.W. 11 Constable Chhote Lal, a formal witness, P.W. 12 Constable Ram Pal Singh, a witness of arrest and recovery from Sripat and P.W. 13 S.L. Raj Pal Singh, the Investigating Officer as well as a witness of arrest of Sripat and Phullan.

8. Jagdish Prasad, Head Moharrir, was also examined as R. W. 1.

9. The trial Court believing the evidence of the prosecution convicted and sentenced the revisionists as stated above.

10. The revisions are pressed mainly on the ground that so far as the recovery from Parasuwaa is concerned it is of doubtful character and besides this it was recovered from the house which was in joint possession of others. Hence, revisionists can not be said to be in exclusive possession of the property; that the property was put up for test identification 11 months after the alleged recovery and the prosecution has not produced the original identification memo nor the Magistrate, who held the identification proceeding, has been examined. Hence identification evidence can not be accepted. As regards offence under Sections

457 and 392, IPC, it is contended that Parasuwa is aged about 60 years and Sripat is aged about 55 years and the incident had occurred about 20 years back. The revisionists have been in jail for sometime. Therefore, after lapse of 20 years no useful purpose shall be served by sending them to jail again. The learned Counsel for the revisionists contends that the sentence of imprisonment may be converted to that of fine. Learned Additional Government Advocate contends that so far as conviction under Sections 392 and 457, IPC is concerned, there is absolutely no infirmity in the judgment and order of the trial Court as well as of the appellate Court. Learned Additional Government Advocate fairly concedes that in view of the defects in prosecution evidence with regard to offence under Section 411, IPC, the revisionists could not have been convicted under Section 411, IPC.

11, So far as revisionist Phullan is concerned, he has been convicted only under Section 411, IPC. Some ornaments are said to have been recovered from his possession. The evidence of recovery was found to be consistent and was rightly believed by the Courts below. However, the identification evidence is defective. Original memo of identification has not been produced nor the Magistrate, who held the identification proceedings, was examined by the prosecution. As already pointed out above, the identification proceedings were held on 21178 that is, about 10 or 11 months after the alleged recovery. The witnesses have not identified some of the articles, though alleged to be looted at the time of the alleged incident. Therefore, the evidence of identification cannot be acted upon.

12, As regards revisionist, Parasuwa the recovery is said to have been made from his house. It has come in evidence that the lock of the room was opened by Parasuwa with a key which was in his possession. The Arresting Officer has not taken into possession the key nor any explanation has been furnished what happened to the key. Both the Courts below have failed to take notice of this fact. Besides this, the recovery was made from the house at the pointing out of the accused Parasuwa. It was come in evidence that other members of the family lived in the house. Even though, Parasuwa had knowledge of the articles being in the house, it can not be said with certainty that he was in exclusive possession of the same. In a case of joint possession, one can not be convicted of the offence under Section 411, IPC for receiving or retaining stolen property unless it is proved that the property was kept by him or retained by him knowing it to be stolen property.

13, Learned Counsel for the revisionists has not challenged the conviction of the revisionists Parasuwa and Sripat under Sections 392 and 457, IPC and on careful examination of the record I find no infirmity in the findings of the trial Court in this regard. The record, however, discloses that Parasuwa and Sripat were arrested on 21277. Sripat was released on bail on 26277 whereas Parasuwa was released on bail on 7477. Thereafter, on appeal being dismissed on 231283. both the revisionists is were taken into custody and they were granted bail by the High Court vide order dated 6184 and were released subsequently. The record

further shows that Parasuwa was 30years old at the time of his statement under Section 313, Cr. PC. was recorded and Sripat was 21 years old. parasuwa must now be 50 years and Sripat around 4142 years. After lapse of more than 20 years, in my view, no useful purpose shall be served by sending the revisionists to jail in the aforesaid circumstances specially when nothing is brought on record to show that after the present incident the revisionists were involved in any other crime of like nature or that they were previous convicts. Therefore, the sentence of imprisonment already undergone and fine of Rs. 1,000 under Section 457, IPC and Rs. 1,500 under Section 392, IPC would meet the ends of justice.

14. In view of the discussions made above, Criminal Revision No. 54 of 1984 is partly allowed. Conviction of the revisionists under Sections 457 and 392, IPC is " maintained. Conviction of Parasuwa under Section 411, IPC is set aside and he is acquitted of the said charge. Revisionists Sripat and Parasuwa are sentenced to undergo imprisonment for the period they have already been in jail and further to pay a fine of Rs. 1,000 under Section 457, IPC and Rs. 1,500 under Section 392, IPC each and in case of default in payment of fine they will undergo imprisonment for a period of 4 months and 6 months respectively on each count. They are granted one month"s time from today to deposit the amount of fine.

15. Criminal Revision No. 55 of 1984 is allowed. Conviction of the revisionist Phullan under Section 411, IPC is set aside and he is acquitted of the said charge.