

Sheo Nandan Vs. the State

Sheo Nandan Vs. the State

SooperKanoon Citation : sooperkanoon.com/451788

Court : Allahabad

Decided On : Jan-24-1963

Reported in : AIR1964All139; 1964CriLJ378

Judge : S.D. Singh and ;T. Ramabhadran, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403, 417 and 423; Indian Penal Code (IPC) - Sections 120B and 396; [Evidence Act, 1872](#) - Sections 3, 9, 114 and 133; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : Criminal Appeal No. 359 of 1961 with Govt. Appeal No. 693 of 1961

Appellant : Sheo Nandan

Respondent : The State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : S.S. Tewari, Adv.

Judgement :

1. This appeal and connected Government Appeal No. 693 of 1961 arise out of Sessions Trial No. 5 of 1960 in which two persons, Nagina of village Sipaya and Sheonandan of village Iswapur in Bihar, were tried for offences under Section 120-B and 396, I. P. C. The Additional Sessions Judge, Gorakhpur, acquitted Nagina, but convicted Sheonandan under both the provisions and sentenced him to

imprisonment for life under Section 396 and to 10 years rigorous imprisonment under Section 120-B, I. P. C. He has, therefore, come up in appeal against his conviction and sentence as aforesaid, while the State of Uttar Pradesh has filed the appeal against the acquittal of Nagina, for the aforesaid offences. These two appeals were heard together and we propose to deal with both of them in the same judgment.

2. A daring dacoity took place at about 8.30 P. M. on 2nd February, 1959, in a second class compartment in 216-Down train of the North Eastern Railway between Lakshmiganj and Ramkola railway stations.

3. Shapker Das (P. W. 3) is a cashier in the Ramkola Sugar Mills. He cashed a cheque for rupees one lac for distribution of salaries on 2nd February, 1959, at the Central Bank at Gorakhpur and received the amount in 14 bundles of currency notes as below:

One bundle of Rs. 100/- each

Rs. 10,000.00 Np.

Eight bundles of Rs. 10/- each

Rs. 80,000.00 '

One bundle of Rs. 57/- each

Rs. 5,000.00 '

One bundle of Rs. 2/- each

Rs. 2,000.00 '

Three bundles of Rs. 1/- each

Rs. 3,000.00 '

Rs. 1,00,000.00'

He carried this cash in an old steel locked suitcase or trunk (Ex. 2) and had Lal Bahadur, an armed guard, with him for the safety of the box. Both of them held monthly tickets for Ramkola. They arrived at railway station Gorakhpur at about 5 P.M. and when the train arrived at 5.40 P.M., they occupied a second class compartment in a composite bogie FST 2314 (which bogie was composed of ,a First Class, a Second Class and probably two Third Class compartments). There were four parallel berths in the compartment which have been referred to by the Sessions Judge in his judgment as berths 1 to 4 beginning with the berth next to the door on the western side. Berths 1 and 2 faced one another and so did the berths, 3 and 4. There was open space to the south of berths 1, 2 and 3 while berth 4, which was on the extreme east, covered the whole width of the compartment from the window on the northern side to the window on the southern side. Shanker Das occupied the third seat on the fourth berth counting from the northern side and Lal Bahdur the third seat counting from the same direction on the third berth. Lal Bahadur and Shanker Das were thus sitting face to face and the steel box is said to have been placed by them under the fourth berth and secured to one of the legs of that berth with a locked chain. One Ram Nandan Srivastava who was going to Padiauna, occupied the first seat on the fourth berth and Sri Sohan Lal, Assistant Engineer in the Ramkola Sugar Mills, the second seat on that berth. The fourth seat on that berth was occupied later at a subsequent railway station by one Sri Satya Narain Gupta. The first two seats on the third berth were occupied by Mr. and Mrs. Narendra Nath Sinha.

Four other persons who subsequently, according to the prosecution case, turned out to be the dacoits, occupied the first and second berths from Gorakhpur. Six other persons, who are said to be their companions and among whom were Nagina and Sheonandan took their seats in the adjoining third class compartment to the west of the second class compartment. But it is said that as the train moved on the four passengers in the second class compartment or two or more of them would get down and go and talk over to their six companions in the third class compartment at each of the railway stations, Kuraghat, Pipraich, Bodarwar, and Captainganj. At Captainganj, where the train stopped for about half an hour, all these persons are said to have gone to a tea stall, where there was a lighted petromax and to have taken tea. At Lakshmiganj, which is the next station on this

side of Ramkola, the six companions of these four persons, who were sitting in the third class compartment, also came over to the second class compartment and stood up in the gallery between the two doors to the west of the first berth. After the train had gone from Lakshmiganj for about two miles, Shanker Das handed over the key to Lal Bahadur, and asked him to unlock the chain with which the box was secured. Lal Bahadur unlocked the chain and handed over the key thereafter to Shanker Das. Just then the person, who was sitting just behind Lal Bahadur, i.e., occupying the third seat (counting from north) on the second berth got up, whipped out a country made revolver and fired at Lal Bahadur at close range. He fired several other rounds with the same revolver where after three or four among the dacoits proceeded to pick up the box. Shanker Das offered some resistance but he was beaten.

Even he and Satya Narain Gupta, who was sitting next to him, were injured. The box was then removed by the dacoits and thrown out of the door near a culvert. As the train slowed down near the distant signal, the ten persons got down one after the other and it is alleged that thereafter they picked up the currency notes and disappeared. The firing of the gun attracted the attention of the passengers in the third class compartment. One of them Ram Autar (P. W. 4) is said to have a torch with him which he flashed out of the window. He tried to stop the train by pulling the chain, but the chain gave way and consequently did not work. Other passengers in the compartment also peeped out of the windows and saw the dacoits dropping out from the compartment one after the other and then running away towards west.

4. Although the train stopped at the distant signal for a few minutes, no one in the neighbouring compartments took any notice of what had happened. When the train arrived at Ramkola railway station, an alarm was raised. The Guard then arrived, and the report, Ex. Ka-II, was handed over by him to the Station Master, Ramkola, who passed it on to Police Station, Ramkola, where the First Information Report (Ex. Ka44) was prepared at 9.30 P.M. S. I. Janardan Pathak (P. W. 25) came to the railway station almost immediately. The body of the deceased, Lal Bahadur, was taken out and he prepared the inquest report in respect of the same, and Shanker Das and Satya Narain Gupta were sent for medical attention in the

dispensary at Ramkola. On the inspection of the second class compartment a bag (Ex. 6) containing a lota (Ex. 1) and a lungi (Ex. 5) were found on the second berth of the compartment. The lota contained an inscription 'Santlalji Dahiyawan Chhapra' in Hindi. Information about the incident was also sent to the Station Officer of the Government Railway Police at Gorakhpur. S. I. Ram Murti Prasad, who was Station Officer there, reached Ramkola railway station at about 4 or 4.30 A.M. in the morning and took over the investigation of the case from S. I, Janardan Pathak. Some time after taking over the investigation, he walked along the railway line to the side of Lakshmiganj railway station and near about the culvert found the box Ex. 2, and 76 small pieces of currency notes, which were sealed by him in an envelope, Ex. 10. Some of the passengers, who were travelling in the second and third class compartments, were detained at Ramkola station and their statements were recorded. Subsequently the investigation of the case was taken over by Inspector E.P.N. Singh of the C. I. D.

5. The body of the deceased was sent for post-mortem examination, which was conducted by Dr. O. N. Saksena at 4 P.M. on 3rd February, 1959. He found three gun-shot wounds of entrance at different parts of the body of the deceased and death was found to have been caused due to the heart of the deceased having been pierced through by the bullet as a result of one of the injuries. As nothing turns upon the injuries, which were found by Dr. O. N. Saksena, except that Lal Bahadur died as a result of gun-shot injuries, we do not consider it necessary to describe them in detail.

The fact that Lal Bahadur was shot at and died as a result of the injuries caused to him was not even challenged before us.

6. The injuries of Shanker Das and Satya Narain Gupta were examined by Dr. S. C. Rastogi, who was Medical Officer in the Sadar Hospital at Gorakhpur. Shanker Das was found to have two lacerated wounds, two gun shot wounds, one contused wound and two contusions. Satya Narain Gupta was found to have one gun-shot injury. The injury reports in respect of these two persons are Exs. Ka-25 and Ka-26. As the fact that these two persons were injured during the commission of the dacoity was also not challenged before us, it need not be referred to in any

further detail.

7. The recovery of the lota (Ex. 2) provided a clue to the tracing out of this dacoity. One of the Sub Inspectors was deputed to trace out Sant Lal of Chhapra, whose name was inscribed over the lota, and when he was interrogated it transpired that Sant Lal had exchanged his lota with one Dhondha and consequently this lota was with him when this occurrence took place. An attempt was, therefore, made to arrest Dhondha, but he could not be found as he is said to have been absconding. Ultimately, however, he was arrested on the night between 20th and 21st of February, 1959, at railway station Thawe in Bihar. He probably had received one injury near about the time of his arrest and had two other injuries on his person when arrested. These injuries were later examined by Dr. B. P. Sinha, who was Medical Officer in Gopalganj Dispensary. The three injuries found on his person were:

(1) Swelling '1' x '1' on the front part of the right knee.

(2) A healing ulcer $1/3'$ x $1/3'$ with scab formation on the dorsum of the metacarpophalanx of the left thumb.

(3) A healing ulcer $1/2'$ x $1/3'$ with scab formation near the second, joint of the left thumb.

8. Injury No. (1) was found to be about six days' old and as this medical examination took place on 26th February, 1959, it may correspond to the time of his arrest. Injuries Nos. (2) and (3) were found to be about three weeks old and since there could be a variation of two or three days in this estimate of time, these injuries are said to, correspond to the time of the commission of the dacoity, the suggestion on behalf of the prosecution being that Dhondha was injured as a result of the firing of the revolver during the commission of the dacoity.

9. Interrogation of Dhondha disclosed the names of his associates. He confessed to have taken part in the commission of this dacoity and his confession was even recorded and pardon having been given to him, he was treated as an approver thereafter.

10. Nine persons were named by him and the names of these nine persons were repeated by him in his statement in the Sessions trial, the names being Deonandan, Ram Bachan Misir, Jagdish, Thakur, Ram Surat, Vishwanath, Rozdeen, Nagina and Sheo Nandan. According to him these nine persons together with Dhondha himself committed the dacoity. While Nagina and Sheonandan remained absconding, these eight persons were either arrested or surrendered in Court and Ram Bachan's house was searched in due course by Inspector R. P. N. Singh on 21st February, 1959, in which 46 currency notes of Rs. 100/- each and 238 damaged notes of Rs. 10/- each were recovered from his house. The hundred-rupee notes are Exs. 11/1 to 11/46 and the damaged ten-rupee notes are Exs. 13/1 to 13/238. Thereafter the aforesaid seven persons Deonandan, Ram Bachan, Jagdish, Thakur, Ram Surat, Vishwanath and Rozdeen were prosecuted and were even convicted by the Civil and Sessions Judge, Deoria, but their appeals, being Nos. 2456, 2457 and 2458 of 1959, were allowed by this Court on 29th August, 1960, and all the seven persons were acquitted.

11. Nagina and Sheonandan, who were subsequently arrested, were put up for trial for the aforesaid offences in the Sessions trial referred to above and as has been mentioned earlier while Sheonandan was convicted, Nagina was acquitted by the Additional Sessions Judge giving rise to the two appeals now before us.

12. The case of the two accused before the trial Court was one of denial of the allegations against them. Both the appellants were put up for identification and while Nagina was identified by Sohan Lal (P. W. 1) and Sudama (P. W. 2), Sheonandan was identified only by Sudama (P. W. 2). Sheonandan who surrendered in Court on 21st October, 1959, alleged that he was shown to the witnesses in Deoria jail when he was being shaved. Nagina was arrested in village Bariarpur and he alleged that he was detained at Nautan police station in Bihar for three days and shown to the witnesses there and that he was also shown to them at Gorakhpur railway station when he was being taken to District Jail Deoria, and that the witnesses travelled with him from Gorakhpur to Deoria and saw him in between these railway stations.

13. The main evidence which has been relied upon against the two accused was that of approver Dhondha and, of course, of those witnesses who identified him. The Sessions Judge thought that the statement of the approver was neither wholly reliable nor wholly unreliable and that in order that any reliance could be placed upon it, it was necessary that that evidence be materially corroborated. This corroborative evidence, which according to him was provided by the evidence of the identifying witnesses, was found unreliable so far as Nagina was concerned and that is why he was acquitted. In the case of Sheonandan, however, the Sessions Judge believed the statement of Sudama, who alone identified him, and convicted him.

14. In respect of the Government appeal against Nagina reference was made to several decisions of the Hon'ble Supreme Court in which the manner of approach in the appraisal of evidence in such appeals has been discussed and pointed out. It may be enough to refer to the latest observations of that Court in Harbans Singh v. The State of Punjab : AIR 1962 SC439 . In some of the earlier cases the Supreme Court emphasised the desirability of interference with an order of acquittal only for 'compelling and substantial reasons' and expressed the view that unless such reasons were present, an appellate Court would not interfere with the order of acquittal. But the words 'compelling reasons' have been explained in later decisions and while discussing this aspect of the case, their Lordships pointed out in Harbans Singh's case : AIR 1962 SC439 :

'The use of the words 'compelling reasons' embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons' In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower Courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower Court that the guilt of the person has not been proved is unreasonable.'

15. Proceeding further their Lordships have pointed out:

'It is clear that in emphasising in many cases the necessity of 'compelling reasons' to justify an interference with an order of acquittal the Court did not in any way try to curtail the power bestowed on appellate courts under Section 423, Cri P. C. when hearing appeals against acquittal; but conscious of the intense dislike in Our jurisprudence of the conviction of innocent persons and of the fact that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the Court was anxious to impress on the appellate Courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals..... What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate Court comes to the conclusion that the view taken by the lower Court is clearly an unreasonable one that itself is a 'compelling reason' for interference. For, it is a Court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established.'

16. In considering the case against Nagina we have kept these observations of their Lordships of the Supreme Court in view and have attempted to examine the evidence relied upon by the prosecution in the light of these observations.

17-59. (His Lordship after examining the evidence on record concluded that the prosecution version of the case was fully borne out by the evidence of Dhondha, the approver, which was fully corroborated on a large number of material points not only by other prosecution witnesses, viz., Sohan Lal Agrawal (P. W. 1) Sudama Pande (P. W. 2), Shankar Das (P. W. 3) and Ram Autar (P. W. 4), but also by material circumstances occurring in the case.

Regarding the identification of the accused, Nagina and Sheonandan, His Lordship pointed out that the identification by P. W. 1 and P. W. 2 was flawless and the allegation that the accused were shown to the witnesses before they were

identified by them was baseless and was not borne out by the evidence on record. Speaking about the inference drawn by the Sessions Judge in this connection His Lordship stated:)

The inference drawn by the Sessions Judge is against the weight of the evidence. If inferences are drawn on mere possibilities, then there is a possibility in every case, of an accused being shown to the witnesses before they are put up for identification. But a judicial finding is not based on such surmises. Section 3 of the Evidence Act defines when a fact may be said to have been proved:

'A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists,'

The circumstances in the case must be such that a prudent man would act on the supposition that a particular fact exists and it is only then that the Court would hold that that fact has been proved. Barring the statement of the accused, which statement has also been rather inconsistent from stage to stage, there is absolutely no evidence on record to show that he was shown to any of the witnesses at Gorakhpur railway station or that any force was used against him, he was uncovered by force or thrown on the ground and his face seen thereafter. There is nothing in evidence even to support the contention that either Sohan Lal or Sudama travelled with Nagina in the same compartment or in the same train that day from Gorakhpur to Deoria.

60-61. (His Lordship after referring to the reason given by the Sessions Judge for disbelieving the identifying witnesses and after pointing out that the reason given was not sound proceeded.)

62. The dacoity was committed on the evening of 2nd February, 1959, while the identification proceedings were taken up on 9th December, 1959, and it was, therefore, contended on behalf of Nagina and Sheo Nandan that the identification proceedings were not of much value and reliance for the purpose was placed upon certain observations of Malik, C. J. and Bind Basni Prasad, J. in *Daryao Singh v.*

State, : AIR1952 All59 in which it was observed:

'The value of identification evidence is very much minimised if the identification proceedings are held long after the occurrence. Human memory is fallible. It is sometimes difficult to identify a person not very well known whom one sees with a rather different appearance about fifteen months later.

Reference was also made to some other unreported decisions of this Court and we will consider them presently, but, it may be noticed that Nagina was arrested on the night between 25th and 26th September 1959 and Sheo Nandan on 21st October and the identification proceedings were, therefore, arranged in about a month and a half after Sheo Nandan's surrender and two and a half after Nagina's arrest and it cannot, therefore, be said that the prosecution was responsible for any delay in arranging the identification proceedings is putting up the two persons for identification.

63. We are in agreement with the observation of Malik, C. J. and Bind Basni Prasad, J. in : AIR1952 All59 that human memory is fallible and it is sometimes difficult to identify a person not very well known whom one sees with a rather different appearance at the time of identification proceedings. But we are unable to subscribe to the view that this necessarily causes any infirmity in the evidentiary value of the witnesses who do, in spite of this difficulty, find it possible to identify the accused or that the value of the identification evidence is minimised because of the time gap between the occurrence and the identification proceedings. If the accused cannot be put up for identification for sometime after the occurrence, the prosecution obviously suffers inasmuch as it becomes more and more difficult for the witnesses to identify persons who were not known to them at all and who were seen by them for the first time at the time of the occurrence. But if, in spite of fading memory and the effect of seeing the accused in a different appearance and the long gap between the time of the occurrence and the holding of identification proceedings, the witnesses do identify the accused, there should be no justification whatsoever for discarding their evidence. The prosecution suffers the disadvantage of losing the testimony of those witnesses who are unable to identify the accused on account of their fading memory. There is no reason why evidence

of even those witnesses who do, in spite of this handicap, identify the accused, should be disbelieved. The question was considered by Wali Ullah, J. in *Dhaja Rai v. Emperor* : AIR1948 All241 . In that case the identification proceedings were arranged about ten months after the commission of the dacoity. The learned Judge observed:

'To say the least, to lay down a hard and fast rule, with regard to the period of time which may elapse between the commission of a crime and the identification of the culprits, would be to impose an arbitrary rule which neither common sense nor the statute of law of evidence can or would justify. If there were such a rule, it would be the easiest thing for a culprit to avoid his arrest for a certain period of time and then turn up with confidence that he can go with impunity because of the lapse of the requisite period of time.'

64. In *Ali Hasan Kunjra v. State*, (Cri. Appeal No. 248 of 1956, D/- 14-8-1958 (All)), Asthana, and Oak, JJ. did not find it possible to rely upon identification evidence mainly because of the circumstances which would appear from the following paragraph in their judgment:

'There is one another point which needs consideration. The identification proceedings were held on the 26th March 1955 after more than a year after the dacoity and the question which needs consideration is whether after such a long time it would be probable for persons who had seen the faces of the dacoits momentarily at night to identify those persons after a lapse of such a long time. It may not be impossible and it may also be probable for some persons to retain the impression in their minds about the features on those persons and be able to identify them, but the probability is rather remote and it will not be very safe to rely on the identification held after such a long time after the dacoity.'

But the learned Judges qualify their observation by further observing:

'We, however, do not wish to lay down as a rule of law that in every case where identification is held after a great delay it should be discarded altogether because in that case it would be very easy for dacoits to avoid their arrest after the dacoity and then when they are arrested after a long time, or when they surrender after a

longtime', take the plea that the identification should not be relied upon as it was made after a great delay. This would mean allowing them to take advantage of their own fault. The evidence of identification in this case has to be judged on the various facts and circumstances of the case and it is not possible to lay down any hard and fast rule as to when a particular identification should or should not be accepted.'

We are in full agreement with the view expressed by Asthana and Oak, JJ. that the evidence of the identification has to be judged on the basis of various facts and circumstances of the particular case and that it is not possible to lay down a hard and fast rule as to when a particular identification should or should not be accepted.

65. Reference was then made to another unreported decision of this Court in Sukkhan v. State, (Cri. Appeal No. 232 of 1953, D/- 19-10-1955, (All) by Desai, J. (as he then was) and Sahai, J.) There were two sets of witnesses who were called to identify the persons who were alleged to have committed the dacoity, those outside the house and those who were inside the house, when the dacoity was committed. The evidence of the outside witnesses was disbelieved on the ground that the identification proceedings were not genuine and even the evidence of the inside witnesses was looked at with suspicion on that account. What was observed in this connection was :

'If the evidence of the outside witnesses is disbelieved on the ground that the identification proceedings in which they identified the accused were not genuine and that they identified them on account of having seen them elsewhere and not necessarily while committing the dacoity, the evidence of the inside witnesses also is rendered doubtful. They certainly could have seen the faces of the dacoits and could have identified them even after two months. But once the identification by some witnesses is rendered suspicious, the identification proceedings cannot be treated as genuine and the identification by inside witnesses also is rendered suspicious. If the outside witnesses identified the accused on account of having seen them elsewhere, such as at a police station, there is no guarantee that the inside witnesses also did not identify them on account of their having seen them at

the police station or somewhere else.'

The contention on behalf of Nagina and Sheo Nandan was that the identification of the other accused having been disbelieved in the previous sessions trial, it would not be safe to rely upon the identification evidence even against them in this particular case. The facts of the two cases are, however, materially different and the observations extracted above cannot by any logical reasoning be applied to the facts of this particular case. There the accused, who were identified by the two sets of the witnesses, were the same. They were put up for identification in the same identification proceeding and if those accused could be shown to one set of witnesses at a particular place, there was the possibility of even the other witnesses having seen them at the same place. Even if it be supposed that the identification of the other accused in the present dacoity was not reliable on any such account, the present accused Nagina and Sheo Nandan were not even arrested when the other accused had been put up for identification. One of them was arrested and the other surrendered much later. The question as to whether they could or might have been shown to any of the witnesses has already been discussed by us earlier. Both of them were put up for identification within two or two and a half months of their arrest or surrender and this is not a case in which the two witnesses had only momentary glimpse of the two accused. Apart from this the extent to which the witnesses were able to identify them would by itself indicate that there has been no attempt on the part of the prosecution to tamper with evidence. Even the witnesses who were injured were not able to pick them out. This by itself should be sufficient to indicate that the accused had not been shown to any one of the witnesses before they were put up for identification.

66. The identification proceedings in respect of Nagina and Sheo Nandan have, thus, been above board and there is no reason to doubt the identification of these two accused. by Sudama Pandey and Sohan Lal Agrawal either on account of the fact the case against the other accused of the same dacoity case ended in their acquittal on because the identification proceedings against Nagina and Sheo Nandan took place about 10 months after the occurrence.

67. It appears to us therefore, that there was no good reason for discarding the identification of Nagina either by Sohan Lal or by Sudama Pandey.

68. The contention whether there was light enough in the compartments and whether there was also opportunity for the two witnesses to notice the features of Nagina and Sheonandan may now be considered.

69. (His Lordship after discussing the evidence proceeded:) The evidence on the record clearly indicates that there was light in both the compartments with which we are concerned and though the light was dim, the evidence indicates that there was sufficient light for the passengers being able to see the faces of each other. This is what Shanker Das stated even in his very first statement. There would be no justification for placing reliance upon one part of his statement made at that time that the lights were dim and disbelieving the other part of his statement that the light was sufficient to enable the faces being recognised. It may also be that the lights would go off at some stations, but it is obvious that they would revive as soon as the train picked up speed. It cannot, therefore, be said that the witnesses who travelled either in the second or third class compartments had no chance of being able to see the faces of these persons.

70. Then comes the question whether the witnesses had opportunity to see the faces of the dacoits, particularly Nagina and Sheo Nandan, with whom we are concerned in these appeals.

71-86. (His Lordship after pointing out that the witnesses had ample opportunity to see the faces of the dacoits proceeded to refer to the contradictions and inconsistencies occurring in the statements of the prosecution witnesses. His Lordship stated that the contradictions were on minor points only and were caused by the anxiety of the witnesses to make positive statements in reply to questions put to them and did not in any way affect the credibility of the witnesses. His Lordship concluded:)

87. Taken as a whole, therefore, the evidence which has been examined in the case is satisfactory. As we have pointed out earlier, the fact that dacoity was committed in the particular train between Lakshmiganj and Ramkola railway

stations when cash to the extent of rupees one lac was being carried by Shanker Das in a box and that Lal Bahadur was killed and Shanker Das and Satya Narain were injured in the commission of that dacoity, were not challenged before us. The recovery of the lota (Ex. 1) on which was inscribed the name of Sant Lal of Chhapra has been fully established. It was this information which led to the arrest of Dhondha and subsequently the arrest or surrender of the remaining accused who took part in this dacoity. Seven out of them were of course put up for trial in the previous sessions case and were acquitted, and we are no longer concerned with the same. The question to be determined however, is whether Nagina and Sheo Nandan were among the dacoits who took part in this dacoity and the main evidence against them is provided by the approver Dhondha, whose statement is substantially corroborated on a large number of points by the other witnesses, to whose statements reference has already been made earlier.

88. Sheo Nandan was identified by Sudama; and Nagina by Sohan Lal Agrawal and Sudama both and there has been no flaw or infirmity in, this additional evidence available against them. As against Nagina his identification by two witnesses should be sufficient by itself for a finding against him. Even as against Sheo Nandan identification by Sudama provides strong corroborative evidence which has been believed by the Sessions Judge and additional strength to the statement of the approver, Dhondha.

89. There is an additional circumstance in the case relating to the recovery of damaged currency notes which provides strong corroboration to the statement of approver Dhondha and leads to the inference that what he has stated is the truth. Some reference has already been made to it earlier in this judgment but it may now be further considered. 238 damaged currency notes of Rs. 10/- each, were found at the house of Ram Bachan. These currency notes have been held in the case against Ram Bachan to belong to him and have even been directed to be returned to him by this Court. The question is about the extent to which the evidence relating to the recovery of these currency notes may be used in corroboration of the statement of Dhondha so far as the case against Nagina and Sheo Nandan is concerned. The Sessions Judge has thought that the finding in the previous case amounts to res judicata and cannot be re-opened in the present

case. After referring to the recovery and the relevancy thereof in the case he says in his judgment:

'It is not necessary for me to express an opinion on this point as in my opinion the principle of *res judicata* applies. It was held in the previous case that the prosecution did not succeed in proving that these notes were proceeds of the dacoity and a contrary finding against Ram Bachan cannot be recorded by me.' '

90. It is certainly correct that a finding cannot be recorded in the present case against Ram Bachan that the currency notes recovered from his house were looted property and did not belong to him. But so far as the case against Nagina and Sheo Nandan is concerned it can still be considered if the property which was recovered on the basis of information made available by the approver Dhondha was property taken away as a result of the commission of the dacoity. If the finding is that it was, it can certainly be relied upon for purposes of conviction of Nagina and Sheo Nandan, though so far as Ram Bachan is concerned, he will remain unaffected by it; and he would perhaps be still entitled to claim that property as belonging to him, even though a contrary finding may be recorded in this sessions trial or in appeal arising therefrom to which he is not a party. The principle of *res judicata*, as it was enunciated in *Pritam Singh v. State of Punjab* : 1956 CriLJ805 in relation to criminal proceeding, would require that the previous judgment must be *inter partes*. Even the Code of Criminal Procedure takes cognizance of that principle when it provides under Section 403 that a person once convicted or acquitted cannot be tried for the same offence again. The previous judgment in this case was, however, given in a proceeding to which Nagina and Sheo Nandan were no parties at all. If Ram Bachan and others were convicted in the previous sessions case, that would have provided no justification for the evidence against Nagina and Sheo Nandan being construed in a manner as to lead to their conviction. The evidence would have had to be considered afresh uninfluenced by any findings which might have been recorded in favour of the prosecution in the previous case and against the other accused; and the position should remain the same even in a case where the previous trial resulted in the acquittal of the accused then before the Court. The question, therefore, whether the currency notes recovered from the possession of Ram Bachan were part of the looted

property has to be judged in the case against Nagina and Sheo Nandan independently of what might have been decided in the previous case.

91. Dhondha deposed that when he and his companions reached the culvert after getting down from the train, they found the box lying open and the notes scattered here and there. He has also deposed that a number of notes had got cut, and their pieces were lying scattered. 76 small pieces of these currency notes (Ex. 10) were found by the Investigating Officer on the spot and were sealed then and there. Ram Bacnan's house was searched as a result of the information obtained. from Dhondha, in respect of which he has given his statement in Court. 238 ten rupee currency notes were found at his house which were damaged or cut in addition to 47 hundred rupee notes. It should certainly be a very strange coincidence that while an allegation was being made that the currency notes which were in the box got damaged on being dropped down from the train, as many as 238 damaged ten rupee currency notes should have been found at the house of Ram Bachan. The matter does not end there. Some of the pieces of the currency notes which were picked up by the Investigating Officer near the culvert were found by us to be tallying with some of the ten rupee damaged currency notes recovered from the house of Ram Bachan. As the 75 pieces found on the spot were exhibited at one place as Ex. 10 some of them were given by us a separate mark for purposes of reference. The result of comparison was:

'The piece Ex. 10-A tallies with Ex. 13/147

The piece Ex. 10-B tallies with Ex. 13/38

The piece Ex. 10-C tallies with Ex. 13/68

The piece Ex. 10-D tallies with Ex. 13/134

The piece Ex. 10-E tallies with Ex. 13/123

The piece Ex. 10-F tallies with Ex. 13/65'

92. It was of course difficult for us to say that the aforesaid pieces 10-A, 10-B and so on were of the currency notes 13/147, 13/38, 13/68 and others. A request was

made by the learned counsel for Nagina and Sheo Nandan to have these pieces of currency notes sent to the Security Printing Press for comparison and for expert evidence, but we did not consider it necessary. Even if pieces Exs. 10-A, 10-B etc., do not correspond to the corresponding currency notes mentioned above, the curves of the lines along which these currency notes have been cut indicate that the pieces Exs. 10-A, 10-B and others relate to the same bundle of ten rupee currency notes of which Exs. 13/147, 13/38, 13/68 etc., formed part. The curve in the corresponding pieces is so exactly similar that the pieces Exs. 10-A, 10-B, etc., cannot but be of the corresponding notes whose exhibit marks have been mentioned by us earlier or which were a little below or a little above them in the same bundle of ten rupee notes. There is also some writing on the backs of Exs. 10-A and 13/147 and the writings on the two pieces appear to be in continuation of one another. Then there are some initials on the piece Ex. 10-E followed by the date '29/1'. The lower strokes of the date '29/1' are carried over to the piece Ex. 13/123 which may indicate that the pieces 10-A and 10E are of Exs. 13/147 and 13/23. This circumstance as well as the similarity in the curve lines and also the size of the pieces, Exs. 10-A, 10-B, etc., make it abundantly clear that the notes Exs. 13/147, 13/238 etc. were no other than those which were carried by Sri Shanker Das and to respect of which dacoity was committed in the second class compartment.

93. This circumstance is so important that by itself it should provide strong corroboration to the statement of Dhondha leading to a firm belief in the truth of what he has stated.

94. It was contended that currency notes Exs. 13/1 to 13/238 as well as the hundred rupee-notes which were recovered from the house of Ham Bachan remained at the police station Kuchai Kote, for several months and that no explanation was forthcoming as to why they were not sent to the District Malkhana soon after their recovery and that this creates an infirmity in the prosecution case. It has not been possible for us to understand what weakness could possibly be caused to the prosecution case on this account. The currency notes were sealed on the spot and in any case their counter-parts, which are Ex. 10, were all the time in district Deoria and remained sealed throughout. It is impossible to believe that it

would have been possible for any one connected with the investigation of the case to cut the currency notes Exs. 13/1 to 13/238 in a manner so as to make some of them correspond the pieces marked Exs. 10-A, 10-B, etc.

95. Some arguments were advanced as to the extent the statement of Dhondha required corroboration. Section 134 of the Evidence Act says that no particular number of witnesses shall be required for the proof of any fact and Section 133, which relates to the evidence of an accomplice, provides that he shall be a competent witness against an accused person and a conviction would not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Along with this, however, is also illustration (b) to Section 114 which says that the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars; and in *R. R. Chari v. State of Uttar Pradesh* : [1963]1SCR121 , the Supreme Court did not approve the finding of guilty against an accused in a case in which the essential part of the prosecution story in respect of a charge under Section 467, I. P. C. rested on the evidence of an accomplice uncorroborated by any other evidence. Normally, therefore, it would not be desirable to record a conviction on the sole testimony of an accomplice. It was from that point of view., therefore, that even the prosecution relied upon other evidence in corroboration of Dhondha's statement.

96. As to the extent Dhondha's statement to to be corroborated we may first refer to a decision of this Court in *State v. Jagdeo* 1955 AH LJ 380 in which Desai (as he then was) and Beg JJ. pointed out that every collateral fact does not require to be corroborated by evidence as. otherwise, there would be no end of corroboration.

97. In *Sarwan Singh v. State of Punjab* : 1957 CriLJ1014 their Lordships of the Supreme Court pointed out that though an approver is undoubtedly a competent witness, appreciation of his evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses, and the second test is that the approver's evidence must receive sufficient corroboration. This test is special to the case of a weak or tainted evidence like that of an approver.

98. So far as the reliability of an approver is concerned, we have discussed at length the statement of the approver, including the contradictions and inconsistencies in the same pointed out on behalf of Nagina and Shiv Nandan, and have endeavoured to show that either these contradictions and inconsistencies were not on material points or were such as may have been caused by lapse of memory and that they do not create any serious infirmity in his statement. Dhondha had no particular axe to grind against either Nagina or Shiv Nandan though, of course, some allegation was made against him by Nagina which allegation was not supported by any evidence or otherwise established. He was doing the work of a gold or silver-smith, at first at Chhapra and then at Gopalganj and he, therefore, appears to be a fairly respectable person though he happened to fall a prey to greed for money and agreed to join Ram Bachan and others in the commission of this dacoity. There has been no inherent weakness or infirmity in his statement. He was not picked up by the Investigating Officers just casually or at random, and tutored up to give evidence against a set of persons whom it was intended to prosecute for the commission of this dacoity. It was as a matter of fact, his arrest, which was made possible by the recovery of the lota from the compartment, which made it possible for the Investigating Officer to register a case against Nagina and Shiv Nandan along with seven others. It appears to us, therefore, that Dhondha is quite a reliable witness and there would be no justification for discarding his testimony merely on the ground of some contradictions here and there.

99. In *Swamirathnam v. State of Madras* : 1957 CriLJ422 it has been held that though the corroboration of an approver's evidence need not be of a kind which proves the offence against the accused, it is sufficient if it connects the accused with the crime. In : 1957 CriLJ1014 it has been held that though Courts are naturally reluctant to act on the tainted evidence of an approver unless it is corroborated in material particulars by other independent witnesses, it would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars, as in that case the evidence of the accomplice would be rendered wholly superfluous. On the other hand, it has further been pointed out, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars, or incidental

details, as, in such cases, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. In *Janendra Nath Gosh v. State of West Bengal* : 1959 CriLJ1492 their Lordships of the Supreme Court have pointed out that it is the approver's evidence which is the direct evidence of the crime, but there should be corroboration in material particulars not only concerning the crime, but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the Court that the approver's evidence that the accused committed the crime is true.

100. The evidence which has been led in corroboration of the statement of Dhondha may be judged in the light of this legal position. We have already pointed out the extent to which Dhondha's statement is corroborated in important details not only by a number of witnesses, to whose statements reference need not be made afresh, but even by material circumstances such as the recovery of the lota (Ex. 2) and pieces of currency notes from the place of occurrence as well as from the house of Ram Bachan, whose name came to the knowledge of the Investigating Officer through Dhondha himself. Apart from this the statements of Sudama Pandey and Sohan Lal Agarwal afford clear evidence that Nagina and Sheo Nandan were involved in the commission of the crime. In fact as against Nagina this evidence should be complete by itself, though against Sheo Nandan it provides only corroborative evidence.

101. We are satisfied, therefore, that Sheo Nandan was rightly convicted by the learned Sessions Judge. The reasons given by him for acquitting Nagina are, however, not only not-convincing but almost perverse. If the statement of Dhondha read with the corroborative statement of Sohari Lal Agarwal was found sufficient for the conviction of Sheo Nandan, there is no reason why the very same statements together with the statement of Sudama Pandey should have been doubted as against Nagina. We have already shown earlier in this judgment that the allegation that Nagina was shown to the witnesses either at Nautan Police Station or at Gorakhpur Railway Station or while he was travelling from Gorakhpur to Deoria has not been made out in evidence. The case against even Nagina has

been fully made out and he too should have been convicted by the Sessions Judge.

102. Criminal Appeal No. 359 of 1961 filed by Sheo Nandan is dismissed. Govt. Appeal No. 693 of 1961 is allowed, Nagina is convicted under Sections 396 and 120-B Indian Penal Code and sentenced to imprisonment for life for the former offence and to ten years' rigorous imprisonment for the latter.. The two sentences will, however, be concurrent.

103. Nagina and Shiv Nandan are on bail.They will surrender to their bail bonds immediately, failing which necessary steps will be taken for issue of warrants for their arrest.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com