

All Hassan and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/470643

Court : Allahabad

Decided On : Jan-08-1974

Reported in : 1975CriLJ345

Judge : P.N. Bakshi and; Chandra Prakash, JJ.

Appellant : All Hassan and ors.

Respondent : State

Advocate for Pet/Ap. : Sri. P. C. Chaturvedi

Judgement :

ORDER

P.N. Bakshi, J.

1. Ali Hasan, Sher Khan, Lakhan Singh, Ashraf and Ghulam Nabi have been convicted by the Sessions Judge, Bijnor for an offence under Section 396, I.P.C. and each of them has been sentenced to imprisonment for life. Shafiq Ahmad has been convicted by the same judgment and order dated 4th February, 1970 for the offences under Sections 411, I.P.C. and 25. Arms Act and sentenced to 2i years rigorous imprisonment and a fine of Rs. 200 on the first count and 1 1/2 years rigorous imprisonment on the second count. Both the sentences have been made to run consecutively. Criminal Appeal No. 373 of 1970 has been preferred by Ali Hasan, Sher Khan. Ashraf and Ghulam Nabi. Criminal Appeal No. 778 of 1970 has

been preferred by Lakhan and Criminal Appeal No. 437 of 1970 has been preferred by Shafiq Ahmad against their respective convictions.

2. Jai Prakash is a Police Constable, who during the relevant period was posted at Police Station Najibabad. He was on leave at his house in village Chehal on the date when the dacoity in question was committed. He lived in a (portion of Haveli which is situate in village Chehal and which is inhabited by several other residents of the village, Hari Singh also lived in this Haveli.

3. The prosecution case is that at about mid-night of 27th/28th October, 1968, eight or nine dacoits armed¹ with single-barrel guns, pistols, lathis and Tabals entered into the Haveli by breaking open its entrance door and by removing the door leaf of the Kotha of Jai Prakash, The dacoits fired twice towards the Kotha of Jai Prakash and made their entry. Jai Prakash also returned the fire twice. The dacoits fired back with the result that Jai Prakash and his 21/2 years old daughter Kumari Santosh received gun-shot injuries. Jai Prakash and his wife on getting an opportunity managed to run out of the Haveli. An alarm was raised by Jai Prakash which attracted a number of villagers who saw the dacoits in the light of the burning Phoos which was lying to the south of the Baithak of Dori Singh and was lit by him and which created immense light. It is said that the dacoits had torches which they flashed during the commission of the dacoity. The villagers had also torches which they were flashing at the dacoits. One of the dacoits was armed with a gun and he was keeping guard at the place where the dacoits were keeping the looted property. Another dacoit armed with a gun and a torch went on the top of the roof from where he fired several rounds. The dacoity lasted for about 45 minutes, After ransacking the house of Jai Prakash the dacoits also looted the house of Hari Singh, It is said that two of the d&coits; Jagat Vir and Ved Prakash, who were known to the witnesses had covered their faces with Dhatas. During the commission of the offence in question their faces got uncovered which enabled their recognition. We are not. however, concerned with the cases of these two accused Jagat Vir and Ved Prakash because they had been acquitted by the Sessions Judge by the same judgment. After looting the aforesaid houses the dacoits made good their escape first towards the east and then towards the south.

4. A report of the incident was written out by Ved Prakash in the village the same night and lodged at Police Station Chandipur the next morning at 7 A.M. Ram Singh. Head Constable P.W. 7 prepared the First Information Report and he sent Jai Prakash and his daughter Kumari Santosh for medical examination. Dr. R. N. Pandey P.W. 10 examined both the injured at 8 and 8-20 A.M. respectively. He found seven injuries on the person of Jai Prakash which included contused wounds and abrasions. Injury No. 5 was five small gun-shot wounds on the back of the right fore-arm in the middle with swelling. The injuries of Jai Prakash indicated that the injuries received by him had been caused by lathis as well as by fire-arm, as is the case of the prosecution. Kumari Santosh had the following injury on her person:

Multiple gun-shot wounds varying from 1/10' x 1/10' particle to 1/2'x1/10 x skin in an area of 8' x 7 1/2' extending from left side of chest, .2' below axilla down to left side of elbow, where they were more in number, and 2 on right side of abdomen. There was swelling round the wounds.

The injuries of both these victims, in the opinion of the Doctor, were caused at about L2-i30 on the night in question. Kumari Santosh expired at 3 P.M. on 28th October, 1968, Thereafter her post-mortem examination was conducted by Dr. A. N. Farooqi vide report Ex. Ka-44, He was of the opinion that death was due to shock and haemorrhage as a result of the gun-shot injuries.

5. Badan Singh Sidhu. Station Officer CW. 2 arrested accused Jagat Vir on 7-11-1968 and Ashraf accused on 10th November, 1968. R. C Pandey, Station Officer, Noorpur and Harpal Singh, Sub-Inspector P.W. 17 arrested Ali Hasan, Sher Khan and Lakhan on 8th December, 1968, These accused were put up for identification on 27th December, 1968. Sri Pratap Singh. Magistrate First Class P.W. 18 conducted these identification proceedings. Accused Gthulam Nabi surrendered in the court of Addl. District Magistrate (Judicial) on 26th March. 1969. He was put up for identification on 19th April, 1969. Sri D. R. Dhal, Magistrate P.W. 1 conducted the identification proceedings of Ghuilam Nabi, Shafiq Ahmad was arrested by S. L. Varma, Station Officer P.W. 19 near the tube-well of village Dhoondhli in the presence of Ganesh Singh and Sheo Nath Singh P.Ws 3 and 4. The gun Exs. 1

and 7 live cartridges Exs. 2 to 8 were recovered) from his possession. After receiving the result of the identification proceedings and' conducting the rest of the investigation charge-sheets were submitted against the accused appellants who were put up for enquiry and trial.

6. The accused pleaded not guilty. They have taken up various defences and have also produced 15 D.Ws. in support of their cases. The defence taken up by them and the statements of the defence witnesses shall be discussed at the appropriate stage.

7. The prosecution in support of its case examined 19 witnesses. Tej Pal CW. 1 and Baran Singh, S. I. CW. 2 were examined as court witnesses. The testimony of the aforesaid witnesses shall now be discussed in connection with various aspects of the dacoity in question.

8. The factum of the dacoity has not been disputed before us. It is also supported by Jai Prakash P.W 9, Tej Vir Singh P.W. 11, Dori Singh P W. 12 and Dori Singh P.W. 13. Tej Pal Singh CW. 1, who was examined under Section 540. Cr.P.C. has also deposed with regard .to the factum of the dacoity. The aforesaid witnesses have stated on oath that dacoity was committed at the houses of Jai Prakash and Hari Singh on the midnight of 27/28th October, 1968. They have also deposed that during the commission of this dacoity injuries were received by Jai Prakash and Kumari Santosh. The witnesses also deposed that the dacoits looted away property from the houses of the victims. Baran Singh CW. 2, who visited the spot on the morning of 28th October, 1968 found pellet marks in the wall of Jai Prakash's Kotha and also in the wall in front of Ami Chand's Ota. He recovered two empty cartridges outside the door of the Kotha of Jai Prakash. The medical evidence on the record also establishes that it was during the commission of this dacoity that injuries were received by Jai Prakash and also by Kumari Santosh, who died subsequently. From a consideration of all this evidence We are satisfied that the prosecution has succeeded in proving that a dacoity was committed at the houses of Jai Prakash and Hari Singh in the night between 27/ 28th October, 1969 and that as a result of fire-arm injuries received by Kumari Santosh she died in the hospital at 3 P.M. next day.

9. The lodging of the First Information Report by Jai Prakash at Police Station, Chandpur at 7 A.M. has also not been seriously disputed before us. It is proved from the statement of Jai Prakash that this report was written out in the village at the house of the complainant on the date of the incident and' that it was lodged at Police Station, Chandipur next morning at 7 A.M. Head Constable Ram Singh P.W. 7 who prepared the First Information Report Ex. Ka-4 has stated that the said report was lodged at 7 A.M. He has further stated that special report was sent vide G. D. entry Ex. Ka-20. In this connection we have also considered the statement of Dori Singh P.W. 13. Baran Singh C.W. 2 has stated that he interrogated Jai Prakash at the Police Station and reached village Chaheli at 10 A.M. in the morning in connection with the investigation of this case. There is some confusion in the statement of Dori Singh with regard to the scribing of the First Information Report, but this confusion has been clarified in his re-examination. In our opinion, Dori Singh did not distinguish in the lodging of the report of the incident and the interrogation of the witnesses. On a consideration of the entire evidence on the record in this connection we are satisfied that the First Information Report was written out in the village at his house by Jai Prakash and that it was lodged at Police Station Chandpur at 7 A.M. on 28th October, 1968.

10. Learned counsel for the appellants has strongly urged two submissions. In the first place he has submitted that there was not enough light for purposes of identification of the accused-appellants. In the second place he has submitted that even if the existence of light is accepted the positions in which the witnesses were placed were such that they could not have possibly recognised the miscreants during the dacoity in question.

11. We shall first consider the question of adequacy of light. Jai Prakash P.W. 9 has stated that he recognised the dacoits in the light o the lantern Ex. 13 which was burning in his Usara, It has come in his statement that he was manhandled by the miscreants and that his gun was snatched away from him. It has also come in evidence that a lantern was hanging from a nail which was fixed towards the west of the door-frame at about a man's height. The fact that he was manhandled by the dacoits makes it obvious that he must have come in very close quarters with them. As such we find no reason to disbelieve that Jai Prakash recognised the

dacoits in the light of the aforesaid lantern. Further Jai Prakash has¹ also stated that he also saw the faces of the dacoits in the light of the burning Phoos. The other identifying witnesses that have been produced in this case have also claimed to have seen and recognised the dacoits in the light of the burning Phoos.

We shall now consider the evidence with regard to this source of light. A look at Ex. Ka-56, which is the site-plan prepared by the investigating officer, discloses that the house of Jai Prakash is situate at point No. 1. The house of Hori Singh is situate at point No. 5. The house of Dori Singh son of Shadi Ram P.W. 12 is situate at point No. 24 and the house of Dori Singh son of Daleep Singh P.W. 13 is situate at point No. 27. Dori Singh P.W. 12 has stated that his southern Chhappar has been blown off by gale about 1 or 2 months prior to the incident in question. He had stacked' the frame of the chhappar as well as the Phoos which was tied in three or four bundles in between the southern wall of the Chhappar and the cattle troughs to its south. Dori Singh has stated that on hearing the alarm of Jai Prakash he had set fire to his Phoos which was lying as aforesaid and which has been shown by the mark X in the site-plan. Jai Prakash P.W. 9 has stated that this Phoos was lying near the corner of his Dalan. On this basis it is urged by the learned counsel for the appellants that there is a contradiction in the statements of Jai Prakash and that of Dori Singh with regard to the actual place where the Phoos had been stacked. We have carefully considered this submission of the learned counsel. Jai Prakash has stated in cross-examination that his Dalan and the Dalan of Dori Singh are one and the same. There is no partition in between them. For this reason he did not draw any distinction between his Dalan and the Dalan of Dori Singh. A look at the site-plan also indicates that there is no partition between these two Dalans. As a matter of fact both are the parts of the same Dalan. Therefore, even if it is assumed that there is a slight discrepancy in the statement of Jai Prakash, this, in our opinion, is not sufficient to negative the existence of the stacked Phoos to the south of the Ghair of Dori Singh. Taj Vir Singh P.W. 11. who was sleeping at his Ghair at the time of the dacoity. has deposed that on hearing the fire of the gun and the alarm raised by Jai Prakash he went into Ami Chand's Ghair. where he was joined by the other prosecution witnesses. He has stated that Dori Singh lit the Phoos after he had reached Ami Chand's Ghair. He has also stated¹ that the Phoos was kept beside the southern wall of Dori Singh's

Chhappar and that the wall had been blackened' by the smoke of the Phoos. Baran Singh, Sub-Inspector C.W. 2 has corroborated the statement of Dori Singh when he states that he found the ash of the burnt Phoos to the south of the southern wall of Dori Singh's Usara. He has also corroborated the statement of Tej Vir Singh to the effect that the wall as mentioned above, had also been blackened as a result of the fire. It has come in evidence that Baran. Singh reached the spot just a few hours after the commission of the dacoity and he found a heap of ash lying near the southern wall of Dori Singh's Usara. There is nothing in the statement of the Sub-Inspector to discredit his testimony on this point. Dori Singh P.W. 12 has specifically stated that he had collected the old frame of his Chhappar and the Phoos in 3 or 4 bundles and had stacked it to the south of his house. Dori Singh son of Dalpat Singh P.W. 13 and Tej Pal Singh C.W. 1 have also deposed with regard to the Phoos in question being lit by Dori Singh. From a consideration of all this evidence we are satisfied that the prosecution has succeeded in establishing by convincing and cogent evidence that Dori Singh P.W. 12 had stacked the Phoos of his Chhaippar to the south of his Ghair and that he had set fire to the same at the time of the commission of the dacoity in question. We are further satisfied from the evidence on the record that the light emitted from this burning Phoos illuminated the entire area and that it was enough to enable a recognition of the miscreants who committed the dacoity in question.

12. We shall now consider whether the identifying witnesses had sufficient opportunity to recognise the features of the dacoits from the place where they are alleged to have collected and witnessed the incident in question. From the statements of the prosecution witnesses it is evident that the miscreants were collecting the looted articles at the point shown by X in the site-plan. This place where the looted articles were being collected is only six paces from 'point No. 24 from where Dori Singh recognised the miscreants. Further this place is about 16 paces from point No. 19 which is the Chaupal of Ami Chand. At this Chaupal Dori Singh P.W. 13 and Taj Vir Singh P.W. 11 had collected. Further this place is about 10 paces from (point No. 17, which is the Sar of Tej Pal. At this place Jai Prakash P.W. 9 and Tej Pal C.W. 1 had collected. The prosecution witnesses have given approximate distances with regard to these various points. We have however, taken the distances as given by the Investigating Officer as precise and correct

and on that basis we shall now deal with the evidence on the record.

13. So far as Dori Singh P.W. 12 is concerned, we have already referred to his statement. He had lit the fire at the point shown by mark X in the site-plan. He was closest to the place marked X. This distance is just six paces. He had witnessed the miscreants collecting the looted articles at the spot marked X from behind his wall, in the light of the fire which he had lit. The close proximity to our minds is such that there can be no doubt that Dori Singh was clearly in a position to recognise the features of the miscreants. Jai Prakash P.W. 9 and Tej Pal C.W. 1 had collected at the Sar of Ami Chand at point No. 17. This place is only ten steps from the spot shown as X. They claim to have recognised the dacoits through a hole in the western wall in the Sar. It has come in the statement of one of these witnesses who has given an approximate idea that this hole in the wall was 1/2' x 1/2' in area. Baran Singh C.W. 2 has, however, stated that this hole was 2 1/2 balisht x 2 1/2 balisht. We have carefully scrutinised the prosecution evidence in this connection and we are satisfied that the hole in question was sufficiently large through which the witnesses, who had collected in the Sar could look out and recognise the features of the miscreants in the light emitted from the Phoos burnt at point X marked in the site-plan. In the Chaupal of Ami Chand, Dori Singh P.W. 13 and Taj Vir Singh P.W. 11 had collected. This Baithak is about 16 steps from the relevant point X where the dacoits were collecting the looted material. The case for the prosecution is that these witnesses saw through a window. The prosecution evidence is that this window was also 2 1/2 balisht x 2 1/2 balisht. We have carefully scrutinised the evidence on this score. We are satisfied with regard to the dimension of this window as given by the prosecution witnesses. We are further satisfied that the witnesses collected at point No. 19 could recognise the features of the dacoits through this window. Learned counsel for the appellants has referred to the statement of P.W. 13 wherein he has stated in the examination-in-chief that he was sleeping at his house at (point No. 27. But in the cross-examination he has stated that he was sleeping at the Baithak in question.

This slight discrepancy, in our opinion is not sufficient to discard the testimony of Dori Singh. If Taj Vir Singh P.W. 11, who has stated that he was at his Ghair and that before the fire was lit he went into the Baithak of Ami Chand, is believable

surely enough Dori Singh P.W. 13 even if he was at his Ghair at Point No. 27, could also have reached the Baithak of Ami Chand¹ prior to the lighting of the fire and could have recognised the dacoits from there. We have carefully considered the testimony of Dori Singh P.W. 13 and Taj Vir Singh P.W. 11 and we do not find any reason to doubt that they were not present at point No. 19 at the Chaupal of Ami Chand at the relevant point of time. From a perusal of their statements we are convinced that they were at the relevant point of time in the Chaupal of Ami Chand and they did see the dacoits towards the western side of the Chaupal, to which reference has been made above. Having thus considered the entire evidence on the record, we are of the opinion that the witnesses, who had collected at points Nos. 24, 19 and 17 had adequate opportunity to recognise the miscreants, who were collecting the looted property at point X marked in the site-plan, in the light of the fire which had been lit by Dori Singh P.W. 12. There is, therefore, no substance in the contention of the learned counsel for the appellants that the identifying witnesses were not in a position to recognise the dacoits. even if it is accepted that the burning Phoos did exist at the relevant point of time.

14. We shall now consider the individual cases of the accused-appellants. Ali Hasan, Lakhan Singh and Sher Khan were arrested by Hari Pal Singh, Sub-Inspector P.W. 17. He took over charge of Police Station Chandpur on 25th November, 1968. On the night of 7th December, 1968 he received information through an informer about the complicity of these three accused. The same night he searched Lakhan Singh at his house in village Milka Badshahpur. He also searched Ali Hasan in village Mehmadpur. These accused were not available at their houses; Next morning he made a search for Sher Khan at village Khirka, but he too was not available. While Harpal Singh was proceeding in search of Ghulam Nabi he was given information at about 12 noon by an informer at Bus Station Tajpur that three persons were distributing clothes and ornaments in the Pakka Bagh and that these ornaments and clothes appeared to be stolen property. Har Pal Singh proceeded along with R. C. Pandey, Station Officer Noorpur, Rup Chand. Sub-Inspector and some constables to the Pakka Bagh. They surrounded it. They found the three accused persons distributing the articles under the cover of bushes. On seeing the Police party the accused began to run away. They were, however, chased, beaten and overpower- ed. Thereafter they were brought

Baparda to Police Station Noorpur where they were admitted in the lock-up at 3 P.M. The articles which were recovered from their possession are not the articles with which we are concerned in this case, therefore, it is not necessary to refer to them.

The relevant entry with regard to the lodging of the accused at the Police Station was made in the general diary vide Ex. Ka-29. At 4-10 P.M. the same day the accused were sent Baparda to District Jail, Bijnor. but as they could not be lodged in Jail they were kept in the lockup of the Kotwali, as deposed to by Tika Bam P.W. 14. Next morning they were sent to the District Jail, Bijnor. An entry to that effect was made in the General Diary vide Ex. Ka-21. Sri Krishna was one of the constables who escorted these accused to Jail. His affidavit Ex. Ka-47 is on record. It proves that the accused were kept Baparda during the course of their transit. The prosecution has also led evidence to prove that while the accused were at Police Station Noorpur and at Police Station Kotwali they were kept Baparda. In this connection the statements of P.Ws. 5 and 14 may be referred. We have carefully perused the statements of these witnesses and we are satisfied from a perusal of the statements that they have succeeded in proving that these three accused from the time of their arrest to the time they were lodged in jail were kept Baparda and no body was allowed to see them at the various Police Stations at which they had been lodged. There is no substance in the suggestion made on behalf of these accused that their photographs were taken at the Police Station and they were shown to the witnesses. Har Pal Singh P.W. 17, who effected the arrest of these accused had stated with regard to their movement and their lodging at the relevant period of time. Nothing has been extracted from, his examination which could throw the slightest doubt on the arrest of these accused and their lodgment in jail in accordance with the procedure prescribed by law. We are, satisfied on a consideration of this evidence that the prosecution has succeeded in proving the arrest of Ali Hasan. Lakhan Singh and Sher Khan from the Pakka Bagh in village Taj pur, and also that they were kept Baparda throughout till the time they were lodged in jail.

15. The identification proceedings with regard to Ali Hasan, Sher Khan and Lakhan were conducted by Sri Pratap Singh. Magistrate P.W. 18 on 27th

December, 1968. We have carefully scrutinised the statement of Sri Pratap Singh and have also considered the identification memos on the record. From a perusal of the statement of the Magistrate concerned it is obvious that 'he had taken all adequate precautions to conceal the distinctive marks of the accused-appellants. He had also stated that requisite number of the undertrials were mixed with these appellants. There is nothing in the cross-examination of the Magistrate to indicate that the identification (proceedings were in any way vitiated by any lapse on the part of the Magistrate. We are satisfied that the Magistrate concerned had taken all due and adequate precautions to ensure a fair and impartial identification. Ali Hasan has been identified by four witnesses namely Jai Prakash P.W. 9, Tej Vir Singh P.W. 11, Dori Singh P.W. 12 son of Shatli Ram and Dori Singh P.W. 13, son of Dalpat Singh. All these four witnesses have stated that they had seen Ali Hasan at the time of the commission of the offence and thereafter at the time of the identification proceedings, and further that they had not seen Ali Hasan in between these two stages. We find no reason to doubt the correctness of their statements. The defence of Ali Hasan was that he was shown to the witnesses and that his photograph was taken at the Police Station. From the findings which we have recorded above it is apparent that this defence is false. Ali Hasan examined one Srimati Aiana his sister D.W. 6, who is wife of Hasan Eaza resident of Chehali. She has stated that the accused often used to visit her and stay at her place for months at a time in order to manage her cultivation, because her husband was sick. We have carefully scrutinised the statement of D.W. 6. She has stated further that Ali Hasan has got cultivation of his own and that when he comes to village Chehali he engages servants who charge Rs. 50, 60 or even 100 per months to carry on his cultivation. She has also stated that servants are also available in village Chehali at Rs. 30 per month. She has further stated that Ali Hasan is not reimbursed for the expenses which he incurs in connection with his cultivation. It is not possible to believe that Ali Hasan would leave his own cultivation and get it done by hired labourers for the purpose of coming to village Chehali for looking after his sister's cultivation. We are not satisfied from a consideration of this evidence that any satisfactory reason has been given by Srimati Aiana for looking after the cultivation of her husband by Ali Hasan. There is no substance in this defence put up by Ali Hasan. Jai Prakash P.W. 9, Tej Vir Singh P.W. 11. Dori

Singh P.W. 12 and Don Singh P.W. 13 have correctly identified this accused-appellant in jail and also before the Sessions Court. We are satisfied on a consideration of this evidence that this identification inspires confidence and is sufficient to uphold the guilt of Ali Hasan.

16. Sher Khan has been identified 'by Jai Prakash P.W. 9, Dori Singh PW 12 and Dori Singh P.W. 13, We have already held above that the identification proceedings which had been conducted have been fair and above board. Learned counsel for the appellants has submitted that Dori Singh did not identify Sher Khan before the committing court. On this basis it is urged that the identification by him in the .parades as well as before the court of session is not reliable. Even if we accept this submission and eliminate the identification by P.W. 13 Dori Singh, yet we have the identification by Jai Prakash P.W. 9 and Dori Singh P.W. 12 against Sher Khan. Nothing has been brought out in the evidence on the basis of which the identification of these two witnesses can be rejected, Sher Khan has taken up a plea that he was shown to the witnesses and also that he was known to them. So far as showing is concerned that part of the defence has already been repelled by us. He has examined D.W. 7 Ramzan Khan, his sister's son and Subey Khan D.W. 8, in support of his case that he was known to the witnesses. We have carefully scrutinised the statements of D.Ws. 7 and 8. D.W. 7 has stated that before the arrest of the accused, Sher Khan and Ramzan Khan went to village Chehali in the evening and returned next morning. On the other hand D.W. 8 has stated that Sher Khan and Ramzan came to village Chehali in the morning and returned in the evening. This contradiction in the statements of the witnesses makes it extremely doubtful whether and when Sher Khan went to village Chehali. We have carefully scrutinised the statements of D.Ws. 7 and 8 and we are of the opinion that they do not inspire confidence. They have merely been got up for the purpose of supporting the defence case that they were known to the witnesses. Sri P. C. Saxena, Assistant Jailor, Bijnor D.W. 4 has also been produced' on behalf of Sher Khan. He has brought the conviction and Jail Admission Register of District Jail Bijnor to show that Sher Khan and Ghulam Nabi were admitted in jail on 24th October. 1963 as convicts in Sessions Trial No. 34 of 1963 and that they were both released on 20th December. 1965. He has also stated that Dori son of Shadi Rain P.W. 12 resident of village Chehali was admitted in Jail on 1st

September, 1964 as an under-trial in a case under Sections SgS/SW, I.P.C. and that he was released on 8th October, 1964. He has further stated that Dori was again admitted into Jail on 4th February, 1965 in connection with an another case and thereafter released on 15th March, 1965. On this basis it is argued that Dori P.W. 12 had known Sher Khan from before. We have carefully scrutinised this argument but we do not find any merit in it. Even if the entries in the Jail Register are accepted it would be too much to expect that Dori Singh must necessarily have known the different convicts and the undertrials including Sher Khan during his stay in Jail. It would further be highly improbable that he would remember the features of the undertrials nearly four years thereafter. We are thus not satisfied that this evidence is sufficient to prove that Sher Khan appellant was known to Dori Singh P.W. 12 from before. We, therefore, do not find any justification for upholding the defence of Sher Khan that he was known to the prosecution witnesses from before. We are satisfied that the identification of Sher Khan by Jai Prakash P.W. 9 and¹ Dori Singh P.W. 12 is sufficient to bring home the guilt to this accused.

17. Lakhan Singh has taken up the defence that he was shown to the witnesses at Police Station Chandpur and that his Photograph was taken there. This defence has already been repelled by us. He has been identified¹ by Jai Prakash P.W. 9. Taj Vir Singh P.W. 11 and Dori Singh P.W. 12. We have carefully perused the statements of these witnesses and we do not find any reason to doubt their correctness. Lakhan Singh has examined Chunni Singh D.W. 10 in his defence. He has stated that this accused was arrested from his house at 4 A.M. D.W. 10 lives at a distance of 5-6 houses away from the house of Lakhan Singh. It is difficult to believe that in the month of December the witness could have seen the police taking away the accused¹ in the early hours of the morning. Moreover, we have already held above that the arrest of Lakhan Singh as also of Sher Khan and Ali Hasan, as alleged by the prosecution has been conclusively established. There is no substance in the contention that Lakhan Singh was arrested from his house.

18. Sri P. C. Chaturvedi learned counsel for the appellants has filed an application supported by a certified copy of the judgment of the Sessions Judge Bareilly dated 29th October, 1970. He submits on the basis of this judgment that accused

Lakhan Singh has been acquitted in that case and as such it should be held by this Court that the arrest of this accused-appellant in the manner suggested by the prosecution cannot be accepted in this case. No notice of this application or copy of the judgment in question has been given to the learned counsel for the State. The State counsel has a very serious objection to the filing of this certified copy of the judgment. It appears that the copy of the judgment dated 29th August 1970 was delivered to the applicant on 9th September 1970. No reason has been given in the application which has been filed now as to why this judgment was not filed at an earlier stage after giving prior notice to the State counsel. The practice of filing document at a late stage without sufficient cause, in our opinion, should be discouraged. In order to hold the scales of justice even it is necessary that the interest of the prosecution as well as of the defence should be equally safeguarded. We do not find any reason for taking the prosecution unawares and for filing the document at this belated stage. It was the duty of the accused-appellants to have filed the certified copy of the document as soon as it was available after due notice to the State counsel so that the State counsel may be in a position to rebut it, if necessary, and also to disclose whether this judgment has become final or is still the subject-matter of an appeal.

19. However, even if the certified copy of the judgment is accepted by us as additional evidence we are of the opinion that it does not in any way advance the case of Lakhan Singh accused any further. This judgment can only be utilised for the purpose of showing that Lakhan Singh was acquitted in Sessions Trial No. 120 of 1969, Neither the reasons that are contained in this judgment nor the evidence on record as embodied in the judgment can be taken into consideration for deciding the present appeal. It has been held times out of number by the Supreme Court that-

the reasoning in the earlier judgment could not be relied¹ upon as it proceeded on evidence which was recorded separately and which was considered separately. The earlier judgment could be admissible only if it fulfilled the conditions laid down in Sections 40, 43 of the Evidence Act. The earlier judgment was admissible to show the parties and the decision but it was not admissible for the purpose of relying upon the appreciation of evidence.

The above observation was made by their Lordships of the Supreme Court in the case of *Kharkan v. State of U.P.* reported in : [1964]4SCR673 . Further it may be pointed out that Sessions Trial No, 120 of 1969 was connected with a dacoity which was committed on 6th October. 1969 at the house of Balvir Singh. The accused-appellant Lakhan had been acquitted on the ground that the identification witnesses in that case did not have sufficient opportunity of recognising the accused. That court also considered that the single identification of Lakhan Singh was not sufficient to convict the accused. These were the grounds on which the judgment proceeded. There is nothing in the judgment to indicate that the arrest of Lakhan Singh as alleged by the prosecution in. the present appeal was in any way doubted', discussed or criticised. As such, even if we consider the contents of the judgment dated 29th August, 1Q70, we are of the opinion that the arrest of appellant Lakhan Singh in the manner now suggested by the prosecution has never been the subject-matter of a decision in the earlier judgment and as such it cannot be argued at all that this appellant is entitled to acquittal on this basis. We are satisfied that the identification of Lakhan by Jai Prakash, Taj Vir Singh and Dori Singh fully established the complicity of this appellant in the crime in question.

20. Ashraf appellant was arrested on 10th November. 1968 at 5 A.M. near the Roadways Bus Stand. He was made Bapardla and brought to the police Station where he was lodged in the lock-up at 7 A.M. P.W. 7 Ram Singh, Head Constable sent him Baparda to the District Jail at 9-10 A.M. Constables Mohammad Saklain and Azam Beg escorted him to the District Jail vide X. Ka-43. The appellant was kept Baparda during the course of transit. He has been identified by Jai Prakash P.W. 9, Dori Singh P.W, 12. Dori Singh P.W. 13 and' Tej Pal C.W. 1. We have carefully considered the statements of these witnesses and we are satisfied that these witnesses did not have any opportunity to see the accused appellant in the period intervening between the commission of the offence and the identification proceedings. The offence taken up by this accused¹ is that the witnesses knew him from before because he has relatives in village Chaheli. In the Sessions Court he has further added that his plastered hand was in sling which was visible at the time of test identification and as such the identification proceedings against him should not be relied upon, Dr. P. K. Gupta D.W. 12 and' Dr. Hash-mat Ullah Khan D.W. 13 have been produced in defence to prove the injuries at Ashraf. We have

considered the statements of these two defence witnesses. The injury reports disclose that seven contusions have been received by Ashraf on various parts of his 'body. Sri Pratap Singh, Sub-Divisional Magistrate P.W. 18, who conducted the identification proceedings has noted that the right hand and the left foot of Ashraf were plastered. He has stated that the plastered hand and the foot of Ashraf were covered with blanket and that they were not visible. In the memo Ex. Ka-35 there is a mention that the hands and the foot of the entire parade were covered. We are thus satisfied that the fact that the right hand of this accused-appellant was under plaster could not have affected the test identification. The evidence on the record¹ clearly proves that the Magistrate concerned had taken all precautions to cover the plastered hand and as such we do not find any merit in the defence taken up by Ashraf. Sher Ali D.W. & has also been produced by Ashraf to show that he has relations in village Chaheli and as such he was known to the residents of that village. From a perusal of the statement of D.W. 8 it appears that Ashraf visited village Chaheli only on special occasions. Even on those occasions he used to come in the evening and return in the morning. It has come in the evidence that the houses of the Ahirs are towards the south-east of the Abadi. As such even if Ashraf went to the village on special occasions there was no likelihood of his coming into contact with the Ahirs of the village. D.W. 9 has also gone to the length of saying that the Station Officer after arresting Ashraf took him to the locality of the Ahirs. We are not prepared to accept this suggestion for it has never been raised at an earlier stage. We do not find any merit in the defence suggestion put forward by Ashraf. The identifying witnesses have denied that Ashraf was shown to them at the Police Station or that they had seen and recognised him in the identification parade on account of the plastered hand. On a consideration of this evidence, we are satisfied that the identification by Jai Prakash P.W. 9. Dori Singh P.W. 12, Dori Singh P.W. 13 and Tej Pal C.W. 1 is sufficient to bring home the, guilt of this accused.

21. Coming now to the case of Ghulam Nabi, it may be noted that he had been identified by three witnesses Jai Prakash P.W. 9, Dori Singh P.W. 12. and Tej Pal C.W. 1. Gbulam Nabi has surrendered in the court of the Additional District Magistrate Judicial Bijnor on 26th March, 1069. Mohammad Ibrahim has stated that he took the accused Baparda to the lock-up of the Collectorate and from there

Jagdish Prasad P.W. 6 took him to the District Jail in a Baparda condition. We have scrutinised the evidence of these witnesses very carefully. Tej Pal C.W. 1 has stated before the committing Magistrate that he had seen Ghulam Nabi visiting Hasan Raza in the village. Even though before the Sessions Court he has retracted from this admission, we are of the opinion that the benefit of this statement made before the Committing Magistrate should be given to this accused. In this state of evidence it would not be safe to accept the testimony of C.W. 1 as against this accused. It may be that he has seen the accused in the village. Jai Prakash P.W. 9 had gone to the court of the Additional District Magistrate (Judicial) Bijnor on 26th March, 1969. Abid Ali D.W. 3 who had brought the general diary of Police Station Najibabad has stated that Jai Prakash had left the Police Station at 10-15 A.M. on 26th March, 1969 for appearing as a witness in a case under Section 396, I.P.C. Jagdish Prasad D.W. 5, who was a court clerk, has deposed that the present case out of which this appeal arises had been fixed for enquiry before the Additional District Magistrate (Judicial) on 26th March, 1969. This appellant Ghulam Nabi has also surrendered in the court of the Additional District Magistrate (Judicial) on 26th March, 1969. From the evidence referred to above, the possibility of Jai Prakash having attended the court of the Additional District Magistrate (Judicial) cannot be ruled out. In these circumstances it may be that Jai Prakash had seen the accused Ghulam Nabi at the time he surrendered in the court of Additional District Magistrate (Judicial) and as such the identification of Jai Prakash as against Ghulam Nabi cannot be safely accepted. As a matter of abundant care and caution, if we exclude the evidence of Jai Prakash P.W. 9 and C.W. 1 Tej Pal as against Ghulam Nabi, we are left only with the solitary identification of Dori Singh P.W. 12. A single identification is not sufficient to bring home the guilt to the accused. For all these reasons, the benefit of doubt must be extended to Ghulam Nabi accused appellant.

22. Shafiq Ahmad appellant has been convicted, as already mentioned for the offence under Section 411, I.P.C. and Section 25 of the Arms Act. According to the case of the prosecution Sri Sohanlal Varma P.W. 19 arrested him near the State tube-well in village Dhoondli at about 3-30 P.M. on 7-6-1969. The gun Ex. 1 and seven live cartridges Exs. 2 to 8 were recovered from his person. These recoveries were made in the presence of Ganesh Singh P.W. 3 and Sheo Nath

Singh P.W. 4. We have carefully scrutinised the statements of these witnesses. We do not find anything in their statements to discard their testimony. They have no reason to falsely implicate the appellant. We are not prepared to agree with the submission of the learned counsel for the appellant that because village Dhoondhli is close to village Chaheli therefore the appellant could not be found there with the incriminating weapons. We have carefully scrutinised the submission but we are satisfied from the evidence on the record that the prosecution has succeeded in proving the arrest as well as the recovery of the incriminating articles from the possession of Shafiq.

23. Jai Prakash has stated that his 12-bore gun No. 18674 had been looted away by the dacoits. The recovery memo Ex. Ka-2 also shows the recovery of the gun of the aforesaid number. It is thus clearly established that the gun recovered' from the possession of Shafiq was the gun which had been reported to have been taken away by the dacoits during the commission of the dacoity in question,, Shafiq Ahmad has failed to produce any licence for the aforesaid gun. Thus the charge under Section 25 of the Arms Act as well as under Section 411, I.P.C. has been fully established against Shafiq Ahmad. Sohan Lai P.W. 19 has also proved the sanction of the District Magistrate for the prosecution of the accused' under Section 25 of the Arms Act.

24. We find from the judgment of the court below that the Sessions Judge has awarded consecutive sentences to Shafiq under Section 411, I.P.C. and Section 25 of the Arms Act, We find no justification for giving consecutive sentences. He has also imposed a fine of Rs. 200 under Section 411. I.P.C. We further find that there is no justification for the imposition of this fine. While, therefore, upholding the conviction of Shafiq for the offence under Section 411, I.P.C. and Section 25 of the Arms Act, we set aside the sentence of fine of Rs. 200 imposed upon him, The sentences of 2 1/2 years rigorous imprisonment under Section 411, I.P.C. and' 1 1/2 years' rigorous imprisonment under Section 25 of the Arms Act are maintained but they shall run concurrently.

25. In the result, therefore. Criminal Appeal No. 373 of 1970 is partly allowed. The conviction of Ali Hasan, Sher Khan and Ashraf for the offences with which they

have been charged is confirmed. They are on bail. Their bail bonds are hereby discharged. They shall surrender to their bail immediately, failing which they shall be taken into custody forthwith to serve out the sentence. The appeal by Ghulam Nabi is hereby allowed. He is on bail. He need not surrender to his bail. His bail bonds are hereby discharged.

26. Criminal Appeal No. 778 of 1970 by Lakhan is dismissed The conviction and the sentence imposed by the court below are confirmed. He is on bail. His bail-bonds are hereby discharged. He shall surrender to his bail immediately to serve out the sentence failing which he shall be taken into custody to serve out the sentence.

27. Criminal Appeal No, 437 of 1970 by Shafiq is also dismissed, with the modification in the sentence as noted above. Shafiq shall surrender to his bail to serve out the sentence failing which he shall be taken into custody to serve out the modified sentence. The fine of Rs. 200 if paid, shall be refunded to him.

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