Bechu Vs. State

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Court : Allahabad

Decided On : Aug-29-1956

Reported in : 1957CriLJ113

Judge : Mulla, J.

Appellant : Bechu

Respondent : State

Judgement :

Mulla, J.

1. This order will dispose of Criminal Appeals Nos. 579 and 599 of 1955 and 16 of 1956. These are three Jail appeals sent by Bechu, Bnagirath and Roopey. Bechu and Bhagirath have been convicted under Section 395, I. P. c while Roopey has been convicted under Section 411 I.P.C. Several persons were tried In this case and the learned trial Court convicted the three appellants as well as two other persons, viz., Jag Prasad and Ram Roop Singh, Ram Roop Singh and Jag Prasad have not appealed from jail, but as in my opinion the trial Court has completely misunderstood and misapplied the law in assessing the evidence of identification, I cannot let the order of conviction stand against them either and I am Betting aside their conviction also.

2. Briefly stated the prosecution story is that a dacoity was committed on the night between the 7th and 8th of June, 1954, at the house of P. W. 1 Sitlu who is a resident of village Aihar, police station Bhilsar, Sub-division Ramsanehi Ghat, District Barabanki. It is alleged that about 35 or 40 dacoits committed this crime and some of them were armed with guns. The light that existed in this case was the torches in the hands of the dacoits and witnesses and according to the prosecution a Parchhati was burnt outside the house of Sitlu.

Next morning a report of the incident was lodged by Sitlu himself at police station Bhilsar which was six miles away. No names were mentioned in this report but a list of looted property was given. In this list of property there were, among others items of lachchas. It is not necessary to give any details about this dacoity because my order rests only on the appreciation of the evidence of identification.

3. The three appellants before me were arrested on different dates. Roopey was arrested on 4-7-1954, Bhagirath on 5-7-1954, and Bechu on 17-8-1954. The other two accused persons who have not appealed viz., Ram Roop Singh and Jag Prasad were also arrested on 5-7-1954. After the arrest of the suspects in this case several identification parades were held. No less than five parades were held in this case. The first identification parade was held on 14-7-1954, the second on 24-7-1954. the third on 4-8-1954, the fourth on 21-9-1954 and the last on 30-9-1954, Roopey appellant and Ram Roop Singh were put up for identification in the second parade held on 24-7-1954. Bhagirath appellant and Jag Prasad were put for identification in the third parade held on 4-8-1954. Bechu appellant was put for identification in the fourth parade which was held on 21-9-1954.

4. The first question that strikes one is as to why Bhagirath, Roopey, Jag Prasad and Ram Roop Singh were not put up for identification in the first parade which was held on 14-7-1954. No explanation has been offered and the trial Court did not care to find it out as to why these four persons Who came to jail by the 6th July were not put up in the first parade which was held on the 14th of July. Still much cannot be made out of this fact and the evidence of identification has to be assessed before any conclusions can be reached. I will take up the cases of the individual accused persons separately,

5. The case against this appellant rests on the evidence of identification alone. There are only two witnesses, viz., P. W. 2 Panna Lal and P. W. 10 Hakimullah who have identified him in Court. It was contended on behalf of Bhagirath that the Court should also consider the results of the other identification proceedings in assessing and evaluating the evidence of these two witnesses. The trial Court, however, relying on a decision reported in Satya Narain v. The State : AIR1953 All385 came to the conclusion that the results of the other identification proceedings should be ignored in assessing the evidence Of these witnesses. The trial Court cited some observations from this decision which run as follows;

The weight to be attached to the identification of a suspect by a witness should ordinarily not depend upon his failure to identify other suspects. He might not have had the same opportunity of noting and retaining in mind the features of all the offenders committing the crime. He might not have even seen all the offenders. He might not have been attracted to the same extent by the features of all the offenders, even if he saw them. Features of some might have made a stronger impression upon his mind than those of others.

In my opinion the learned Judge when making these observations was only dealing in abstract with the question why a witness succeeds in identifying a suspect but fails to identify others. He did not mean to convey that where a person identifies one suspect correctly but commits several mistakes still that identification should be accepted and the evidence of that witness should not be discarded. This decision is not an authority for such a proposition. To do so would amount to ignore the rule of prudence and caution completely and would be quite contrary to the definition of the word 'proved' as given in Section 3' of the Indian Evidence Act.

The trial Court read much more in the observations of the learned Judge than was meant by the-learned Judge himself. It is obvious that if a witness can make a mistake in one instance there is a reasonable possibility of his making a mistake in another instance also. A person who picks out wrong persons is certainly open to the criticism that he is willing to pick out a person lightly merely because the face of some suspect resembles a faint image which he carries in his mind. As a rule of

caution such evidence has to be scrutinised very carefully before it can be accepted.

In my opinion the decision cited by the trial Court is not applicable to the circumstances of this case at all. There is a Bench decision of this. Court which is more applicable to the circumstances of this case. That decision is reported in State v. Wahid Bux : AIR1953 All314 . It was observed by the learned Judges in this case:

The question in such cases is whether we cart-rely upon the identifying witnesses. Normally the result of identification proceedings in which a particular accused was put up must alone be taken into consideration in deciding this question. It is upon the basis of it that it must be held whether identification is good and reliable or fit to be discarded. Other identification proceedings in which the particular accused was not put up for identification and other accused were put up, are immaterial except in so far as an inference may be drawn against the power of observation of the witnesses.

This inference may be drawn from these other identification proceedings when they were held either prior to the identification proceeding relating to the particular accused or simultaneously with or shortly after it. But no conclusion can be drawn from these other identification proceedings if they were held long afterwards, because by the lapse of time a witness may lose that freshness of impression which he might have retained at the time when the proceeding connected with the particular accused was held- Therefore identification proceedings held long after the particular proceeding with which the Court is concerned should not be taken into consideration in weighing the evidence of identification with regard to a particular accused.

The extract quoted above clearly lays down that it is only those parades which are held long after the relevant parade which could be ignored from consideration. The parades which are held prior to the relevant parade cannot be ignored. Similarly parades held almost simultaneously or shortly-after the relevant parade have also to be considered. The trial Court completely ignored this rule when it assessed the evidence of identification in this case, I have, therefore, to consider how these

identifying witnesses fared in other parades winch were held prior to the relevant parade or near-about that time.

6. An analysis of the parades shows that p. W. 2 Panna Lal when he went to the first parade identified two persons correctly and made three mistakes. Similarly Haiiimullah identified one suspect correctly and made two mistakes. Again in the second parade held on the 24th or July Hakimullah failed to pick out a suspect correctly and committed one mistake while Panna Lal identified three persons currently and made one mistake. The third parade was held only after 10 days of the second parade. In this parade it seems that the memory of Panna Lal was rejuvenated and he identified five persons correctly without making any mistake.

This rejuvenation happened not only in the case of Panna Lal but in the case of other witnesses also who have identified the other appellants in this case. This extraordinary circumstance of a rejuvenation of memory in the third parade did not seem to have struck the trial Court. Normally it is expected that the picture that one carries in one's mind is most fresh at a time nearest to the incident and by lapse of time this image gets fainter and fainter and in the end it fades away completely. The analysis of the identification parades in this case shows a curious phenomenon.

It shows that the image in the mind of the witnesses was at its faintest at the time of the first parade and it became stronger and stronger as the time elapsed. The appellants have taken up the plea that they were shown to the witnesses after their arrest. This strange revival of memory by itself is a circumstance that lends support to their contention. Taking the results of all the five parades together I find that Hakimuliah identified two persons correctly and made four mistakes. Panna Lal identified 10 persons correctly and made lour mistakes. The prosecution very conveniently did not send Panna Lal as a witness to the fourth and the fifth parades.

Panna Lal had done his job very well in the third parade when he identified five persons correctly without committing a mistake and the prosecution was not willing to undergo the risk of his evidence being assailed by his subsequent failures; where a witness without any adequate reason is not sent to the subsequent

parades it is a circumstance which throws doubt upon his power of observation and memory. This by itself suggests that the performance of Panna Lal in the third parade was not a genuine performance but was the result of some external aid. At any rate, the evidence of Hakimuliah is not worthy of reliance at all as he has made too many mistakes. It would not be safe to convict the appellant on the identification of Panna Lal alone even if his evidence is worthy of consideration. I am therefore of the opinion that the evidence of identification against Bhagirath appellant is inadequate and he is entitled to an acquittal.

BECHU

7. The two witnesses who have Identified this appellant are P. W. 1 Sitlu and P. W. 3 Manohar. Bechu was placed in the fourth parade that as held on 21-9-1954. There were three earlier parades and one subsequent parade held about 39 days later. The fifth parade cannot be described as one which was held long after the relevant parade. An analysis of the identification of these two witnesses shows that Sitlu identified 11 persons correctly in these five parades and committed 9 mistakes. It is surprising that in the first parade he made as many as six mistakes. It is, therefore, clear that Sitlu was picking out people at random and hardly any reliance can be placed upon his identification.

Manohar the other witness identified six persons correctly and made four mistakes. He did not do well in the first two parades. In the first parade he picked out one suspect correctly but committed two mistakes. In the second parade he picked out one suspect correctly and at the same time picked out one wrong person. It was only in the third & the fourth parades that he improved. In the third parade he picked out two persons correctly and made one mistake. He was at his best in the fourth parade when he identified two persons correctly and made no mistake. He also after this performance was not sent to the fifth parade. The observations made by me while discussing the case of Bhagirath apply to the identification of sitlu and Manohar also. It is strange that both these witnesses had latent memories which improved by the passage of time. I am therefore of the opinion that this evidence of identification is worthless and no reliance can be placed upon it,

8. He has been convicted under Section 411, I. P. C. The evidence of identification against him has not been accepted by the trial Court. It is alleged that when he was arrested some lachchas were recovered at his pointing out and they were idenfined by the prosecution witness as stolen property The trial Court has also held admissible a statement of the appellant to the effect that he had kept these lachchas in a box hidden under Bhusa in a Kothri. it has come repeatedly to my notice that recoveries made in the ordinary course of investigation are for the purpose of prosecution described as recoveries made after a disclosure has been made by an accused.

When Roopey was arrested it was but natural that his house was also searched and if there was some property which looked like stolen property it was bound to be taken into possession. The prosecution, however, wants us to believe that left to itself it could not have recovered these lachchas. It would like the Court to hold that if Roopey had not made this disclosure these lachchas could not have been recovered in the ordinary course of investigation. It is an obvious device to utilise the provisions of Section 27 of the Indian Evidence Act and it is surprising that the trial Court did. not see through it.

Before any inference can be drawn against the appellant two facts have to be proved. Firstly that the recovery was made from the possession of the appellant and secondly that the property recovered was stolen property. On the evidence before me I am not satisfied that the prosecution has satisfactorily proved that the lachchas were recovered from the possession of Roopey. When this property was recovered there were two witnesses who attested the recovery list.

These two witnesses were examined in the Committing Magistrate's Court but they were not produced in the Court of Sessions. An application was given that these witnesses had been won over, The trial Court would have exercised a better discretion if instead of accepting this application at its face value it had examined these two witnesses under Section 540, Cr. P. C., and then formed his opinion whether they were won over or not. Such an application can also be a device on the part of the prosecuting agency to prove the recovery by the evidence of one

witness alone so that there may be no risk of any contradictions on material points.

The prosecution, therefore, depends upon the evidence of the investigating officer alone to prove that this recovery was made from the possession of Roopey. I have already referred to the twist given by the investigating officer to this recovery and I therefore cannot place implicit reliance upon his evidence. The trial Court again cited a decision of this Court reported in Dwarka v. State : AIR1954 All106 to support Its view that the evidence of the investigating officer alone is sufficient to prove the recovery, This question depends upon the different circumstances of each case.

In a case where the investigation inspires confidence and no criticism can be levelled against the conduct of the investigating agency and good reasons are given for not producing the other witnesses it is open to a Court to accept the uncorroborated testimony of a police officer after a strict scrutiny. In this case, however, I have my doubts against the fairness of the investigation. As observed by me above, the investigating officer has tried to turn an ordinary recovery into a discovery within the meaning of Section 27 of the Indian Evidence Act. I cannot place reliance upon his uncorroborated statement. I, therefore, find that the prosecution has failed to establish that the lachchas were recovered from the exclusive possession of Roopey appellant. As such no presumption can be drawn against him and he also is entitled to an acquittal.

9. I will now take up the case of those two accused persons who have not appealed. I do so in the exercise of my inherent powers under Section 561, Cr. P. C.

JAG PRASAD

10. The evidence against this accused consists of the recovery of a Chadar alleged to be stolen property and the identification of P. W. 2 Panna Lal P. W. 3 Manohar and P. W. 4 Attaullah. The trial Court came to the conclusion that it has not been established that this Chadar was stolen property, it also found that the Chadar was not satisfactorily identified and it therefore rejected this piece of evidence against this accused. It only accepted the evidence of identification

against him. I have discussed the evidence of Panna Lal as well as Manohar in the case of Bhagirath and Bechu. For the reasons given above their evidence of identification is worthless.

11. That leaves only the identification of Ataullah. Ataullah when he was examined in the Sessions Court did not identify Jag Prasad. The trial Court without any allegations that the witness had turned hostile permitted the State counsel to place the earlier statement of Ataullah made in the Committing Magistrate's Court under Section 288, Cr. P. C., on the record of the case. After doing so it accepted his identification in the lower Court. For this extraordinary procedure the trial Court again relied upon a decision of this Court reported In Nagina v. Emperor AIR 1921 All 215 (D).

In that case the trial Court had used the jail Identification for purposes of conviction and when the case went up in appeal the appellate Court found that the jail identification could not be used as a substantive piece of evidence and, therefore, directed that the statements of the witnesses recorded before the Committing Magistrate where they had identified some accused persons should toe brought on record. It did BO because there was clear evidence that when the accused appeared before the trial Court they had completely changed their appearance and the witnesses were baffled by this device. The witnesses expressed their inability to identify the accused because of this change. The learned Judges also drew the attention of the Provincial Government towards it as it was a serious breach of jail rules.

12. This clearly indicates that the authority cited is not applicable to the circumstances of this case at all. There is no allegation or suggestion that the appellants in this case had in any manner changed their appearance. The trial Court ignored this important and material difference and followed a procedure of law which was quite indefensible. It also ignored all the recent decisions of this Court in which it has been repeatedly held that identifications which are not consistent throughout have hardly any evidentiary value. It fished out a 35 year old decision which was quite inapplicable and which did not support the procedure adopted by him. I am therefore of the opinion that the trial Court misdirected itself

when it relied upon the identification of Ataullah.

13. There is thus no reliable evidence of identification against appellant Jag prasad and his conviction cannot be upheld.

RAM ROOP SINGH

14. This appellant has been identified by four witnesses. They are P. W. 1 Sitlu P. W. 2 panna Lal, P. W. 3 Manohar and P. W. 9 Srimati Lakhpata. I have already dealt with the first three witnesses while discussing the cases of the other appellants. Snmati Lakhpata is also the same kind of witness. In the first parade held on 14-7-1954, she failed to identify any suspect correctly and made two mistakes. In the second parade held on 24-7-1954, Ram Roop Singh along with some other suspects was put for identification.

She identified three persons correctly and made no mistakes. After this brilliant performance she was not troubled to go as a witness in any of the three subsequent parades. A narration, of these facts speaks for itself. It is not necessary to comment upon it. I am therefore of the opinion that Srimati Lakhpata is no better than the other witnesses and her evidence also is worthless. As a result there is no reliable evidence of identification against this accused also.

15. I therefore find that the prosecution has failed to establish its case against any of the three appellants as well as against the other two accused persons who have not appealed. In the interests of justice it is necessary that although they have not appealed the order passed against them should also be set aside. I, therefore, set aside the conviction and sentence of the three appellants as well as of the two other accused persons, viz., Jag Prasad and Ram Roop Singh. They are acquitted. They should be released forthwith unless wanted in connection with some other cases.