

Sakil Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-11-1988

Reported in : 1990CriLJ497

Judge : H.C. Mital, J.

Acts : Evidence Act - Sections 145; [Indian Penal Code \(IPC\), 1860](#) - Sections 395 and 397; Code of Criminal Procedure (CrPC) - Sections 161, 162 and 162(1)

Appeal No. : Criminal Appeal Nos. 879, 880 and 881 of 1979

Appellant : Sakil

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : T. Rathore, Adv.

Disposition : Appeal allowed

Judgement :

H.C. Mital, J.

1. The above three appeals arise from a common judgment in S.T. No. 38 of 1977 State v. Sakil and Ors. dt. 5th Mar.. 1979 passed by Sri B. B. Sisodia, III Additional Sessions Judge, Jaunpur, convicting and sentencing the appellants under Section

395 read with Section 397, I.P.C. to seven years R.I. each.

2. The prosecution case, in brief, is that on 16-5-1976 Hafiz Muneer Ahmad had gone to Khetasarai to realise money from his customers and was returning from there at about 7 p.m. to his village. At about 8 p.m. when he reached Sabrahad Chatti, he took tea at the tea stall of Abdul Jabbar and thereafter at about 8.30 p.m. he proceeded to his village on his bicycle through the Kuchcha road. It is alleged that he was having a torch with him. His bag containing Rs. 920/-, towel, papers of account and invitation card was hanging on the handle of his bicycle. It is further alleged that at about 8.45 p.m. when he reached near the culvert on that Kuchcha road, six miscreants ambushed him. One of them caught hold of his cycle and the rest tried to snatch his bag containing cash and other articles. When Hafiz Muneer Ahmad attempted to offer some resistance, he was attacked with a knife and as a result of injuries he fell down. The miscreants after looting the bag with cash ran towards south to make good their escape. Hafiz Muneer Ahmad raised hue and cry. His cries attracted S. O. Satya Narain Singh (P. W. 5), S. I. Jai Prakash Misra (P. W. 6) and some constables who were going on the road and they reached there, to whom the complainant told about his being robbed and also named appellants, Shakeel and Sharfuddin to be amongst the miscreants, S. I. Jai Prakash Misra (P. W. 6) along with the constables and other public witnesses including Mohd. Ashfaq (P.W. 3) and Sharda Prasad (P.W. 4) chased the miscreants in the police jeep and ultimately succeeded in apprehending appellants, Shakeel, Fanendra Narain Shukla, Aditya Pratap Singh, Shamsheer Bahadur Singh and Rajeshwari Singh. Appellant Sharfuddin, however, had made good his escape, but it is alleged that he had been seen and recognised by S. I. J. P. Misra (P.W. 6) and other witnesses in the flash of the torch.

3. From the possession of Rajeshwari Singh the bag containing Rs. 920/- towel, papers of account and invitation card belonging to Hafiz Muneer Ahmad were recovered, while from the possession of appellant Shakeel a knife is alleged to have been recovered. The articles so recovered were duly sealed and taken to the police station, where first information report (Ex. Ka. 5) was lodged by S. O. Satya Narain Singh (P.W. 5).

4. The investigation of the case was entrusted to S. I. Ram Achaiber Misra (P.W. 7), who after investigation submitted the charge-sheet. Appellant Sharfuddin had surrendered in Court after the committal of the case to the Court of Session. The case was tried by the III Additional Sessions Judge, Jaunpur before whom the prosecution examined in all seven witnesses, of whom Hafiz Muneer Ahmad (P.W. 1) is the victim and the only eye-witness of the occurrence of robbery. Mohd. Ashfaq (P.W. 3) and Sharda Prasad (P.W.4) alleged to have accompanied S. I. Jai Prakash Misra (P.W. 6), who apprehended the appellants but they have not supported the prosecution case. They have stated that Muneer Ahmad did not name any of the miscreants and that the persons arrested were not found running and escaping. They have also denied the recovery in their presence.

5. Dr. Abdul Haleem (P.W. 2), the Medical Officer, who had conducted the medical examination noted the following injuries on the person of Muneer Ahmad on the same day at 11.30 p.m. at Primary Health Centre Sondhi:

1. One abraded swelling 4 cm x 3 cm on the right side of the forehead just above the right eyebrow.

2. One incised wound 1 cm x .10 cm x skin deep on the right orbited margins on the right side of the face 3 cm lateral to bridge of nose.

3. One contusion 4.5 cm x 0.8 cm on the middle of nose 1.5 cm above the tip of nose.

6. In the opinion of doctor the injuries were simple and injuries 1 and 3 were caused by blunt object while injury No. 2 by sharp object.

7. Satya Narain Singh (P.W. 5) and Jai Prakash Misra, S. I. (P.W. 6) corroborated their version which have been told by the victim Hafiz Muneer Ahmad about the occurrence and that they chased the miscreants and arrested them. Lastly, Ram Achaibar Misra (P.W. 7), the Investigating Officer deposed about the various steps taken by him in the course of investigation.

8. The version of the appellants has been of clear denial. However, Shurfuddin stated that there was litigation with Abdul Hai for the last ten years and Abdul Hai

was relation of Hafiz Muneer Ahmad, hence he got him falsely implicated.

9. According to the appellants Aditya Pratap Singh, Shamsheer Bahadur Singh, Rajeshwari Singh and Shakeel they had gone to see a Mela and were waiting for the transport from where they were apprehended. Shakeel had further stated that at the tea stall he had a quarrel with co-accused Rajeshwari. Daroga reached there and apprehended both of them at the instance of the nephew of Hafiz Muneer Ahmad. According to Fanendra Narain Shukla Sri Bishambhar Nath Mishra, Advocate was his relation and then he was a student of High School. He had examined Sri Bishambhar Nath (D.W. 1) to corroborate the defence version. Bhawani Prasad (P.W. 2) was examined on behalf of appellant Rajeshwari Singh and he also stated that he had gone to see Mela on that day. Dashrath Singh (D.W. 3) was examined on behalf of appellant Shamsheer Bahadur, he also stated that he had come to his place. Rajendra Singh (D.W. 4) was examined on behalf of Aditya Pratap Singh. He stated that he had come to his place.

10. The learned Sessions Judge believed the prosecution version, hence convicted and sentenced the appellants as above. On behalf of the appellants Rajeshwari Singh, Aditya Pratap Singh and Fanendra Narain Shukla it was alleged before the Magistrate that they be got identified by the victim Hafiz Muneer Ahmad as they alleged that they were not amongst the miscreants, and their identification had not been conducted by the Investigating Officer. Their application was allowed by the Chief Judicial Magistrate on 6-7-76. In spite of that order the Investigating Officer did not think it proper to put them at a test parade to be got identified by Hafiz Muneer Ahmad, who admittedly did not know them.

11. On behalf of learned counsel for the appellants reliance has been placed on 'Suresh Chandra v. State', 1979 All LJ 1160. The facts of that case were also similar, in which a dacoity had taken place and appellant Suresh Chandra was caught on the spot. He was locked in a room and a person was sent to the Thana to make a report. After the report the Sub-Inspector arrived and appellant was taken in custody and then taken to the police station. Appellant had denied to have taken part in the dacoity. He also denied to have been arrested on the spot. The Court below, however, believed the prosecution and convicted the appellant. In the

appeal it was alleged that the appellant was not put up for identification in spite of his application. The witnesses did not know him. After considering the various decisions including that of the Hon'ble Supreme Court, the learned Judge Hon'ble V.N. Varma, J. held 'When an accused claims identification it should normally be allowed in order to lend assurance to the statements of the eye witnesses of the occurrence and in order to corroborate their statements from the result of the identification proceedings. If the accused is a stranger to the prosecution witnesses and he claims identification, his request in this regard must always be allowed because it is only by holding his test identification that the veracity of the eye-witnesses could be checked. And if the prosecution turns down the accused's request for identification it runs the risk of the veracity of the eye-witnesses being challenged on that ground. In such a situation it would not be proper to place much reliance on the evidence given by the witnesses in Court'. The learned Judge held doubt about the prosecution case and acquitted the appellant.

12. In the present case also these three appellants claimed identification and in spite of the order of Chief Judicial Magistrate they were not put up for identification. Admittedly the appellants were not known to the victim Hafiz Muneer Ahmad (P.W. 1). That apart, it is very doubtful that he could have had any clear glimps of the miscreants, especially when he being an old man and using spectacles and the same having fallen down when he was assaulted by the miscreants and after robbing him they made good their escape from the spot. It is admitted by him that he had also fallen down on the ground. In this case the three appellants viz. Fanendra Narain Shukla, Aditya Pratap Singh and Rajeshwari Singh are not apprehended by the victim. But according to the prosecution version they were apprehended subsequently when the police arrived on hearing his cries, he narrated about the incident and then the police party had given a chase and apprehended them. The testimony of S. I. J. P. Misra (P.W. 6) who is alleged to have apprehended them and that the S. O. Satya Narain (P.W. 5) is also not free from doubt particularly because the two independent witnesses Mohd. Ashfaq (P.W. 3) and Sharda Prasad (P.W. 4) have denied that these appellants were escaping in the manner as alleged. Mohd. Ashfaq (P.W. 3) had denied that any police had come at that time. Dr. Sharda Prasad (P.W. 4) had also stated that two or three persons were quarreling among themselves and were apprehended by

Daroga but nothing was recovered from their possession. The witnesses were declared hostile and confronted with their earlier statement under Section 161 Cr. P.C. but they denied to have made any such statement. The learned Sessions Judge has committed a flagrant error in placing reliance on those statements of the two witnesses under Section 161, Cr. P.C. The law is very clear that the statement under Section 161, Cr. P.C. of the witnesses cannot be treated as substantive evidence, as specifically provided under Section 162(1), Cr. P.C. which reads as under:

'No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing be signed by the person making it, nor shall any statement or any record thereof, whether in a police diary or otherwise or any part of such statement or record, be used for any purpose save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.'

In the case of *Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012, their Lordships of the Supreme Court very specifically laid down as follows:

'The intention of the legislature in framing Section 162 in the manner it did in 1923, was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso are intended to serve primarily the same purpose i.e. the interest of the accused.

The section was conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused and the exception cannot obviously

be used to cross the bar.'

13. In view of the above discussion it is clear that testimony of Jai Prakash Misra (S. I.) (P.W. 6) and Satya Narain Singh S. O. (P. W. 5) is not free from doubt as the independent witnesses Mohd. Ashfaq (P.W. 3) and Sharda Prasad (P.W. 4) have not supported the prosecution version regarding the arrest of the appellants Shakeel, Fanendra Narain Shukla, Aditya Pratap Singh, Shamsheer Bahadur Singh and Rajeshwari Singh in the manner as set up by the prosecution. Once their arrest immediately after the occurrence as alleged is held doubtful, their conviction cannot be sustained.

14. As regards appellant Sharfuddin, he was not apprehended on the spot but it is alleged that he had made good his escape and had been seen and recognised by Jai Prakash Misra, S. I. (P.W. 6) and other witnesses in the flash of the torch. Mohd, Ashfaq (P.W. 3) and Sharda Prasad (P.W. 4) have not stated that Sharfuddin was amongst the miscreants and who had escaped. However, there is testimony of Satya Narain Singh S. O. (P.W. 5) and Jai Prakash Misra, S. I. (P.W. 6) that they had recognised this appellant. Sharfuddin amongst the miscreants who were running. Prima facie the testimony of both these police Sub-Inspectors is highly doubtful as they were not present when the occurrence had taken place. They reached there subsequently and by then sufficient time had elapsed which could enable the miscreants to make good their escape and could not be seen, that is why Mohd. Ashfaq (P.W. 3) and Sharda Prasad (P.W. 4) have stated that they did not see the miscreants escaping after committing the offence. Hence the prosecution evidence against Sharfuddin is also not sufficient to bring home guilt to him beyond reasonable doubt.

15. The conclusion, therefore, is that all these three appeals are allowed and the appellants' conviction and sentence under Section 395 read with Section 397, I.P.C. are hereby quashed. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.