

Mahendra Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-09-1990

Reported in : 1991CriLJ1381

Judge : P.S. Gupta and ;G.K. Mathur, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 380, 396 and 547

Appeal No. : Criminal Appeal Nos. 676, 745 and 1219 of 1978

Appellant : Mahendra Singh

Respondent : State of U.P.

Advocate for Def. : D.C.A.

Advocate for Pet/Ap. : J.N. Srivastava, ;N.N. Singh, ;Shashank Shekhar and ;A.D. Giri, Advs.

Judgement :

G.K. Mathur, J.

1. This and the connected appeals arises out of the judgment and order dated 28th February, 1978 passed by Sri J.D. Chaturvedi, Additional Sessions Judge, Varanasi in Sessions Trial Nos. 193 of 1975 and 111 of 1976, convicting the appellants for the offence punishable Under Section 396 I.P.C. and sentencing

each of them to undergo life imprisonment.

2. The case of the prosecution, in brief, is that at about 2 a.m. on 23rd of March, 1975 Raj Bali, complainant, who was sleeping in his Marha situate to the east of his house in village Dhananjaipur, P.S. Baragaon district Varanasi, woke up due to barking of dogs and saw six or seven persons, armed with pistols, guns and lathis, coming to his house. They flashed their torches and caught hold of his father Chhama Nand Rai and his cousin brother, Prem Shanker, who were sleeping on the heap of harvested wheat crop kept in between his house and the Marha, Raj Bali raised alarm which attracted Hausla Prasad (P.W. 2), Samarjeet Upadhyaya (P.W. 3), Sheo Nath (P.W. 4) and several other villagers who came there armed with lathis, spears and gandasas. They had also torches with them and one of the villagers is said to have set fire to the Marha of Raj Bali Rai which caused sufficient light. It is also said that a lantern was also burning in the outer verandah of the house of the complainant. Some of the dacoits entered the house of the complainant by climbing over the roof. According to the prosecution case, one of the dacoits, who had covered his face, was Mani Shanker, resident of village of the complainant, as during the course of dacoity, cloth by which he had covered his face got loose. Smt. Dulari, who had come out of the house, died by the fire arm shot of the dacoits. Raj Bali Rai, Chhama Nand Rai, Naresh Prasad Ram Nawal, Smt. Silwant, Ram Abhilakh, Shiv Nath Misra and Mahendra Pratap Udadhyay received injuries at the hands of the dacoits during the course of dacoity. It is alleged that one Ram Nawal caused spear injury to one of the dacoits and the villagers hurled brickbats and scuffled with the dacoits. Thereafter the dacoits left the spot with the booty taken out from the boxes. The villagers, however, chased them and claimed to have succeeded in apprehending three after causing injuries to them, while the remaining four dacoits made their escape good. Out of the three dacoits, who had been apprehended, two died at the spot and the third one disclosed his name as Prayag Dutt. He had in his possession a country made single barrel gun and five live cartridges. He allegedly disclosed the names of the dacoits who had there and also of those who had succeeded in making their escape good as Mani Shanker, Ram Lochan Singh and Ram Chhattar Singh but in respect of the particulars of the fourth escaped one, he pleaded ignorance.

3. The first information report was lodged by Raj Bali Rai, complainant, at 6-05 a.m. on 23rd of March, 1975 at police station Bara Gaon district Varanasi. P.W. 12 Sri Hardiya Nand Singh, the Station Officer of the police station, in whose presence the said report was lodged, started investigation of the case. After recording the statements of the complainant, Raj Bali Rai, and other injured persons, who had accompanied Raj Bali Rai to the police station, he sent all the injured persons for medical examination to the Primary Health Centre, Bara Gaon, where Dr. Avinash Chandra Rai (P.W. 13), Medical Officer, examined the injuries of Raj Bali Rai, Chhama Nand Rai, Hausala Prasad, Ram Nawal, Smt. Silwanti, Ram Abhilakh, Shiv Nath Misra and Mahendra Pratap Upadhyaya from 7-30 a.m. to 9-30 a.m. on 23rd March, 1975 and prepared their injury reports marked Exs.Ka. 7-A to Ka-14-A. Sri Hardiya Nand Singh (P.W. 12) reached the place of occurrence at 8-30 a.m. and took in police custody. Prayag Dutt, his gun and cartridges with belt from Prem Shanker and sent Prayag Dutt for medical examination. Dr. Avinash Chand Rai examined his injuries at 7-30 p.m. at Primary Health Centre, Bara Gaon and found the following injuries on his person :

1. Gun shot wound of entry $1\frac{1}{4}' \times \frac{1}{2}'$ x four metacarpal on the palmer aspect of left hand near the base of left ring finger. Scorching and tattooing present.
2. Gun shot wound of exit $\frac{1}{2}' \times \frac{1}{4}'$ x muscle deep on the web of left index finger.
3. Gun shot wound $1' \times \frac{1}{2}'$ x bone deep on the palmer aspect of distal phalynx of left ring finger. Scoroching and tattooing present.
4. Incised penetrating wound $\frac{3}{4}' \times \frac{1}{2}' \times 3'$ on the medial side of right elbow joint directed downwards and medially.
5. Abrasion $1' \times \frac{1}{2}'$ on the front of right knee joint.

4. The injury report prepared by Dr. Avinash Chand Rai is Ex.Ka.31 P.W. 12 Hardiya Nand Singh took in his possession one country made pistol and seven used cartridges, sample of ash of the burnt Marha and sample of brick-bats found at the spot and also the blood stained earth and the ordinary earth and sealed them separately after preparing their respective memos. He sent the dead bodies

of Smt. Dulari and the two dacoits, namely, Suresh and Hira Singh under sealed covers for post-mortem examination after preparing the inquest reports. He made local inspection and prepared the site plan. Dr. V.P. Rai, (P.W. 9) conducted the post-mortem examination of the dead body of Smt. Dulari and Dr. R.S. Singh (PW. 8), did the autopsy of dead bodies of Hira Singh and Suresh. Sri Hardiya Nand Singh (P.W. 12) arrested Mani Shanker Upadhyaya on 28th April, 1975. The involvement of Mahendra Singh alias Birendra Singh in the crime in question came to light on 28th April, 1975, Mahendra Singh surrendered in the court of Munsif Magistrate, Varanasi on 3rd Dec. 1975. His identification parade was conducted by Sri Sheo Nath Singh Modi, Executive Magistrate, (P.W. 10) on 9th January, 1976 in the District Jail, Varanasi. He has been correctly identified in the said identification parade by Raj Bali Rai (P.W. 1), Hausala Prasad Pandey, (P.W. 2), Samarjit Upadhyaya (U.P. 3), Sheo Nath (P.W. 4) and one Kashi Nath.

5. The accused persons pleaded not guilty. Prayag Dutt has specifically denied all the allegations made against him and stated that he had come to Varanasi along with some people of his village and that his enemies got him arrested in the day and thereafter he was beaten. He stated that the witnesses deposed against him under the pressure of the police. He also stated that false and fictitious entries were noted by the doctor in his injury report under the pressure of the police.

6. Mahendra Singh alias Birendra Singh also specifically denied the prosecution case made against him and stated that the witnesses deposed against him under the pressure of the police and out of enmity. He stated that he had been shown to the witnesses by the police.

7. Mani Shanker Upadhyaya accused stated that he did not know whether the dacoity in question was committed at the house of Raj Bali Rai. He, however, denied the allegations made against him and stated that the witnesses deposed against him due to enmity. He stated that Raj Bali Rai complainant got him implicated in the case of Hari Chamar in which he had been acquitted.

8. Mahendra alias Birendra Singh accused examined three witnesses in his defence, namely, Haridar Singh (D.W. 1), Jagdhar Tiwari (D.W. 2) and Deo Narain Singh (P.W. 3). He also filed certified copy of the order sheet of Sessions Trial No.

77 of 1974 (State v. Birendra) marked Ex. Kha. 7. The other accused persons did not examine any witnesses in defence.

9. The learned trial court found the case proved against the appellant and convicted and sentenced them, as indicated above. Feeling dissatisfied with the order of the trial Court, the appellants have preferred separate appeals.

10. The finding of the trial court regarding the factum of dacoity with murder has not been challenged before us. It has also not been challenged that two of the dacoits, namely, Suresh and Hira Lal had been done to death at the spot.

11. Learned counsel for Prayag Dutta argued that this appellant had not been arrested at the spot and that in spite of his application claiming test identification from the witnesses, no such test identification was done. Learned counsel also referred to the injury report of Prayag Dutta (Ex. Ka.. 31) and stated that three of the injuries were on his left hand with scorching and tattooing present on two of them. He argued that these injuries appeared to have been caused to him from a close distance.

12. After scrutinising the statements of Raj Bali Rai (P.W. 1), Hausala Prasad Pandey (P.W. 2), Samarjit Upadhyaya (P.W. 3) and Shiv Lal (P.W. 4) we have come to the conclusion that Prayag Dutta was arrested at the spot and that he received injuries during the course of dacoity and arrest. It has come in the cross-examination of P.W. 3 Samarjit Upadhyaya that Prayag Dutta received injuries from the pistol of Mani Shanker when Prayag attempted to snatch his pistol to get himself released from the clutches of Shiv Nath. Moreover, in the course of dacoity several rounds of shots had been made from different weapons. In this view of the matter, the presence of scorching and tattooing on the person of Prayag Dutta does not go to show that these injuries could not be caused during the course of dacoity. It had not been put to Dr. Avinash Chand Rai that Prayag Dutta had no injuries at all at the time of his medical examination made by him and that he noted false and fictitious injuries in his injury report at the instance of the police. On the other hand, from the cross-examination of the doctor it appears that Prayag Dutta had the injuries in question when his medical examination was made by him. According to the case of the prosecution, Prayag Dutta appellant had told the

names of the dacoits who had been done to death at the spot on the basis of which their names were mentioned in the first information report. He had also named Mani Shanker Upadhyaya. Ram Lochan Singh and Ram Chandra Singh, when he was arrested at the spot. Hardiya Nand Singh S.O. (P.W. 12), stated that on reaching the spot, he found Prayag Dutta in the custody of the village people in injured condition. He has denied that suggestion put to him that he had been arrested in Varanasi city. From the evidence on record, it is therefore, fully established that the appellant Prayag Dutta was arrested at the spot as alleged by the prosecution. In view of the fact that he had been arrested at the spot, the question of his test identification did not arise and the argument of the learned counsel for the appellant in this regard has no merits.

13. The appellant Mani Shanker is the resident of village in which the dacoity in question had been committed and was known to the witnesses. He is nominated in the first information report. All the four witnesses of the occurrence, namely, Raj Bali Rai, Hausala Prasad, Samarjit Upadhyaya and Shiv Nath have deposed that one of the dacoits had covered his face by cloth and that in the course of dacoity, the cloth slipped from his face and they recognised him and found him to be Mani Shanker. It is in evidence that the villagers who had gathered at the spot had scuffled with the dacoits. Seven persons of the village had received injuries at the hands of the dacoits. All the four prosecution witnesses mentioned above had also received injuries in this dacoity. One Smt. Dulari Devi had been murdered by the dacoits. As said above the people apprehended three dacoits and two of them died at the spot and the third one, namely, Prayag Dutta was handed over to the police. The learned counsel for the appellant Mani Shanker submitted that the theory of slip of cover from the face, does not deserve to be accepted, He developed this argument on the strength of the statement of P.W. 3 Samarjit Upadhaya made in cross-examination that he did not tell any body in the night of the incident in question that Mani Shanker was amongst the dacoits. Samarjit Upadhyaya has repeatedly stated that Mani Shanker was amongst the dacoits and that there had been a scuffle with him and that Shiv Nath had caught hold of Mani Shanker and the pistol of Mani Shanker was fired at that time which caused injuries on the hand of Prayag Dutta. As said above, other witnesses have consistently deposed that Mani Shanker was amongst the dacoits and was

recognised at the time of dacoity as his cloth by which he had covered his face got untied. There is no enmity between Mani Shanker and prosecution witnesses Nos. 2 to 4, namely, Hausala Prasad, Samarjit Upadhyaya and Shiv Nath.

14. On behalf of Mani Shanker it is argued that Raj Bali was one of the witnesses for prosecution in a case State v. Mani Shanker Under Sections 547/380 IPC in which Mani Shanker was acquitted. In that case Hira Lal was the complainant and Raj Bali was one of the witnesses. It related to the incident of night of 17/ 18th November, 1971. A copy of the judgment of the aforesaid case is Ex.Ka-4 and the copy of the charge-sheet is Ex.Ka. 3. Ex.Ka. 55 is the sale deed to show that on 20th September 1974 Ram Bujharat, father of Mani Shanker appellant executed a sale deed in favour of Chhama Nand, the father of Raj Bali. Learned trial court in this view of the matter has rightly held that there could not have been any motive for Raj Bali to falsely implicate Mani Shanker in this case.

15. From the evidence on record, we hold that Mani Shanker has rightly been held guilty for the offence of dacoity in question.

16. Mahendra Singh alias Birendra Singh was not nominated in the first information report and was not known to the witnesses from before. He surrendered in the court of the Munsif Magistrate, Varanasi on 3rd December, 1975. His identification had taken place in District Jail, Varanasi on 9th Jan. 1976. The prosecution had adduced the evidence to show that he had been made Baparda on 3rd December, 1975 and kept Baparda till he was admitted into the District Jail, Varanasi on that date. The learned counsel for the appellant Mahendra Singh argued that Mahendra Singh was facing trial in the court of the IInd Additional District and Sessions Judge, Varanasi in Session Trial No. A-77 of 1974 (State v. Birendra Singh). Accused Birendra Singh attended the court of the Sessions Judge in the said Session Trial No. A-77 of 1974 on 3rd December, 1975 and thereafter attended the same court on 18th December, 1975 and that there is no evidence on record to show that on 18th December, 1975 he was brought from jail Baparda and kept Baparda till his return to jail the same day. Ex. Kha 7 is the copy of the order-sheet of the aforesaid Sessions Trial No. A-77 of 1974 in which Birendra Singh was one of the accused. From this order-sheet of 18th Dec. 1975 it

is made out that accused Birendra Singh had come from jail and his face was covered at the time of hearing of the case on that date. The prosecution has, however, not given any link evidence to prove that Mahendra Singh alias Birendra Singh was brought Baparda from Jail on that date and was kept Baparda till he was again lodged in jail the same day and he was not shown to any prosecution witnesses on that day. The case of Mahendra Singh has been that he had been shown to the witnesses. In view of this lapse on the part of the prosecution, we have no option but to give the benefit of doubt to him.

17. The conviction and sentence of the accused Prayag Dutta and Mani Shanker are maintained and the Criminal Appeals Nos. 745 of 1978 and 1219 of 1978 are dismissed. They are on bail. Their bail bonds are cancelled and sureties discharged. They be taken into custody forthwith to serve out the sentence.

18. The Criminal Appeal No. 676 of 1978 is allowed and the conviction and sentence of Mahendra Singh alias Birendra Singh are set aside. He is on bail. He need not surrender. His bail bonds and sureties are discharged.

19. Let a copy of this judgment be placed on the record of each of the Criminal Appeals Nos. 745 of 1978 and 1219 of 1978.