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Ramesh Singh Vs. State

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Court : Allahabad

Decided On : Dec-18-1990

Reported in : 1991CriLJ1874

Judge : H.C. Mittal and ;G.D. Dube, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 147, 148, 149, 302, 307 and 396

Appeal No. : Criminal Appeal No. 2712 of 1984

Appellant : Ramesh Singh

Respondent : State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : A.B.L. Gaur and ;B.R. Singh, Advs.

Disposition : Appeal allowed

Judgement :

G.D. Dube, J.

1. Ramesh, Dhanpal, Naresh, Nem Singh, Satish Singh, Shree Pal and Suraj Pal were charged for the offence punishable under Section 396 of the Penal Code by the Special Judge (Dacoity Affected Area), Etah. During the trial Ramesh was also charged for the offence punishable Under Section 302, I.P.C. while the rest six

were charged Under Section 302 read with 149, IPC. Out of them only Ramesh was found guilty, convicted and sentenced to imprisonment for life Under Sections 396 and 302, IPC each. Rest six were acquitted. As against this order of conviction appellant Ramesh filed this appeal. The State also filed Government Appeal No. 188 of 1985, State v. Dhanpal Singh and 5 others against acquittal in this court. This appeal has been summarily rejected by this Court on 10-2-1987. Hence we are left with this appeal only.

2. The prosecution case is that the daughter of maker of the report Smt. Ramawati was married recently. This married girl Smt. Pravesha had returned to her father's house after marriage, a few days back. It is alleged that at about 12 in the night between 18 and 19th June, 1983, some dacoits scaled the walls of the house of Smt. Ramuwati, situated in village Managadpur, P.S. Aliganj, District Etah. They started looting property. They overpowered Satyapal son of the reporter and threatened that they will kill him if all valuables were not handed over. The reporter handed over the valuables. Despite this, the dacoits shot at Satyapal and caused his death. It was alleged that the dacoits were recognised in the light of torch. Besides the persons mentioned in the opening sentence of this judgment some more unknown persons were recognised. According to prosecution on the alarm raised by the inmates of house Atar Singh, Rampal Singh, Sudhar Singh, Ram Swaroop Singh, Shripal Singh, Ram Prakash Singh and others arrived. They too saw the dacoits and recognised them. The dacoits had looted Rs. 2000/- cash and ornaments worth Rs. 70 to 80 thousands.

3. Report of the occurrence was lodged by Smt. Ramawati P.W. 2 at Police Station Aliganj at 7-45 a.m. following morning. The investigation was taken up by Sunghar Singh, P.W. 6. It was later handed over to Rampal Singh, P.W. 7. Sunghar Singh had conducted the inquest on 19-6-83 and sent the dead body of Satyapal for post-mortem on 19-6-83. The post-mortem was conducted at 9-30 a.m. in mortuary of Etah on 20-6-1983 by Dr. A. K. Malyani, P.W. 4. Doctor has found that the deceased was about 23 years old. He had one ante mortem injury on his person, i.e. one gun shot wound of entry 2.5 cm. x 2.5 cm. x cavity deep over the front of left chest. Other details are not necessary for this case. The doctor opined that the deceased had died as a result of the said injury which was

sufficient in ordinary course of nature to cause death. After the interrogation of the witnesses, preparation of site plan and other investigations the 7 persons named above were charge-sheeted.

4. The prosecution had examined 7 witnesses. Out of them P.W. 1 Jaipal Singh, P.W. 2 Smt. Ramwati, P.W. 3 Rampal Singh were eye witnesses. P.W. 4 was Dr. A. K. Malyani. P.W. 5 was Head constable Jagdish Saran who had registered the case. P.Ws. 6 and 7 were Investigating Officers. The accused had pleaded not guilty to the charges. They had stated that they were implicated on account of enmity. The Court had examined as a court witness one Atar Singh after the statements of accused were recorded. The accused had not examined any witness in defence. After a perusal of the evidence the learned Special Judge had found only the appellant guilty of the offence Under Section 396 and 302 of the I.P.C.

5. The learned counsel for the appellant I has urged that the case of the prosecution was found not established against six persons and this finding having been confirmed by this court by dismissing the Government Appeal on 10-2-1987, hence on this very evidence the appellant could not be convicted. The second ground of attack is that witnesses had made an improvement regarding presence of moon light in their statements. This was not stated in the first information report. Hence the evidence of the witnesses regarding the presence of moon light should not be believed. It has been also urged that the Investigating Officer had not prepared any memo of the torch allegedly used at the time of occurrence. This is also an infirmity in the prosecution case. The third ground of attack is regarding the possibility of false implication of appellant by the reporter on account of previous enmity between the parties. It was urged that some other person was responsible in getting the appellant and other persons named in the first information report. Several enmities had been stated between the accused and other persons. Lastly it was contended that there was no possibility of recognising the dacoits at the alleged time.

6. The learned counsel for the State urged that even though, unfortunately the Government Appeal was dismissed summarily, this should not deter this court in

upholding the judgment of lower court if this court is satisfied that the case was proved against the appellant. It was urged that the witnesses had stated in their statement before the Investigating Officer that moon light was present at the time of occurrence. In these circumstances there was no improvement if the reporter, being a lady had failed to mention the presence of moon light in first information report. It was also urged that the reporter had no enmity with any one of the accused. The report was also lodged by one Atar Singh who was a resident of the village where Pravesha was married. He had started at about 4-45 a.m. from his village to village Mandadpur. He had scribed the report at 5-30 a.m. It was urged that in these circumstances there was no probability that any witness would have prevailed upon the reporter and scribe to falsely name the accused persons.

7. In this case the very arrival of Atar Singh on the spot appears to be doubtful. The dacoity is said to have taken place at about 12 in the night. Atar Singh had stated that his village was situated at a distance of 2-2 1/2 km. from village Mandadpur. It has not been stated by any one of the witnesses whether any information was sent to the family of husband of Smt. Pravesha about this incident in the night. It does not appear probable that soon after the dacoity any body would have rushed to the village of Atar Singh for informing the family members of husband of Pravesha about the dacoity. After the dacoity and the death of Satyapal Singh the family members would have been in a deep state of grief. Jaipal Singh P.W. 1 has admitted towards end of his examination-in-chief that on account of fear and want of means none could go to police station to lodge a report. This was applicable in going to the husband's place of Smt. Pravesha. In these circumstances nobody would have thought of informing the husband's family of Smt. Pravesh in that very night about the dacoity and death. It also appears doubtful as to why only Atar Singh proceeded for Mangadpur and any one of family members of the husband of Pravesh had not arrived. These circumstances, therefore, go to show that the first information was not written at Mangadpur as alleged by Atar Singh C.W. 1. Atar Singh had admitted in cross-examination that when Smt. Ramwati had dictated the first information report Sughar Singh, sub-Inspector was sitting at some distance. He had been cross-examined by counsel for State. In this cross-examination too he has stated that some body had informed him that Sub-Inspector and the constable were present at the spot when the first

information report was being dictated by Smt. Ramwati. The State has not been able to elicit any fact from the cross-examination of Atar Singh to show that he has been won over by the accused and stating in their favour deliberately. The above admission made by Atar Singh in cross-examination along with suspicious circumstance about his arrival at Mangadpur, the scribing of report at Mangadpur makes the lodging of report at 7-45 a.m. very doubtful.

8. The site plan Ext. Ka 16 shows that the home of Ramesh Singh and Dhanpal Singh was situate towards south just adjacent to the house of the victim. P.W. 2 Smt. Ramkali has stated that she had no enmity with the accused persons. P.W. 1 had stated that Ramesh Singh appellant and Dhanpal Singh are his uncle by relation. Jaipal Singh is son of Smt. Ramwati P.W. 2. The other named accused were also related with the victims' family. All the eye witnesses had stated that appellant and Dhanpal Singh had scaled the common wall between their house and the house of victim and ran away. In view of such a circumstance it looks improbable that Ramesh Singh and Dhanpal Singh would have come with open faces to commit dacoity. In this particular case they would have certainly taken the care to conceal their identity.

9. Jaipal Singh P.W. 1 had stated that he was lying ill on a cot below a Chappar in his house. He stated that his mother (P.W. 2 Smt. Ramwati) possessed a torch and she had flashed it. When Satyapal Singh was murdered, without any cause and partcularly after all the valuables had been handed over to Dhanpal Singh accused it was not at all probable that Smt. Ramwati would have flashed her torch any more to see the faces of any dacoits. According to the prosecution the dacoits cought hold of Satyapal and having threatening to kill him if valuables were not so handed over. After valuables had been handed over there was no cause for murdering Satyapal. If it be deemed that the intention of the dacoits was to kill Satyapal in order to wipe of his occular evidence as he had identified the dacoits then dacoits would not have left Smt. Ramawati and Jaipal Singh alive. There was no purpose of murder of Satyapal Singh after the dacoits had taken valuables. All these circumstances reveal that some sort of twisting has been made in the prosecution story to give it some colour.

10. P.W. 1 Jaipal Singh had admitted that the Investigating Officer had not seen the torch flashed by his mother. The two Investigating Officers had also stated that they had not prepared any memo of this torch. It may be said that Sughar Singh Sub-Inspector was closely ralated to one of the accused. His sister was married in the family of father-in-law of nephew of Nem Singh accused. That is why the Investigating Officer had deliberately left this important pieace of evidence. For this lapse the prosecution will suffer. The Local Police Officers had changed the Investigating Officer. The second Investigating Officer ought to have taken this precaution of inspecting and making memo of this torch). This factor, therefore, wipes of an important evidence in this case.

11. P.W. 1 Jaipal Singh and P.W. 2 Smt. Ramwati had stated that both Nem Singh and Ramesh Singh had fired towards Satyapal. It was argued that in the state of alleged terror created by the dacoits no body would have noticed as to whose shot had hit Satyapal. We agree with the above contention. It was difficult to notice in the moonlight and in the torch light as to whose shot had actually hit Satyapal. There is no evidence that when the gun shot had struck on the body of Satyapal the torch was buring. There is no evidence as to whether it was a full moon light or some half moon or less. The extent of moon light has also not been stated by any one of the witnesses. In all these circumstances it is obvious that none would have been able to notice as to who was the real murderer of Satyapal. The statement of all the eye witnesses in this respect are only based on the imagination. The lower court had wrongly held the appellant guilty of intentionally causing death of Satyapal.

12. P.W. 3 Rampal Singh was lying in a ditch near the house of Smt. Ramwati. He had stated that he had seen Ramesh Singh crossing the wall between his house and the house of Smt. Ramwati and jumping inside of his own house while running away from the place of occurrence. He admitted that when the accused were running away from the place of occurrence he was lying in the ditch. The common wall between the house of Ramesh Singh and that of victim was 6-6 1/2 feet high. The position of the witnesses was shown towards the north-western corner of the house of the victim. Hence while crossing the common wall the back of Ramesh Singh would have been towards the witness. In such a state and in the light of

moon it was not at all probable to recognise the person scaling the wall.

13. All the above go to show that the evidence of the prosecution witnesses was not of such a character on the basis of which it could be said that the appellant was recognised while committing dacoity. The case against all other accused based on similar facts has been disbelieved by the lower court. This part of judgment had been confirmed by this court by dismissing the Government Appeal. Therefore, there is no justification to uphold the conviction on that very evidence when on examination we find that it does not inspire confidence.

14. The learned counsel for the appellant has drawn our attention to several litigations between the accused and one Atar Singh (other than the scribe of report C.W. 1) alleged eye witness. Rampal Singh had admitted in his cross-examination that a case of dacoity was pending on the report of Shripal against Nem Singh and Ram Niwas. This Shripal Singh was also shown as a witness. The lower court had referred to a first information report lodged by Dhanpal Singh accused against Shripal, Satyapal S/o Atar Singh and seven others on 15-2-1983. No exhibit mark has been given. This report was Under Section 147/148, 149 and 307, IPC. All these circumstances go to show that the eye witnesses mentioned in the first information report Ext. Ka 1 had some grievance against the accused person including the appellant. Considering the suspicious circumstances under which the report was written, the role of the witnesses namely Shripal and Atar Singh in getting the accused persons roped in this case can not be ruled out.

15. For the reasons mentioned above we find that there was no satisfactory evidence on record to hold the appellant guilty of the offence punishable Under Section 302 and 396, IPC. The appellant should have been acquitted of the charges Under Section 302 and 396, IPC.

16. The appeal is allowed. The judgment and order of the lower court are set aside. The appellant is acquitted of the charges levelled against him. His bail bond is cancelled and sureties are discharged.

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