

Sheodan Vs. State of Uttar Pradesh

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Court : Allahabad

Decided On : Sep-03-1987

Reported in : 1988CriLJ479

Judge : Umesh Chandra, J.

Appellant : Sheodan

Respondent : State of Uttar Pradesh

Judgement :

Umesh Chandra, J.

1. This is an appeal directed against the judgment and order, dated 16-8-1984, passed by IInd Additional Sessions Judge, Bulandshahr, convicting and sentencing appellant Sheodan son of Pritam, resident of village Shiwala, P. S. Khera, district Aligarh, at present resident of village Jagdishpur, P. S. Ahmad Garh District Bulandshahr, to five years' rigorous imprisonment under Section 395 IPC.

2. According to the prosecution, in the night between 2/3-12-83 Satya Dev Prasad Verma (P.W. 2) Engineer in the Narora Atomic Power Project, was returning from Delhi in vehicle No. UPP-5592 of Narora Atomic Power Project. Sri D. N. Gaur, an engineer and Sri M. S. Rao, Chief Administrative Officer, Sri Man Singh, tradesman and driver Sami Ullah (P.W. 4) were also travelling in the same vehicle. At about 1-45 A.M. the vehicle reached the bridge of village Fateh Garh. The driver of

the vehicle found that a truck was blocking a portion of the road and the remaining portion was being blocked by a fallen mango tree. The vehicle had to stop and immediately thereafter about 15-20 young-men came before the vehicle armed with lathis, knives and country-made pistols. They forced open the door and put a country made pistol at the neck of the driver and started dragging the complainant Satya Devo Prasad Verma out of the vehicle. The rest of the dacoits started looting the passengers. When Sri M. S. Rao, Chief Administrative Officer, refused to give his attachie, then one of the dacoits fired at him and other passengers. With the result Sri Rao received multiple gun-shot wounds vide report Ex.Ka-4. There was light inside the vehicle and the witnesses had also flashed torches' light in which the miscreants were identified.

3. A report of this occurrence was lodged by Satya Deo Prasad Verma (P.W. 2) at Ahmad Garh police station at 5-15 A.M. on 3-12-1983, that is, after about 3 1/2 hours of the occurrence, the place of occurrence from the thana being 3 kilometres.

4. On 16-12-1983, S. O. Kalyan Singh Yadav (P.W. 8) arrested the appellant at village Khudadiya at about 5 P.M. He was put baparda and brought to the Thana the same day at 6.20 P.M. (vide Ex.Ka-13). The G.D, entry written out by constable clerk Mohan Singh. He remained baparda and was sent to district jail, Bulandshahr the next day. Vide statement of constable Netra Pal Singh (P.W. 10) the accused was put for identification on 26-12-1983, that is about 23 days after the occurrence and was correctly identified by Satya Deo Prasad Verma and Sami Ullah, the driver of the vehicle. The case was investigated by Kalyan Singh Yadav (P.W. 8) who after interrogetting the witnesses prepared site plan and after the receipt of the result of the identification, submitted a charge-sheet, leading to the trial of the appellant in S.T. No. 269 of 1984.

5. The prosecution examined Sri Satya Deo Prasad Verma (P.W. 2), D. N. Gaur (P.W. 3) and Sami Ullah (P.W. 4) as eye witnesses, the testimony of other witnesses being of formal nature. Dr. M. M. Sharma (P.W. 1) was Radiologist who examined the injuries of Sri. M. S. Rao under X-ray. Dr. S. K. Jaiswal (P.W. 6) had examined the injuries of Sri M. S. Rao and Sri D. N. Gaur vide Exs. Ka-4 and Ka-

5. On the consideration of this evidence, the learned Additional Sessions Judge found that:

(1) the factum of dacoity has been established,

(2) there was sufficient light inside and outside the vehicle in which the prosecution witnesses had sufficient opportunity of identifying the miscreants.

(3) the appellant was put baparda at the time of his arrest till he was put for identification and,

(4) the performance of the identification witnesses, namely, Satya Deo Prasad Verma and Sami Ullah leaves no room for doubt that the appellant was one of the miscreants.

6. With these findings the appellant was convicted and sentenced as mentioned above. Aggrieved the present appeal has been filed.

7. There is no doubt that in the night between 2/3-12-1983, vehicle UPP-5592 was held up near Fateh Garh at about 2 A.M. and about 15-20 miscreants entered the vehicle and looted the valuables of the passengers. Firstly, a prompt report has been lodged at 5.15 A.M. the distance from the place of occurrence to the Thana being 3 Km. Moreover, two passengers Sri M, S. Rao, Chief Administrative Officer and D. N. Gaur, Engineer had received injuries and were examined at 4.15 A.M. the same night. They were brought to the hospital on the same vehicle. None of the prosecution witnesses has been cross-examined on the factum of dacoity which stands established in this case.

8. There was also sufficient light in the vehicle in which the miscreants could be identified. All the prosecution witnesses have deposed that the inner lights of the vehicle were on at the time when it had to stop because of the road blockade. The passengers had also torches with them and they had also flashed when the miscreants entered the vehicle. The miscreants have come in close contact with the passengers, each one of whom was searched and valuables were removed from their possession. It is significant that one ,of the miscreants had pointed a pistol at the neck of the driver Sami Ullah (P.W. 4) and when Sri Rao refused to

handover the attachie one of the miscreants had fired at him. This shows that in the narrow space inside the vehicle the miscreants had come in close contact with the passengers and in the light they would have been easily identified. Significantly the identification parade in this case was held about 23 days after the occurrence in which period the witnesses would have remembered the features of the dacoits, making it possible for them to correctly identify the miscreants. The learned Additional Sessions Judge was, therefore, justified in finding that there was sufficient light inside the vehicle in which the witnesses had sufficient opportunity of identifying the miscreants. It was lastly argued that the appellant Sheodan was not put baparda after arrest. He had been correctly identified by Satya Deo Prasad Verma (P.W. 2) and Sami Ullah, the driver of the vehicle (P.W. 4). According to Kalyan Singh Yadav (P.W.8) the appellant was arrested on 16-12-1983, was kept baparda and was lodged in Havalat Thana at 6.20. p.m. the same day. Constable Netrapal Singh (P.W. 10) has stated that on 17-12-1983 at 9.15 A.M. the appellant was transferred to district jail, Bulandshahr. Both these witnesses have stated that the appellant had remained baparda so long as he was in Havalat thana and was being taken to jail by constable Netrapal Singh (P.W. 10) and Sheshpal Singh. The learned Counsel has pointed out that in the cross-examination of Netrapal Singh (P.W. 10) has stated that Sheodan was arrested on 17-12-83 at 8-30 P.M. and on the same day at 9.15 P.M. he was taken to Bulandshahr. This statement is obviously incorrect and probably it was not correctly recorded because admittedly the appellant was lodged in jail on 17-12-83. Therefore, he could not be arrested at 8.30 P.M. Moreover, Ex. Ka-13 relating to the arrest of the appellant is dated 16-12-83. This has been proved by Kalyan Singh Yadav (P.W. 8) and has not been challenged in the cross-examination. It is difficult to believe that both the prosecution witnesses Sayta Deo Prasad Verma (P.W. 2) and Sami Ullah (P.W. 4) residents of Narora would have been taken to thana Ahmad Garh in the night so that the appellant could be shown to them. In the cross-examination it was also not suggested that they had been taken to the thana Hawalat so that they may have a look at the appellant. There is, thus nothing on record to taint the performance of these two witnesses in the test parade. As their performance inspires confidence the learned Additional Sessions Judge was justified in relying on the same and convicting and sentencing the

appellant. Learned Counsel for the appellant has further argued that Sheodan has been in jail for over 3 1/2 years and considering the facts and circumstances of the case the sentence awarded by the Additional Sessions Judge should be reduced to the period already undergone. This argument cannot be accepted. A grievous view of the offence must be taken looting passengers and causing injuries to them, not only causes disruption in the social life of the community but also proves that the miscreants including the appellant are hazardous type of persons requiring severe punishment. Learned Additional Sessions Judge, therefore, was justified in awarding the sentence of five years* rigorous imprisonment.

9. In view of the discussion given above, there is no force in this appeal and the same is dismissed. The order dated 16-8-1984 passed by the Additional Sessions Judge, Bulandshahr, convicting and sentencing the appellant to five years' rigorous imprisonment is confirmed. The appellant is in jail. He shall serve out the sentence passed against him.