

Paras Vs. State and anr.

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Court : Allahabad

Decided On : Feb-22-1978

Reported in : 1978CriLJ634

Judge : V.N. Varma, J.

Appellant : Paras

Respondent : State and anr.

Judgement :

ORDER

V.N. Varma, J.

1. This revision is directed against an order dated 17-6-77 passed by Sessions Judge Deoria in a case Under Section 392 IPC

2. In the year 1974 Ragghu Ram P. W, 1 was the Munim of the Firm M/s. Mani Ram Rampat Ram. On 11-3-74, at about 8-30 P.M., he had been returning to his Firm after realizing Rs. 12,000 as dues of the Firm from various shopkeepers. It is said that when he reached in front of Green Medical Hall on Arjun Road in the town of Deoria, two persons intercepted him. One of them caught him from the back and the other snatched his bag containing the said sum of Rs. 12,000/-. He raised an alarm whereupon Babu Ram P. W. 2, Vikram P. W. 3, Shiv Shanker, Durgeshwar Pande and several others arrived. They saw the miscreants in the

electric light of the street pole, but they could not apprehend them. Ragghu Ram went to the shop of the Firm and got a report of the incident written out by one Basi Lai. Armed with that report, he went to P. S. Kotwali and lodged it there at 10-20 P.M. S. I. Ram Kiran Yadav, P. W. 11 was present at the than and he immediately took charge of the investigation. He went to the spot and recorded the statements of the material witnesses on 15-3-74. The investigation of the case was taken up by S. I. Achhaibar Nath Dufocoy S. O.P. S. Kotwali. On the morning of 17-3-74 he went to the house of the applicant and arrested him. He interrogated the applicant and the applicant told him that he had got Rs. 9595/- with him and he could give it to him. He then took out the said sum from his house and gave it to S. I. Achhaibar Nath Dubey. The applicant was made 'Ba Pardah' and taken to Kotwali. The money recovered from him was also deposited at the Kotwali. The applicant was sent to Jail on 17-3-74 and admitted there some time in the evening. The applicant was put up for identification in Jail and he was correctly identified by Ragghu Ram P. W. 1, Babu Ram P. W. 2, Vikram P. W. 3 and Shiv Shanker. After receiving the results of identification and after completing the investigation S. I. Achhaibar Nath Dubey submitted a charge-sheet against the applicant.

3. The applicant pleaded not guilty and repudiated the truth of the allegations made against them. According to him, he was shown to the witnesses at P. S. Kotwali and the evidence of identification against him was, therefore, of no value. Regarding the recovery of Rs. 9595/- from his house, he stated that this amount had not been recovered from his house as alleged by the prosecution. According to him, this money belonged to him and he had given it to the Investigating Officer as demanded by him.

4. The learned Magistrate found the prosecution case proved against the applicant and he, therefore, convicted him Under Section 392 IPC and sentenced him to one year R. I, Regarding Rs. 9595/- his finding was that it was not part of the case money and he, therefore, passed an order for its return to the applicant. The applicant felt aggrieved with his conviction and went up in appeal. The State and Ragghu Ram felt aggrieved with the order returning Rs. 9595/- to the applicant and they, therefore, also filed appeals against this part of the Magistrate's order. All the three appeals were consolidated and heard together. The learned Sessions

Judge dismissed the appeal of the applicant and maintained his conviction. He, however, allowed the appeals filed by the State and Ragghu Ram and ordered for the return of Rs. 9595/- to Ragghu Ram. Aggrieved, the applicant has come up in revision to this Court,

5. The story of the crime as narrated by the witnesses stands unchallenged and conclusively proves to commission of an offence punishable Under Section 392 IPC and indeed the learned Counsel for the applicant has made no attempt to question the factum of the occurrence. Accordingly, all that is necessary for me is to discuss the evidence and endeavour to judge whether or not the participation of the applicant in this crime has been established beyond reasonable doubt.

6. Admittedly, the applicant had not been named in the report filed by Ragghu Ram P. W. 1. Mainly the case against him rests on the evidence of identification. Four persons, namely, Ragghu Ram P. W. 1, Babu Ram P. W. 2, Vikram P. W. 3 and Shiv Shanker were said to have identified the applicant in the test identification parade. Shiv Shanker, however, was not examined in this case. Vikram P. W. 3 is not a good witness because in the parade he identified the applicant correctly but committed one mistake. No value is, therefore, to be attached to his evidence of identification. We are thus left with the identification evidence of Ragghu Ram P. W. 1 and Babu Ram P. W. 2. Before I comment on the evidence of Ragghu Ram, I would first like to discuss the identification evidence furnished by Babu Ram. Babu Ram is not named as a witness in the report made by Ragghu Ram, Ragshu Ram did not name him in his statement Under Section 161 Cr.PC also.

Babu Ram, according to his own showing, is a great friend of Ragghu Ram. He has gone so far as to say that without him no work of Ragghu Ram is done. If such was the friendship of Babu Ram with Ragghu Ram, it is really surprising why the name of Babu Ram did not find place in the report made by Ragghu Ram. Had Babu Ram been present at the spot and seen the incident, Ragghu Ram possibly could not have missed him and, therefore, his name was bound to have found place in the report. Ttie fact that the name of Babu Ram does not find place in the report shows that he had not witnessed the incident and he is no better than a got

up witness. His evidence of identification is, therefore, of no value at all.

One may then ask as to how he succeeded in identifying the applicant in the test parade. The reason for this is not far to seek. The applicant was arrested on 16-3-74 at 4-30 A.M. He was fully interrogated and then he was brought to P. S. Kotwali at 12-30 P.M. He was not sent to Jail on that day. The evidence on record shows that he was sent to Jail on 17-3-74 and he was admitted there some time near about 4 P.M. No convincing explanation has been offered as to why the applicant was detained at the Kotwali for such a long time. The Courts at Deoria are hardly at a distance of half a mile from P. S. Kotwali. The applicant could, therefore, easily have been sent to Jail on 16-3-74. According to the applicant, he was not sent to Jail on that date, because he was to be shown to the witnesses and the witnesses actually saw him at the Kotwali.

I see no reason to disbelieve the applicant on this point because of the non-giving of any convincing reason for detaining the applicant at the Kotwali for such a long time. My feeling is that Babu Ram was called to Kotwali and the applicant was shown to him there. It was for this reason that even though he was not named as witness in the report, he succeeded in identifying the applicant. The evidence of identification furnished by him is, therefore, thoroughly useless and as such not at all fit to be acted upon.

7. Now I come to, the evidence of Ragghu Ram P. W. 1. We have to see how far his evidence of identification is worthy of reliance. The incident had taken place at a time when it had become dark. In the F.I.R. it has not been mentioned that any light existed at the place where the incident took place. It was during the course of evidence that electric light was introduced. Obviously, the introduction of electric light was nothing but the result of an afterthought. It appears that the incident had taken place in the darkness of the night and Ragghu Ram had, therefore, no opportunity to mark the features of the persons who had robbed him. On this ground alone his evidence is to, be thrown over-board.

Further, if the applicant could have been shown to Babu Ram P. W. 2, what is the guarantee that he could not have been shown to, Ragghu Ram also. The shop of Ragghu Ram is hardly at a distance of 100 paces from P. S. Kotwali and he could

easily have been called to the Kotwali to see the applicant after he had been brought there. The evidence of identification furnished by Ragghu Ram is, therefore, also not such on which much reliance can be placed. The courts below obviously fell in error when they thought that Ragghu Ram and Babu Ram were good identifying witnesses. On the face of it, they were not good identifying witnesses and it was not at all proper on their part to have acted upon their evidence. Obviously, in believing them, they ignored all the fact and circumstances swinging in favour of the applicant.

8. Now I come to the question of recovery of Rs. 9595/- from the possession of the applicant. Even if one believed the prosecution case and took it as proved that this money had been recovered from the possession of the applicant, that will not go to advance the prosecution case in any manner. Money is not a thing which could be subjected to test identification. On the material present on record it cannot be held as proved that the money recovered from the possession of the applicant was the same money which had been looted on the night of 11-3-74. The applicant has explained how he came to be in possession of this amount. The explanation given by him may not be very convincing, but that by itself can be no ground for holding that the money really belonged to Ragghu Ram.

9. Thus, from a perusal of what I have mentioned above, it is clear that the prosecution has not succeeded in proving its case against the applicant beyond reasonable doubt. Ragghu Ram may have been robbed on the night of 11-3-74, but on the basis of the material present on record, it cannot be said with any degree of certainty that it was the applicant who had robbed him. The conviction of the applicant was, therefore, bad in law and he must be acquitted. The money recovered from him must also be returned to him.

10. In the result, I allow the revision and set aside the conviction and sentence passed against the applicant Under Section 392 IPC. He is acquitted of the offence charged. He is on bail, his bail-bonds are discharged and he need not surrender to them. Rs. 9595/- recovered from the applicant is ordered to be returned to him.