

Badloo Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-10-1997

Reported in : 1998CriLJ1072

Judge : B.K. Sharma, J.

Acts : Arms Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 395; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 2731 of 1980

Appellant : Badloo

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Devendra Swarup, Adv.

Disposition : Appeal allowed

Judgement :

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 26-11-1980 passed by Sri B.B.S. Chaudhary, the then Xth Additional Sessions Judge, Kanpur in S.T. No. 270 of 1979 State v. Badloo and Chhotey, whereby he convicted the accused

appellant Badloo of the offence under Section 395, I.P.C. and sentenced him to undergo R.I. for a period of 7 years.

2. A dacoity was committed at the house of Subedar Dwivedi informant in the night between 27/28-9-1978 by 6-7 dacoits. In the course of dacoity, the informant was injured and his property was looted. The F.I.R. about the occurrence was lodged by the informant on 28-9-1978 at 10-20 a.m. at the police station. No one was named therein as the dacoits were unknown persons. During the investigation, present accused appellant and Chhotey co-accused were arrested and put up for test identification and since the result was positive charge-sheet was submitted against them.

3. At the trial, Subedar informant. P.W. 1 Nand Lal P.W. 2, Prem Narain P.W. 3 and Bans Lai P.W. 4 were produced as witnesses of fact. Rest of the evidence was formal in nature. The learned Sessions Judge held that there was light emitted from the Bangla of Sumer which was set on fire by witness Nand Lal there was evidence of flash of torches by the dacoits and there was also evidence of the light of lantern hanging at two places in the house of the informant. He believed the identification evidence furnished by Prem Narain P.W. 3 and Bans Lal P.W. 4 against both the accused in the trial which was positive and, therefore, convicted both of them of the offence under Section 395, I.P.C. and sentenced each of them to R.I. for a period of 7 years. The present appeal has been preferred by Badloo accused alone. It appears that the other accused did not prefer any appeal against his conviction and sentence.

4. The prosecution evidence re investigation against the accused-appellant Badloo was that on 6-1-1979 Ved Prakash Gautam who was S.I. of police station Bidhnoo made departure from the police station for the arrest of these accused alongwith force that as per the information of the informer, accused was at his house, that on seeing the police force, Badloo accused came out from his house and ran and was chased and was arrested by the police force at a distance of two furlongs from the village near the road and a Tamancha and two live cartridges were recovered from his custody and that he was made Bapurda .at the spot.

5. The prosecution has led the usual evidence about keeping him Bapurda. The learned counsel for the accused appellant claimed that he was arrested from his house and shown to the witnesses at the police station Bidhnoo on the date of arrest. He claimed that the prosecution story of his arrest at a distance of two furlong from this house and the recovery Tamancha and cartridges from him was false and concocted. In this regard he has pointed out that the accused-appellant was tried for the offence under Section 25 of the Arms Act in respect of the Tamancha and cartridges alleged to have been recovered from him at the time of his arrest and that though he was convicted by the trial Court, his appeal (Crl. Appeal No. 159 of 1979) was allowed by the then 7th Additional Session Judge, Kanpur on 9-4-1980 and he was acquitted by the same. A copy of the said judgment in appeal was filed at the trial of the present case. It was F.xt. Kha. 1. He has pointed out that the said appellate Court rejected the prosecution story of the police party and the public witnesses going to the house of the accused appellant, of his coming out from his house and running from there with the Tamancha in the Phaint of his Pajarna and his arrest at a distance of two furlongs from village Katherua. The observations of the said appellate Court were that the circumstances leading to the recovery and the place of recovery could not be established by the prosecution, that it seems quite strange and unbelievable that the accused-appellant started to run from his house on-seeing the police party and that at that time, he had a Tamancha at the Phaint of his Pajama and that it seems highly improbable that anyone sitting at his house shall sit with Tamancha in his Phaint and that the whole prosecution story seems to him to be concocted one. The trial of the accused-appellant in the present Sessions Trial took place subsequent to his acquittal in the said appeal.

6. The learned counsel for the accused-appellant claimed on the basis of the said finding in the said Criminal Appeal that no value can be attached to the identification of the accused-appellant based on that arrest. The learned counsel for the prosecution pointed out that in his statement under Section 313, Cr.P.C., the accused-appellant stated that he was arrested from his house at 5.00 p.m. and contended that, therefore, the time of arrest as set out by prosecution (5.30 p.m.) and the time of arrest as set out by the defence (5.00 p.m.) were practically the same and that therefore, the prosecution evidence of his being made Bapurda at

the time of arrest and the link arrest about keeping him Bapurda all along till lodging him in the District Jail should not be discarded on the basis of the said acquittal in the said criminal Appeal given by the 7th Additional Sessions Judge, Kanpur.

7. In my view, the link evidence of keeping the accused Bapurda becomes suspect in this case, in view of the rejection of the prosecution story about the arrest and recovery set out by prosecution as a concocted one. When the place of arrest and the factum of recovery of Tamancha and two live cartridges from his possession has been categorically disbelieved a shadow of doubt is cast on the police investigation in relation to this accused-appellant. It goes to make the entire investigation against this accused-appellant in the present case tainted. In the case of identification, the arrest of the accused is the foundation on which the entire link evidence proceeds and if the evidence of arrest from the place claimed by the prosecution is found to be concocted, then the evidence of S.I. (Ved Prakash Gautam P.W. 9) who made the arrest, about making the accused-appellant Barnirada on that place also falls through. So the very foundation of the evidence of keeping the accused Bapurda falls to the ground.

8. The learned A.G.A. has pointed out that the suggestion made to this S.I. (Ved Prakash Gautam) in his cross-examination was that the police of police station Mangalpur to which the case of dacoity related had accompanied the police force of police station Bidhnoo alongwith the witnesses (the prosecution witnesses of the present occurrence) and argued that it meant showing of the accused-appellant to the witnesses at the time of his arrest while in his statement under Section 313, Cr.P.C. the accused did not make any claim that he was shown to the witnesses at the lime of the arrest.

9. I have considered this aspect of the ease. The suggestion to the arresting officer should be taken in its pith and substance. The suggestion did not necessarily mean that he was shown to the witnesses right at the place of arrest. The witnesses could have been conveniently shown this accused at police station Bidhnoo where he was certainly taken after his arrest on the version of the police and on the defence plea also. The link evidence furnished by the prosecution was

that of being taken from the spot of arrest to police station Bidhnoo to which this S.I. Ved Prakash Gautam belonged who had received a requisition for his arrest). The further took evidence was of keeping him Bapurda at the police station (given by Constable Kaleem Uddin P. W. 13 and Constable Nawal Kishore Shukla P.W. 14) and then of his being taken from the police station to Kanpur (Courts) and after preparation of his warrant his being taken from there to District Jail, Kanpur Bapurda and lodged there. The accused in his statement before the identifying Magistrate Har Govind Sahai Mathur, Special Executing Magistrate P.W. 6 stated at the time of the identification proceedings, 'THANE VA KACHEHRY PER PAHCHANWAYA.' It is not a case where the accused was taken from the police station Bidhnoo where he was lodged after his arrest to police station Magalpur to which the case of dacoity related in which case there might be any ambiguity in the meaning of the claim made by the accused-appellant before the Executing Magistrate, P.W. 6. He was taken from the spot of arrest to police station Bindhnoo and from there he was taken on the next day to Kanpur Court and after preparation of his warrant, taken from there to the District Jail Kanpur and lodged there. So if he claims that he was shown to the witnesses at the police station, it only means that his statement was that he was shown to the witnesses at police station Bindhoo. This claim of this accused-appellant was in no way inconsistent with the suggestion made at the trial by his lawyer to the arresting officer Ved Prakash Gautam P.W. 9 in his cross-examination. The suggestion at the trial to Constable Kaleem Uddin P.W. 13 on behalf of this accused was that the accused was not kept Bapurda in the Hawalat of the police station Bidhnoo and was got identified from the witnesses. A similar suggestion was made to Constable Nawal Kishore, P.W. 14. As noted earlier both the constables gave link evidence of keeping this accused-appellant Bapurda at the police station and his dispatch from the police station Bapurda. So the claim made by the accused in his statement under Section 313, Cr.P.C. about being shown to the witnesses at the police station (Bidhnoo) was consistent with his earlier claim i.e. his claim was consistent throughout and it assumes significance and weight in the background of the false and concocted story of arrest and recovery from the way alongwith the country made Tamancha and two live cartridges without licence and the police conduct of registering a false case against him under Section 25 of the Arms Act. There is

also the case of the accused-appellant that he was shown to the witnesses at the Court of Kanpur at the time of preparation of warrant for his lodgment in District Jail, Kanpur.

10. It is true that a case of being shown to the witnesses is very often put by the accused and that the mere allegation does not entitle the accused to get the benefit of it. But where there are positive circumstances which point in that direction the defence claim becomes credible.

11. In the present case there are other circumstances also which tend to show that his identification became possible only with extraneous help. The occurrence took place in the night between 27/28-9-1978. This accused appellant was arrested on 6-1 -1979. He was put up for identification on 15-2-1979 i.e. after a period of forty days and there is no explanation set out at the trial by the prosecution as to why this unusual delay took place. It is obvious that greater the time gap between the date of arrest and the date of identification before the Magistrate, the lesser the value of the positive identification made before the Magistrate.

12. There were three sources of light set out by the prosecution. One was the light of two lantern hanging at two different places in the house of the informant Subedar Dwivedi P.W. 1. Another was the light that emanated from the Bangla of Sumer when it was set on fire by the witness Nand Lal during the course of the dacoity. The third source of light was the torches flashed by the dacoits. Subedar informant P.W. 1 was an injured in the occurrence. He claims that he was caught by the dacoits and was also beaten. He did not identify a single dacoit at the identification proceedings before the Magistrate or at the trial. Another witness Nand Lal P.W. 2 who claimed to have taken the initiative of putting the Bangla of Sumer on fire to create a substantial source of light to enable identification stated at the trial that he had made identification at the District Jail by way of guess work only.

13. Prem Narain P. W. 3 was son of the informant Subedar P.W. 1. He claimed that he and informant were caught by the dacoits and beaten and then taken inside the house but after some time he managed to run away from there and that he identified the accused persons. He was not an injured.

14. Bans Lal P. W. 4 claims that he woke up on cries of the wife of the informant and reached at the Gonda of the informant which was near the door of the informant's house and saw the dacoits. He also claims to have reached near the room of Hari Lal and soon the dacoits coming out from the Sadar Darwaja of the informant's house and going towards south. Both these witnesses Prem Narain P.W. 3 and Bans Lal P.W. 4 have made the usual statement that they did not see the accused-appellant between the date of the dacoity and the date of the identification before the magistrate but it is difficult to place implicit reliance on the said claim or their evidence of identification against the accused-appellant,

15. There is no recovery of any looted property from the possession of this accused-appellant. So the identification evidence having failed there remains nothing to connect the accused-appellant with the crime.

ORDER

16. Consequently the appeal is allowed. The conviction and sentence of the accused-appellant Badloo for the offence under Section 395 IPC are set aside and he is acquitted to the said offence. He is at present lodged in District Jail, Kanpur Nagar. He be released forthwith unless required in connection with some other case or crime.

17. Let a copy of this judgment be sent to the Superintendent of the District Jail, Kanpur Nagar immediately for information and compliance.

18. A copy of this judgment be also sent to the Sessions Judge Kanpur Nagar for information and compliance. Compliance report be submitted by him to this court within a month from today.