

Ram Sagar and anr. Vs. State

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Court : Allahabad

Decided On : Oct-08-2002

Reported in : 2003CriLJ1113

Judge : M.C. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395; [Evidence Act, 1872](#) - Sections 9

Appeal No. : Criminal Appeal No. 1869 of 1981

Appellant : Ram Sagar and anr.

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : H.S. Misra, ;V.C. Katiyar and ;V.V.P. Jaiswal, Advs.

Disposition : Appeal allowed

Judgement :
ORDER

M.C. Jain, J.

1. Ram Sagar and Brikshpal are the appellants in this appeal, who are aggrieved by the Judgment and order dated 21-8-81 passed by Sri M. S. Premi, III Additional

Sessions Judge, Farrukhabad, convicting them under Section 395, I.P.O. and sentencing each of them to rigorous imprisonment for four years and to pay a fine of Rs. 250/-. In default of payment of fine, each of them has to undergo further simple imprisonment for three months. Three Sessions Trials No. 74 of 1981, 77 of 1981 and 101 of 1981 were tried together. One Chandra Prakash was accused in S. T. No. 74 of 1981 with the appellant Ram Sagar. Appellant Brikshpal was accused in S. T. No. 77 of 1981. There was one Ram Pal accused in S. T. No. 101 of 1981. Chandra Prakash and Ram Pal were acquitted.

2. An armed dacoity as committed in between the night of 12/13th May, 1977 close to midnight by 11-12 desperadoes at the house of PW-1 Sonpal, in village Harha Purwa, a Hamlet of village Ismailpur, Police Station Gurusahai Ganj, District Farrkhabad. The same night, the dacoits also committed dacoity at the houses of Sone Lal Pradhan, Lal Ram and Ram Babu, It so happened that PW-1 Sonpal and his brother Natthu singh were sleeping in their Baithak and a lantern was glowing as usual, when 11-12 armed dacoits appeared there. Four of them had torches and guns and rest were armed with countrymade pistols. One of them had a cane stick also. They surrounded the two brothers and commanded them to get the door of the house opened. Four of them, who had guns, scaled the back wall and reached the roof. The women folk and children opened the door. The dacoits barged inside and started looting. Those on the roof were flashing their torches and opening shots. The shouts attracted Sarnam Singh, Sobaran Singh, PW-2 Ram Babu, Lala Ram and Veer Bhan. The two brothers somehow reached the door of Pradhan. Veerbhan set fire to the Patel (dry leaves) heaped there which produced a flood of light. Pradhan Sone Lal and Veerbhan had torches also. In the light produced by the fire set to Patel and in the light of torches, the dacoits were allegedly very well seen. Sobran Singh Sarnam Singh and PW-2 Ram Babu had received injuries also in such incident of dacoity. The appellant Ram Sagar was named in the F.I.R. and the case against the appellant Brikshpal is based on identification, he having been arrested in a case under Section 307, I.P.C. and his complicity having come to light. He was lodged in jail on 28-6-1977 and was subjected to identification on 15-9-1977. At the identification parade, two witnesses, namely, PW-1 Sonpal and PW-2 Ram Babu correctly identified him. At the trial, in all five witnesses were examined including these two.

3. The defence of the appellant Ram Sagar who was named in the F.I.R., was that the witnesses knew him from before and that he had a dispute with the complainant and other witnesses over the Mend of his field and for this reason he had been falsely implicated. On the other hand, the contention of the appellant Brikshpal was that he had been arrested from his house at 8 A.M. and was kept at police station for two days. According to him, his photo had been taken and he was also shown to the witnesses.

4. At the hearing of the appeal, none appeared from the side of appellants, though on record they are represented by Sarvasri H.S. Mishra, V.G. Katiyar and V.V.P. Jaiswal, Advocates. I have heard learned A.G.A. from the side of State in opposition of the appeal and have examined the record with his assistance.

5. So far as the factum of dacoity is concerned, it admits of no doubt, having been clinchingly proved by the testimony of PW-1, Sonpal and PW-2, Ram Babu. There is no serious challenge either to the factum of dacoity from the side of appellants as is apparent from the cross-examination of the witnesses and their own statements under Section 313, Cr.P.C. However, I find that the conviction of the appellants for the offence of dacoity in question cannot be sustained. So far as appellant Ram Sagar is concerned, he is named in the F.I.R. as stated earlier. There is no evidence to show that he was a hazardous character who could have gone to commit dacoity at the house of known person with open face. The evidence of PW-1, Sonpal and PW-2, Ram Babu is there that one of the dacoits had muffled up his face. PW-2, Ram Babu admitted that agricultural land of appellant Ram Sagar was two furlongs away from his house, though he denied that he used to get his crop damaged in respect of which a Panchayat had been held a number of times. The possibility cannot be ruled out that there was some bad blood between the prosecution witnesses on the one hand and the appellant Ram Sagar on the other which led to his naming in the F.I.R. as one of the dacoits.

6. So far as other appellant Briksh Pal is concerned, it is noted from the testimony of PW-5 S.I. Jagdish Dutt Dwivedi that he had arrested this appellant on 27-6-1977 in some other case under Section 307, I.P.C. According to him, his complicity in this crime came to light on his interrogation. It is to be noted that no

recovery was made from him relating to this dacoity. To say it other way, the only evidence against him is of having been identified by two witnesses at the identification parade held on 15-9-1977. It may be stated at the risk of repetition that he was lodged in jail on 28-6-1977. Thus, his identification parade took place nearly 2 1/2 months later. Identification parade held after lapse of such time creates doubt. It is difficult to conceive that after such lapse of time the witnesses would be remembering his facial image and profile. I am, therefore, in judgment that under such circumstances, the conviction of the appellant Briksh Pal can also not be upheld.

7. In the result, the appeal succeeds and is allowed. The appellants Ram Sagar and Briksh Pal are acquitted. They are already on bail. Let a copy of this judgment along with the record of the case be sent to Court below for necessary entries in the concerned register under intimation to this Court within two months.

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