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Court : Madhya Pradesh

Decided On : May-14-1958

Reported in : 1960CriLJ230

Judge : G.P. Bhutt,; A.H. Khan and; H.R. Krishnan, JJ.

Appellant : The State

Respondent : Karan Singh

Judgement :

A.H. Khan, J.

1. The Additional Sessions Judge, Gwalior, convicted Karan Singh son of Raghuvir Singh Rajput Under Section 302 Indian Penal Code and sentenced him to death. The record of the case has been sent to the High Court Under Section 374 of the Cr. P.C. for confirmation of the death sentence and the case is numbered as Criminal Reference No. 1 of 1958. The accused has also filed appeal No. 13 of 1958 against his conviction and sentence. Both the cases are being disposed of by a single judgment.

2. The prosecution story is that on 29-3-1953 nearabout sun-down some persons dressed in Khaki uniforms and armed with rifles and guns went to Police Station Kolaras, They entered the iAier courtyard of the Police Station by a back door. They were mistaken to be a police-party by the Police men that were at the Thana,

but when they approached nearer and opened fire, it was then realised that they were dacoits masquerading in Police uniform. Gopilal Sentry, who had a 303 rifle with him, fearing that the party of dacoits had crane there to rescue the under-trial prisoners, moved towards the lock-up.

He was fired at and died then and there. Another person by the name Abdul Salam Constable was also killed by the dacoits. Seeing this, all the constables of the Station, including the Sub-Inspector of Police scattered in different directions. It is said that the PrJice-party withdrew in order to take position and then fire. Be what it may, the Police station was deserted. The dacoits raided the Mal-khana and breaking open the lock took away all the arms and ammunition they found there. In all, the dacoits took away three 303 rifles, including the one Gopflal Sentry had with him. Three Police musket rifles (410 Bore) were also taken away.

After the departure of the dacoits, Sub-Inspector Ganpatrao Shinde and the other Police Constables returned to the Station and found Gopilal and Abdul Salam Constables lying dead. They also discovered that the Malkhana had been raided and that rifles and ammunition were missing. The Sub-Inspector (P.W. 2) wrote down the F: I. R. (Ex. P. 9) in which it was recorded that Constable Kalyan Singh P.W. 18 had recognised the accused Karan Singh in the gang of dacoits that raided the Police Station. Kalyan Singh and Karan Singh had been together in the A. R. P.

3. The incident took place on 29-3-1953. The accused was arrested on 31-8-1954 near Ashok Talkies, Gwalior, by Vishnu Kumar Sub-Inspector. The accused hat; denied the commission of the offence and has pleaded that he was with his brother at Agra (U. P.).

4. The case really turns on the evidence of Kalyan Singh P.W. 18. After telling how the dacoits entered the Thana, the witness has stated that the accused Karan Singh was the fourth in the order in which the raiders entered the place. He was in Khakhi Shirt and shorts, and, was wearing a woollen cap and carried a 303 rifle. He had a special reason to identity the accused. Sometime in the year 1951, this witness and the accused had been together and were constables in the District Reserve Police at Shivpuri. .Both resided in quarters of the Police Lines for a

period of about 6 months. This association enabled him to recognise Karan Singh at once.

5. The learned Counsel for the appellant has suggested that it had grown dark and that it was the case of mistaken identity. But no question has been put to the witness in the cross-examination as to whether it had become so dark that he could not identify the accused properly. The time of occurrence as stated in the F. I. R. is 6-45 P. M. In the month of March, at this hour of the day, it Is not so dark that one cannot recognise a person whom one already knows,

6. The accused in his examination Under Section 342 -of the Criminal Procedure Code, while admitting that Kalyan Singh knew him well has stated that when Kalyan Singh came on transfer to the Reserve Police Shivpuri, the Subedar of the Lines ordered the accused to put him up at his quarters. The accused did not like this and ever since the accused and the witness Kalyan Singh had not been on good ternis with each other. In support of his contention, the accused has examined Abdul Razak D, W. Section a constable from Bhind. Abdul Razak has deposed that whjle Kalyansingh and Karansingh were at Shivpuri he was also there. In the beginning, the 'relations of Kalyansingh and the accused were cordial but that later on both of them fell foul of each ther and they fought with each other also.

From the statement of Abdul Razak, the cause of estrangement between the two was that they had absued each other. Abdul Razak does not say that the estrangement was caused by the order of the Subedar who asked the accused to accommodate Kalyansingh, when Kalyansingh came to the Lines on transfer. On the contrary Abdul Razak D. W. 5 says that in the beginning, the relations of the accused and Kalyansingh were happy. In the circumstances there is no good reason to assume that Kalyansingh P.W. 18 is incriminating the accused because of any grudge or enmity.

7. There is nothing on record to show that it is V a case of mistaken identity. No one has stated that 1t had become so dark that it became necessary to light the evening lamps. In the absence of any reference to it, it must be assumed that there was sufficient light, and that the raid took place before the lighting time.

8. Ganpatrao Shinde, Police Station Officer P.W. 26 who wrote the report has stated that after the departure of the dacoits when the Police force returned to the Thana, Constable Kalyansingh (P.W. 18) told him that he had identified Karansingh in the raiding party. Mr. Anand learned Counsel for the accused has argued that the gang continued to raid the Police Station from 15 to 20 minutes and that it is said that the Thanedar and others came to the Police Station soon-after the departure of dacoits.

If this is correct, the learned Counsel argues, then the Thanedar and constables came back to the Thana by 7-30 in the evening. But the F. I. R. is written at 9 P. M. This shows that the raid took place say at 8-30 p. m. No doubt the prosecution witnesses have deposed that they returned to the Thana soon after the departure of the raiders. But some allowance must be made for the bravery, which the Police is now attempting to show. The record speaks in a manner which does not redound to the credit of the Police force.

It appears that excepting trie Sentry and one more constable, the entire Police force scattered in all directions, the moment they heard the firing by the raiders. It is said that the Police force retired in order to take position and fire but the statement is all moonshine. The fact of the matter is that 83 soon as the dacoits opened fire, every one, excepting the two constables who were killed, ran away to hide himself. In these circumstances I do not think that the Policemen came to the Station soon alter the departure of the dacoits. The dacoits at the time of leaving Station made no announcement that they were leaving the place.

The Sub-Inspector and the constables must have waited for sufficiently long time before coming back to the Thana. Some time must have been spent in talking and expressing regret when they saw Gopilal and Abdul Salam constables dead. In these circumstances, the time of the actual occurrence cannot be fixed by the fact the F. I. R. was written at 9 P. M. There is no reason to assume that Sub-Inspector Police tutored Kalyansingh, because if any tutoring had been resorted to, the other constables could have also named Karansingh,

The Thanedar at Kolaras and his men mistook the raiding party for men belonging to some other Police Station, not because the light was dim, but because the

Khaki dress made the raiding party look like their own force from some other Thana. That there was sufficient light is evident from the fact that at the time of the raid, another report was being recorded without the help of a kerosine lamp. If it had grown dark, surely the Thana people would have lit up a lamp.

9. After the arrest of the accused Karansingh, Govindsingh P.W. 2, Pahalwan Singh P.W. 4, Shive Charan Singh P.W. 6 and Constables Shyaitt-lal P, W. 3, Hardas P.W. 7, Har Kishore P.W. 8 and Ramswaroop P.W. 13 identified the accused (as one of the raiders) in the identification parade. It Is said that at the time of the parade, the Police Prosecutor was with the Magistrate and that though the accused took objection to it, yet no heed was paid to his protest. For this reason and also for other reasons recorded by the learned Additional Sessions Judge, the identification of the accused by other witnesses has not been relied upon by the Court. And rightly so.

10. The accused has denied being with the gang of dacoits. The fact of the matter is that the accused was at one time a Police Constable who deserted the Police Force in 1952 and his whereabouts remained unknown. He has examined his brother Gulab Singh D. W. 1, who has stated that his brother Karansingh after resigning from the Police Force in 1952 came to him and was with him for the last two years. He says that along with Chhedilal he started the business of Khoncha. Chhedilal is dead. Lniinrarn D, W. 2 and Anegh Singh D. W. 2 support Gulab Singh D. W. 1, but all the three defence witnesses admit that Karansingh did not hold anv licence for doing the business in partnership with Chhedilal.

It is possible that while doing business in partnership with Chhedilal, accused Karansingh may occasionally get away and join the raiders, more specially when Chhedilnl was there to carry on business in his absence. The evidence has been disbelieved by the trial Court and I am afraid that the evidence produced by the defence is not enough to hold that on the night of the occurrence, the accused was in Agra doing his Khoncha business.

11. From the evidence on record it appears that Karan Singh was a constable in the District Beserve Police, Sfjivpuri who absented himself on 29-4-1952 and never returned to the lines. He was eventually dismissed from service On 20-5-52.

12. The dacoity which was committed no doubt was a daring one: it was boldly conceived and desperately carried out. Two men have lost their lives and as the learned Additional Sessions Judge has said no extenuating circumstances exist in favour of the accused. The case calls for a deterrent punishment. There is absolutely no reason why the extreme penalty of law should not be imposed upon him,

13. For reasons stated above, the appeal of the accused is dismissed and the sentence of death passed by the learned Additional Sessions Judge is confirmed. The appeal and Criminal Reference are thus disposed of.

H.R. Krishnan, J.

14. In this death reference Under Section 374 Cr. P.C. by the learned Additional Sessions Judge, Gwalior, and the connected appeal by the condemned man, the only question for consideration is whether in the circumstances of this case, it would be safe to base the conviction on the uncorroborated single witness's evidence of Head Constable Kalyan Singh that the appellant condemned man was one of the raiders at the Kolaras thana on the evening of the 29th March, 1953.

15. It is convenient to set out the facts in so far as they relate to this crucial issue. Some time on the evening of the 29th March, 1953 five or six persons wearing khaki and carrying firearms walked Into the police station building at Kolaras by what has been described as a back door. There was no doubt a sentry carrying a rifle, but otherwise, the thana officer and his- constables were quite taken by surprise. The officer himself was in the outer compound actually writing or dictating notes of his movement and activities earlier on the day which Included the recording of the gist of information said to have been received earlier that day from one Jagannath Patel of Sesai that on the previous night a groim of 20 or 25 hfirlmnshes had hepn seen going through that 'village for an unknown destination'.

Any way, when these five or six persons entered the thana, the officer and his men took them for a body of policemen from elsewhere and did not put themselves on guard. The infruders however, suddenly opened fire; then it flashed on the minds of the members of the thana police that after all these were not brother policemen

from elsewhere, but dacoifs raiding the thann. The sentry, Gopilal. moved towards the armory, but was shot down. The other policemen literallv scattered in different directions in thp Tieichhnurho of though the thana officer says that thru went here and there to take positions to return the fire. The officer himself ran away towards the school compound followed by Abdul Salam Constable, who was shot down by one of the infruders before he could rearh there. The raider1; however. did not seem to have been seriously inconvenienced or disturbed by this process of 'taking position:' they managed to collect firearms that is 3 rifles. 3 muskets, and quite a quantity of ammunition, the details of which have been set out in the evidence After they dispersed, the police force came back and took stock of what had happened. The F. I. B. was written at 9 P M. It sets out the course of events summarised above and ends with statement, 'Karan Singh Thnkur ex-constable, who is now in the Amritlnl's gang of divots has been identified by the constable Kalyan Singh. Further descriptive particulars of the following badmashes are being taken for their identification etc. etc.'

16. Karan Singh was arrested about; 18 months later in September, 1954. He was put up for test identification and three more witnesses namely Pahalwan Singh, Sheocharan and Govind Singh police constables picked him out. Even if the rules had been literally regarded, this would be of very licitly value; for one thing there is a lapse of time and for another Karan Singh was generally known to the police force of that district and actually a descriptive roll had been circulated. Certainly, these persons-had heard that Karan Singh was suspected in this dacoity, and nothing would have been easier for them than to point him out. Actually the position i worse. The police public prosecutor was present during the identification, and was assisting in it. So, the learned Additional Sessions Judge has very rightly rejected the results of the identification parade.

17. That there was a raid on the evening of the 29th March, 1953 at the Kolaras police station by more than 5 persons who murdered two of the policemen and also took away by force firearms and ammunition, is altogether beyond doubt. It is equally certain that whoever was in that party of. raiders is-guilty Under Section 396, IPC In view of the seriousness of this outrage, the punishment should be the extreme penalty. But the question here is whether Karan Singh was one of the five

or six; for this the evidence adduced has to be scrutinized.

We have a single witness eivdence without any independent corroboration whatsoever. The appellant has suggested that this single witness was ill-disposed towards him; but I am not prepared to hold that simply because there has been some difference between Karan Singh arid Kalyan Singh the latter would implicate him falsely. I shall proceed on the basis that Kalyan Singh's identification is not false to his knowledge and intention. It is, of course, for consideration, if this single v ilness evidence becomes doubtful in the circumstances of the case, and not so free from a possibility of a mistake in good faith as to justify the conviction.

18. The law in our country does not prescribe the minimum number of witnesses for the conviction of any person; the uncorroborated evidence of a sinjde winess is not on that ground alone in sufficient to sustain a conviction; that would depend on the facts and the circumstances of each case. Certainly, the spontaneous and independent observations of two or more honest witnesses to the same effect, would carry more conviction than the observation of an equally honest single witness even in good faith, because the factors of honest error partly cancel out. Surely, the criteria for the assessment of evidence are just the same, whether the offence is a slight one, or one that would call for a capital sentence; but in practice courts considering a capital case, feel n heavier load on their conscience, and automatically begin to apply the same principles with more caution than in less serious ones.

Be that as it may, while no hard and fast rule can be laid down, it is not difficult to enumerate the broad tests of nrudence to be applied to a single witness evidence for eliminating the possibility of a mistake or at least reasonable doubt. We arp not denling with a case where the witness is not speaking with a clean heart, or the pure mind to the best Of his knowledge: such a witness has to be disbelieved. We are dealing with one who Is honest, but may be mishiken. In the event of the evidence beans the visual observation of a single witness we should be sure that he knows the accused well enough, has I seen him off and on for some time, and has himself I no defect of vision. All this is found here. Them' comes the question of visibility. If the offence is committed in what we can call 'broad day light' or in

light that would be undoubtedly sufficient for correct identification, then there is no difficulty on this score. Finally, the mental state of the observer, whether he is upset or calm, whether he is anxious to run away or is willing to stay on, has to be coiiisidtered.

19. Applying these tests to the present case we may try to ascertain the actual time of the happening. The officer writes in the F, I. R. that 'it was quarter to seven'. In the end of March the sun sets after 6 P. M., may be according to the Indian Standard Time shortly after 6.10 P.M. Half an hour after sunset there may be good twilight, unless it is cloudy; we can suppose that on that evening it was not cloudy. Still the question remains whether it is quite correct to time the happening at quarter to seven and whether the fleeing officer did actually look at the watch. We have, from quite a number of witnesses a description of the raid, the shooting of the two constables, the breaking into the armoury, %and the removal of the firearms and the ammunition 'and finally the dispersal of the intruders and the return of the policemen.

It is not difficult to estimate how long the whole thing could have taken, making allowance for the fact that the policemen of the thana had been taken by surprise, and had possibly not shown that high degree of alertness and physical courage expected in that branch of public service. Even so, it is difficult to imagine that the entire happening could have taken more than 20 minutes or half an hour at the widest. Everybody is in a hurry. The dacoits are anxious to collect what they had come for, and make good their escape; certainly they would no be there for something like an hour or two. We know definitely that the F.I.R. given immediately or shortly after the return of fugitives, was at 9 P.M. now at least the officer looking at his watch. But whether the officer looked at his watch while running away to the school to take position for shooting, he himself cannot be certain. But very likely he did not. Anv way, it cannot Vie that the dacoits arrived at quarter to seven and trip policemen returned to the thana just before nine that is to say more than 2 hours later.

Either the dacoits came later than quarter to seven, or the policemen returned well before 9 O clock, say about 7.30 or about 8 P.M. at the latest. The result of this

discussion is that the raiders must have come not when there was sufficient twilight, but much later and the witnesses are trying to advance it a bit earlier either to make out that there could have been some light, or with some other ulterior purpose. If it is 6. 45 P.M. I would not say it was 'broad day-light'; the light was fading and there was some chance of mistake in the observation. The risk was greater, if it was later.

20. There is one more point which seems to have been missed by the learned Additional Sessions Judge. When the intruders walked in, the officers and staff of the Kolaras thana just noted that they were in Khaki and thought that they were policemen, may be from a neiehhonrinc thana. This indicates that, the light was such that one and all the 7 or 8 persons committed this mistake. If it was impossible for them at the first instance to distinguish between somebody in mere khaki and a member of the police force one will have to assume that it was not very bright and the light had been fading.

21. Kalyan Sineh states that after they opened tire he realised that they were dacoits. He saw them walking in and noted the fourth man was Karan Singh, 'In a minute', after the dacoits opened fire he started running away. Thus he was greatly surprised; saw the accused only in a glimpse, or so, and was anxious to leave. In cross-examination an attempt has been made to elicit how far these dacoits might have been from the witness at that time. The result was bound to be unsatisfactory in any case,, but for what it is worth Kalyan Singh's statement is that it was- 15 to 20 paces, say 40 to 50 feet. For daylight it is not much of a distance, but for twilight, if there was twilight at all, it is some distance. Any way, the witness was not very near the person heir identified.

22. To sum up, we have one witness identification deposed to, without any animus or intentional disregard of truth. The witness certainly knew the. accused from before. But the light to say the least, was not sufficient; the appearance being that it was nearly but not quite dark. Any way, it was not broad daylight and twilight at its best. The single witness was taken by great surprise or shock, saw the accused for a short time and was not quite nearby. Had there been independent corrobnration either, in other circumstances, or by the observation of other

witnesses made independently, the position would have been different; but here, the conditions do not exclude the possibility of a mistake, nor reasonable doubt. It is not my principle that a single witness evidence should always be deemed insufficient, but in this particular case the uncorroborated one witness evidence is not such as can satisfy me beyond reasonable doubt that the condemned man was really one of the raiders of the Kolaras thana on 29-3-1953. I would, therefore, reject the reference No. 1/ 1958 and allow the appeal No. 13 of 1958, and set aside the conviction and sentence, and order the release of the appellant unless he is wanted or has-been convicted in some other case.

G.P. Bhutt, J.

23. This appeal was heard by Khan and Krish-nan, JJ. of the Gwalior Bench of this Court, along-with the connected criminal reference, No. 1 of 1958. On a difference of opinion between the learned: Judges, the appeal and the reference have been referred to me under the orders of the Hon'ble the Chief Justice.

24. The appeal is directed against the conviction of accused Karan Singh Under Section 306 of the Indian Penal Code and the sentence of death awarded to him thereunder. The reference is for confirmation of the death sentence. The accused is said to have been a member of n irana which rnmmitrpd dacoity in the.' evening of 29th March 1953 at police-station Kolaras, in the course of which sentry Gopilal and constable Abdul Salam were killed with gunshots. The first information report of the incident was recorded by station-officer Shinde (P.W. 2fi) and is Ex, P-9 on record. That report was recorded at 9 p.m. and mentions the time of the commission of the dacoity as 6.45 p.m.

25. The solitary witness of the identification of the accused is head constable Kalyansingh (P.W. 18). Khan. T . saw no reason to discard his evidence, while Krishnan, J. did not consider it safe to rely upon it. There is no doubt that a person can legally be convicted on the evidence of a solitary witness. The question, however, is whether, in the(circumstances of the present case, it would be safe to do so.

26. The accused was in the year 1951 a member of the police force at police-station SMvapuri, when Kalyansingh (P.W. 18) was also posted there. At that lime, they lived in the Police Lines close to each other for six months. Since then two years passed, when the dacoity at police-station Kolaras took place. It is not shown that during this time Kalyansinglv (P.W, 18) had again any occasion to meet the accused. This is a circumstance to be kept in mind.

27. It appears from the evidence of Kalyansing (P.W. 18) that as soon as the dacoits entered the back courtyard from the western doer, they began firing the guns, hitting sentry Gopilal. It also appears from his evidence that as soon as this happened, he ran away from the western door. His exit from the place must, therefore, have occurred soon after the dacoits entered the courtyard. In such a short time, it was difficult for him to notice the dacoits, even if they had created immediate suspicion. As ij- was, they were disguised as policemen; and as the witness mistook them as men of the police force, he admittedly took notice of them only when they began firing. However, as he ran away soon after, it was not possible for him to notice them with any particularity during that short time. Nevertheless, he pretends to have noticed them all and has given their description with great details. This makes his evidence not worthy of implicit reliance,

28. The witness admits that he knew that the accused had deserted the police force and joined the gang of dacoit Amritlal. It is possible that this prescience coloured his vision and he beean to imagine that the accused was among the raiders. His previous acquaintance with the accused would have been a reliable factor if he had sufficient time to notice him before the dacoits began firing. As this did not happen, his identification of the accused .cannot be safe for reliance.

29. Krishnan, J. has also considered other factors which render the evidence of Kalyansing (P.W. 18) unsafe for reliance. As already stated, Shinde (P.W. 26) recorded the first information report (Ex. P-9) at 9 p.m.; it appears from his evidence, as ;also from that of Kalyansing (P.W. 18) that the dacoits were on the spot for only a short time. According to Shinde (P.W, 26), they came in the front portion of the police-station within only 10 or 15 minutes of their entering the back courtyard and soon after they ran away. Kalyansing (P.W. 18) heard the gunshots

only for 15 or 20 minutes, indicating that they were present on the spot only during that much time. Shinde (P.W. 26) inspected the magazine and the malkhana soon after the dacoits left the place. He found no loss in the malkhana but noticed gome shortage in the magazine.

Soon afterwards he recorded the first information report If his evidence is reliable, he should have been free to record the first information report within an hour of the arrival of the dacoits. As it was it was not till 9 p.m. that the first information report was recorded. This indicates a possibility of mistake in noting the time of the arrival of the dacoits. In the event they came to the police-station later in the evening, their identification by Kalyansingh (P,W. 18) would be open to doubt. This is apart from the fact whether he had any motive to falsely implicate the accused. On that point, however, I am inclined to agree with Khan, J. who is of the negative view.

30. Even without the above facts, it appears to me, keeping in view the frenzied state of mind of the linmates of the police-station when the dacoits beean firing and the very short time thereafter when they could have their view, that it would not be safe to rely upon the identification of the accused by Kalyan-singh (P.W, 18). This is particularly so, as there was a possibility of his imagining his presence among the dacoits. I, therefore, agree with Krishnan, J. that the accused is entitled to be acquitted.

31. I would accordingly allow the appeal, set aside the conviction and sentence of the accused Under Section 396 of the Indian Penal Code and acquit him of the charge. 'As a result, the criminal reference would be rejected.

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