

Umesh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-20-1996

Reported in : 1997CriLJ1369

Judge : R.P. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392, 394 and 397

Appeal No. : Criminal Appeal No. 1164 of 1991

Appellant : Umesh

Respondent : State of Madhya Pradesh

Advocate for Def. : D.V. Pendharkar, Govt. Adv.

Advocate for Pet/Ap. : Anil Khare, Adv.

Disposition : Appeal dismissed

Judgement :

R.P. Gupta, J.

1. This appeal is directed against the judgment dated 1-10-1991 of the Additional Sessions Judge, Jaspur Nagar, Raigarh, in Sessions Trial No. 30 of 1990, arising out of Crime No. 10/90 of Police Station Jaspur Nagar, Raigarh. The appellant was convicted for having committed an offence under Section 394 read with Section

397 for committing robbery by use of dangerous weapon. He was sentenced to rigorous imprisonment for 7 years.

2. The learned trial Court found it established against the accused that he, on 19-1-90, in the house of Vinod Kumar Jain, P.W. 1, had looted gold ornaments from the person of Smt. Sanjana Jain, wife of Vinod Kumar Jain, in her own room at point of knife, threatening to kill her.

3. Brief facts of the case are that the accused had illegally entered the house and had entered the room of Smt. Sanjana Jain. The time was about 6.25 p.m. Sanjana Jain, her mother-in-law and sister-in-law were watching TV in a room on the ground floor, while her husband Vinod Kumar Jain and father-in-law Hanuman Prasad Jain were in their shop. Sanjana Jain went upstairs to switch off the light of the bath-room. When she entered the room upstairs, she noticed the presence of a stranger in her room. He was the present appellant. He asked Smt. Sanjana Jain to sit down on the bed at the point of knife, and demanded key of the safe. When Smt. Sanjana Jain disclosed that she did not have the key, the accused, at the point of knife, asked her to remove all the ornaments on her body and hand them over to him, else she will be killed. The accused-appellant had shut the doors of the room. Smt. Sanjana Jain then took off her gold necklace, weighing 11/2 tolas from her neck, 2 gold rings weighing 11/2 tolas from her fingers, 4 gold bangles, weighing 3 tolas from her wrists and one Titan wrist-watch from her wrist and handed over to the accused. The accused took them and went out. The door of the room was left open. Smt. Sanjana Jain raised the cries 'CHOR CHOR'. Her husband and father-in-law went upstairs and they saw this appellant running from the house and he had jumped over the wall. Vinod Kumar Jain and Hanuman Prasad Jain know the accused from before. On their cries, the people of the locality also gathered and chased the accused. There was a hotel adjoining the house of Hanuman Prasad. In fact the said hotel is in a building which belongs to Hanuman Prasad Jain. At that time, Halwais and other workers of the hotel were also present there. The accused-appellant had come there and parked a lady's bicycle in front of the hotel and this had been noticed by the workers of the hotel. After some time, they saw the accused in a perplexed condition and they heard the cries of 'CHOR CHOR' from Hanuman Prasad and Vinod Kumar Jain. The

accused-appellant then suddenly ran from the hotel also. He was chased by some persons, but the appellant could not be caught and subsequently escaped. Hanuman Prasad and other's then lodged a report with police, within an hour of the theft, naming this accused as the culprit. The police searched for the accused and kept a watch for him. Two days later, he was found moving in the area of Tikaitganj. Some police men chased him and with the help of some boys, who were playing cricket in a ground, the accused was surrounded and over-powered. That was on 13-1-1990. One gold necklace, 2 gold rings and 2 bangles of gold were recovered from him. The accused was then sent to jail on judicial remand. On 21st January, 1990, in an identification parade, in the jail before the Tehsildar (the Executive Magistrate), Shri B. S. Bais, P.W. 10, vide proceedings Ex. P-8, Smt. Sanjana Jain identified this accused. Smt. Sanjana Jain did not know this ground from before. Identification parade in respect of the recovered ornaments was conducted in the presence of one Suresh, P.W. 11, and Lata Devi P.W. 12. In this identification parade, Smt. Sanjana Jain and Vinod Kumar Jain had correctly identified their ornaments, as those, which were looted from Smt. Sanjana Jain by the accused. Memorandum in respect of this identification is Ex. P-12. This identification was conducted on 14-1-90.

4. The prosecution examined 15 witnesses in all. P.W. 1 is Vinod Kumar Jain, complainant and husband of Smt. Sanjana Jain, P.W. 4 is Hanuman Prasad, father of Vinod Kumar Jain, P.W. 13 is Smt. Sanjana Jain. Sanjana Jain had named the accused-appellant as the person who had looted her at the point of knife. Vinod Kumar Jain had stated that he knew the accused-appellant earlier to robbery and had seen him running away from his house, when he heard his wife's shout of 'CHOR CHOR' P.W. 3 is Manoj Jain, a shop-keeper, who had chased the accused. P.W. 2 is Satya Narayan, owner of the hotel 'Suvidha'. He had heard the shout of 'CHOR CHOR' raised by Hanuman Prasad. But on going there, he did not find any culprit. He then came back to his hotel and saw the accused in perplexed condition and people were trying to apprehend him, but the accused continued running. P.W. 14 is Rakesh Sharma, who is a worker of 'Suvidha' hotel, on whose narration, Ex. D-I was recorded by the police. P.W. 9 is Surendra who is worker of 'Suvidha' hotel. He had noticed the accused appellant parking his cycle in front of the hotel and then going away. He had heard the cries of 'Thief Thief' from the side

of the house of Hanuman Prasad. The accused came there after some time and they had asked him as to where he had been. The accused was in perplexed state. They even followed him for a short time and chased him, but he ran away and escaped, although he was chased by Satya Narayan, Vinod Kumar, Suresh and this witness also. P.W. 11 is a witness of chasing the accused on the date of robbery. He is shop-keeper nearby. He had stated that Vinod Kumar Jain had told him that Umesh had committed robbery at the point of knife in his house. This witness had conducted an identification parade of the recovered ornaments from witnesses Smt. Sanjana Jain and Bhauri Devi and they correctly identified the ornaments. He prepared the identification memo Ex. P 10, P.W. 12 Lata Devi is a witness before whom the identification parade of ornaments was conducted by the police.

5. P.W. 6 is Imran Khan, who is a businessman and along with other boys was playing cricket in a ground on 13-1-90. They heard the shouts of a police officer chasing this accused and he and others helped the police in over-powering the accused. The accused was apprehended by them and from his possession, gold ornaments were recovered. Other boys were Subodh Chourasia, Vinay Rakshit, Rameheswar Oza and Omprakash and others. P.W. 5 Subodh Chouresia turned hostile. He is a student and simply stated that he knew nothing about the accused. He was confronted with his previous statement to police in support of the prosecution story, but he denied the same. P.W. 7 is Vinay Kumar Rakshit. He is a shop-keeper and also supported the assertion of Imran Khan P.W. 6 about apprehension of this accused and recovery of gold ornaments from him, such as necklace, bangles, etc.

6. P.W. 10 is B. S. Bais, Tahsildar and Executive Magistrate, who had conducted the identification parade of the accused on 21-1-90 in which Smt. Sanjana Jain had correctly identified the accused. The memo of identification parade was prepared by him, which is Ex. P8. P.W. 8 is Phoolchand Patwari, who had prepared the site-plan of the place of robbery. P.W. 15 is R.G.S. Goutam, A.S.I., who is the Investigating Officer. He had recovered the F.I.R. on the statement of Vinod Kumar Jain on 11-1-90 before whom Vinod Kumar Jain had produced a cycle which he seized. Then on 13-1-90, he recovered gold ornaments from the

accused vide seizure memo Ex. P 9.

7. The accused denied that he committed any robbery. He said that he had gone to the hotel to take tea and people caught him shouting 'CHOR CHOR'.

8. The learned trial Court found the evidence of the witnesses reliable and returned verdict of guilt of the accused. He found support from the F.I.R. Ex. P1 wherein the accused has been named.

9. I have been taken through the entire evidence of the witnesses and also the documents, by the learned counsel of both the sides. One thing, on perusal of the evidence, is clear that no witness had stated, at the time of arrest, on 13-1-90 that the accused had covered his face with any cloth Investigating officer simply stated that he recovered the ornaments from the accused and prepared the memo Ex. P3. He did not say whether the accused was made to muffle his, face at the time of arrest and recovery of ornaments from him. Similarly the evidence of first judicial remand of the accused was not produced which might have suggested in what condition the accused was produced-whether the accused was produced with muffled face and whether the Magistrate had instructed the accused to keep his face muffled, till he entered the jail, as he was to be identified by witnesses. This is a great lacuna in the identification proceedings of the accused. Law is settled that the prosecution must establish that the accused was not shown to witnesses, nor was there any opportunity for the witnesses to see and identify him at the time of arrest or before the identification parade and when the evidence about this is not produced, reliance on identification parade cannot be placed. No thought was given to this aspect by the learned trial Court. May be that no question was put either to Smt. Sanjana Jain that the accused was shown to her after the arrest or before lodging him in jail. Still it is the duty of the prosecution to lead evidence that all precautions were taken so that no witness could have opportunity to see the accused after his arrest or before the test identification parade.

10. A successful identification parade, at best, provides a corroborative piece of evidence. The substantive testimony of identifying witnesses is their statements in Court that the accused was the person who was involved in the crime, although

not known earlier to the identifying witnesses. Substantive evidence is always the statement in Court that the accused was the person who was seen by witness. However, in order to seek corroborative support from an identification parade, the prosecution must show that all precautions have been taken so that the witnesses could not see the accused at the time of arrest or at the time of identification parade. This has not been done. Thus a suspicion grows in mind about the fairness of the test identification parade and it has to be ignored and corroborated value cannot be given to that identification parade when a number of persons had joined and apprehended the accused, it would become known to the people of the locality that the accused had been apprehended. In these circumstances, if the evidence of identification of accused by Smt. Sanjana Jain was to be given corroboration, then the evidence must have been proved that the accused was kept in muffled face and Smt. Sanjana Jain had no opportunity to see him till he appeared at test identification parade. So I am discarding the testimony of Test identification parade of the person of the accused.

11. However, in cases where witnesses know the accused or some of them know the accused, their testimony is not dependent for corroboration on the test identification parade. Witnesses Vinod Kumar Jain and Hanuman Prasad had sufficient opportunity to see the accused while he was escaping from the house. Vinod Kumar Jain had identified him as the culprit of 'the robbery and had named him in the F.I.R. The F.I.R. has great corroborative value in such circumstances. The accused has been again named and identified by this witness in Court and also by witness Hanuman. Prasad. So the testimony of Vinod and Hanuman Prasad confirms the identification of the accused by Sanjana in Court and it makes no dent in the overall proof brought by the prosecution, if the test identification parade is ignored as the piece of evidence in this case.

12. Further evidence is that the looted ornaments were recovered from the accused when he was arrested on 13-1-1990. This is so stated by Imran Khan P.W. 6 and R.G.S. Goutam, Investigating Officer, P.W. 15 and P.W. 7 Vinay Rakshit. It is true that in respect of necklace Article A ring Articles B and C and bangles Articles D and E were recovered from the accused by the Police, a test identification parade was also conducted before a witness Surendra.

13. In respect of the test identification parade of the ornaments, nothing has been stated by the Investigating Officer that the ornaments were sealed at the time of recovery. The counsel for the appellant has challenged the veracity of this identification parade on the ground that it is not by an independent person but it is by one of the witnesses. However, in this case, although there are the above mentioned lacunae, it makes no difference in overall weight of the evidence of the witnesses Sanjana, Vinod and Hanuman Prasad even if the test identification parade is ignored. Vinod Jain had specifically named and described the stolen articles in F.I.R. He identified them in Court. No suggestion was made to him that he saw the articles before the test-identification parade. In spite of this possibility, his evidence is believable, as he is expected to have seen the ornaments on the person of his wife day to day for a long period. He is corroborated by details of ornaments in F.I.R. Similarly his wife Sanjana is also expected to know her ornaments and her statement in Court that those are her ornaments is believable. There is no reason to doubt her testimony. The accused has not stated that the ornaments belonged to him. He Has totally denied their recovery from him. So, the identity of ornaments that they were the looted one is fully established by the evidence in Court. It is corroborated by their description in the F.I.R. The evidence of Imran Khan P.W. 6, Vinay Kumar Rakshit, P.W. 7, and the Investigating Officer is clear and believable that these ornaments were recovered from the person of this accused at time when he was apprehended on 13-1-90. Possession of stolen goods so, soon after robbery leads to inference that accused is either the robber or receiver of stolen property. In this case, the earlier presumption of his being robber has to be taken as it is confirmed by the evidence of his identification by Sanjana, Vinod and Hanuman Prasad.

14. The net result of my above discussions is that although the identification parade of the accused-appellant by Sanjana has to be ignored and even if we ignore the evidentiary value, of the test identification parade of the ornaments, it is established beyond doubt that, it is this accused who looted these ornaments and others (there were 2 other bangles also) from Sanjana in her own house at the point of knife threatening to kill her. So the appellant had certainly committed an offence of robbery punishable under Section 392, I.P.C. and had used deadly weapon like' knife which is punishable under Section 392 read with Section 397,

I.P.C.

15. It makes no difference that the identity of knife recovered from the accused at the time of his arrest is not proved to be the same which was used to threaten and frighten Sanjana at the time of incident. She had frankly admitted that she became too nervous by the threat given by the accused that she could not remember as to what type of knife was used by him and whether the knife recovered is the same which was used by the accused. There was a knife which was used and that is sufficient to attract Sections 397, I.P.C.

16. So, I find that the trial Court rightly convicted this accused. I confirm the conviction of the accused under Section 392, I.P.C., read with Section 397, I.P.C. Under Section 392, I.P.C., the sentence cannot be less than 7 years, when the conviction is by operation of. Section 397, I.P.C. Hence the sentence is proper and I upheld it

17. The appeal fails. The conviction and sentence are confirmed. Warrant of confirmation be sent.

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