

**Fatta and anr. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/514092](http://sooperkanoon.com/514092)

**Court :** Uttaranchal

**Decided On :** Oct-12-2006

**Reported in :** 2007CriLJ1239

**Judge :** Prafulla C. Pant, J.

**Appellant :** Fatta and anr.

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. K.S. Verma

**Disposition :** Appeal dismissed

**Judgement :**

**Prafulla C. Pant, J.**

1. This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C), is directed against the judgment and order dated 24-8-1982, passed in Sessions Trial No. 43 of 1977, by learned Additional Sessions Judge, Deharadun, whereby appellants Fatta and Ibrahim have been convicted under Section 395 read with Section 397 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.); under Section 412 of I.P.C. and also under Section 307 read with Section 149 of I.P.C, and each one of the appellants has been sentenced by the trial Court to rigorous imprisonment for ten years under

Sections 395/397 of I.P.C, rigorous imprisonment for five years under Section 412 of I.P.C. and rigorous imprisonment for five years under Sections 307/149 of I.P.C. All the sentences are directed to run concurrently by the trial Court.

2. Heard learned Counsel for the parties and perused the entire record.

3. Prosecution story, in brief, is that P.W. 2 Kewal Ram lodged a First Information Report (Ext. A-6) at police station Sahaspur, District Dehradun, on 16-2-1977, at 9.05 p.m., informing that at about 8.00 p.m., when he along with his son P.W.3 Balwant and son-in-law Rajendra Singh were in the sitting room of their house and the ladies of the family Smt. Kasturi and Smt. Bala were inside the house, some 6-7 persons entered in the court-yard of their house. The miscreants, when interrupted by the above male members, started beating P.W.3 Balwant and P.W.4 Rajendra Singh. The miscreants, thereafter, entered inside the house and committed dacoity. Inside the house Smt. Kasturi raised alarm on which one of the dacoits fired shot at her from a country made pistol and caused injuries to her. Meanwhile, Smt. Bala came out and she also raised alarm on which neighbours Bashir, Islam and Samir and some other persons reached there. According to the prosecution story one miscreant was armed with an axe and some of them were armed with lathies. The miscreants looted a double barrel gun and 50 cartridges along with the license from the house of informant Kewal Ram. The witnesses saw the faces of the dacoits in the light of lantern and torches. After commission of dacoity the miscreants ran towards the canal. While fleeing from the scene of occurrence they fired at the tyres of taxi bearing registration No. P.N.B./4331, parked outside the house, and damaged the same, so that the same may not be used in chasing the dacoits. The police registered the case and prepared check report Ext. A-20, and necessary entry was made in the general diary (copy of extract of which is Ext. A-21). The crime was investigated by P.W. 14 Station House Officer Narendra Singh, who immediately after receiving the information, rushed to the spot and thereafter tried to chase the dacoits but the dacoits could not be traced in the jungle in whole of the night. Next morning, the Investigating Officer prepared site plan (Ext. A-11) and collected the broken glasses of taxi and lantern etc. from the place of incident. He also recovered empty cartridges and prepared memo Ext. A-12. During investigation, appellant Fatta and Ibrahim were

arrested in connection with a crime and stolen articles (Ext. 1 to Ext. 19) were recovered from the possession of the appellant Fatta, while Ext. 20 to Ext. 42, and Ext. 44 and Ext. 45, were recovered from appellant Ibrahim. After identification proceedings, on conclusion of investigation, charge-sheet (Ext. A-19) was submitted against both the above appellants. Some of the other accused were also arrested later on, and separate charge-sheets (Ext. A-25 and Ext. A-26), were filed against them. They were also tried along with the Sessions Trial No. 43 of 1977.

4. On receipt of the charge-sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C, committed the case to the Court of Session, for trial. Learned Additional Sessions Judge to whom the case was transferred for trial, by the Sessions Judge, after hearing the prosecution and the defence, framed charge against appellants Fatta and Ibrahim relating to the offences punishable under Sections 143, 307/149, 395/397 and 412 of I.P.C. Both the appellants pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 S.B. Srivastava (The Executive Magistrate who conducted the identification proceedings); P.W. 2 Kewal Ram (informant); P.W.3 Balwant Singh (injured eye-witness); P.W.4 Rajendra Singh; P.W. 7 Janak, P.W.8 Naurtu (eye-witness); P.W.9 Constable Nawal Singh, P.W. 10 Constable Bir Singh; P.W. 11 Constable Jagdish Chand; P.W. 12 Constable Rajendra Pal; P.W. 13 Constable Bhim Singh; P.W. 14 Station Officer Narendra Singh (Investigating Officer); P.W. 15 V. D. Sharma (another Executive Magistrate who conducted the identification parade of another accused (not appellant)] and P.W. 16 Sub-Inspector S.D. Yadav (co-investigating officer). All the documentary evidence, including the medical examination report and the recovery memo and identification reports, were put to the accused persons, in reply to which they pleaded that the evidence adduced against them is false and they were shown to the witnesses before identification parade was conducted. The trial Court, after hearing the parties, found accused Fatta and Ibrahim guilty of the charges relating to the offences punishable under Sections 395/397, 307/149 and 412 of I.P.C. and sentenced them, as mentioned earlier. However, other accused persons appear to have been found not guilty and they were acquitted of the charges framed against them. Aggrieved by said

judgment and order dated 24-8-1982, the convicts preferred this appeal before Allahabad High Court in the year 1982, from where the same is received by this Court by way of transfer, under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

5. Before further discussion, it is pertinent to mention here, the articles reported to have been looted in the dacoity, as per the First Information Report (Ext. A-6):

- i) gold chain 21/2 A Tola 1 No.
- ii) gold bangles 2 Tola 2 Nos.
- iii) gold amulets 2 Tola 2 Nos.
- iv) gold finger rings 1/2 Tola each 4 Nos.
- v) gold tops 1/2 Tola 1 pair
- vi) gold ear rings 1 Tola 2 pair
- vii) gold ear ring (Jhumki) 11/2 Tola 1 pair
- viii) silver anklet 4 Tola each 2 pair
- ix) silver bracelet (Dastband) 8 Tola 1 pair
- x) silver anklet (Jhavar) 10 Tola 1 pair
- xi) silver Katsari 20 Tola 1 pair
- xii) silver Ramnomi 1 No.
- xiii) silver bangle 10 Tola 1 No.
- xiv) brass glasses 50 Nos.
- xv) brass plate large 1 No.
- xvi) brass plate small 1 No.

- xvii) bronze plate 2 Nos.
- xyiii) brass Paraal 2 Nos.
- xix) brass Lola 3 Nos.
- xx) one used brass glass, plate and six brass bowls
- xxi) ladies garments and bedsheet (one)
- xxii) one shawl 1 No.
- xxiii) ladies suit 4 Nos.
- xxiv) ladies Dupalta 4 Nos.
- xxv) one black gents jacket and garments used
- xxvi) Time piece Jayco (new) 1 No.
- xxvii) Wrist watches used 3 Nos.
- xxviii) Transistor Murphy 3 Band used 1 No.
- xxix) 3 Blankets and 2 mattress (used)
- xxx) used gents shawl (looe) 1 No.
- xxxi) black quilt used 1 No.
- xxxii) double barrel gun 12 Bore 1 No.
- xxxiii) cartridges 50 (LG and local) 50 Nos.
- xxxiv) Cash worth Rs. 22,240/-

6. It is also pertinent to mention here the injuries found on the person of the injured witnesses, during the incident, recorded as per medical examination report Ext. A-33. Injuries found on the person of P.W.2 Kewal Ram are reproduced here under:

(i) Contusion 1 1/2 cm x 1 1/2 cm at the head 13 cm above right ear and 17 cm above and backwards to right eyebrow. Red in colour.

(ii) Contusion 2 1/2 cm x 2 1/2 cm at the back of right side chest 9 cm away from vertebral column and 16 cm below the spine of scapula. Red in colour.

(iii) An abrasion 1/4 cm x 1/4 cm present in the middle of contusion.

Injuries found on the person of P.W.3 Balwant during the incident, recorded as per medical examination report Ext. A-34, are as under:

(i) Lacerated wound 2 cm x 1/2 cm x 1/2 cm vertically present at the right side head 5 cm above right eye-brow and 12 cm above right ear. Bleeding present.

(ii) Contusion 4 cm x 3 cm horizontally present just above the left eyebrow. Red in colour.

(iii) An abrasion 1 cm x 1 cm present in the middle part of contusion.

Injuries found on the person of P.W.4 Rajendra Singh during the incident, recorded as per medical examination report Ext.A-36, are as under:

(i) Lacerated wound 6 cm x 1 cm x bone deep obliquely present at the left side of hand 9 cm above left ear and 12 cm above left eyebrow. Bleeding present.

(ii) Contusion 15 cm x 12 cm obliquely present in the right outer scapular region of back of shoulder 16 cm away from vertebral column. Red in colour. Swelling present on the area.

Injuries found on the person of Kasturi Devi during the incident, recorded as per medical examination report Ext. A-35, are reproduced below:

(i) Two circular lacerated wound of 1/2 cm in diameter, depth could not be ascertained (for which x-ray is advised) on left side of face 2 1/2 cms apart. Margins inverted and blackened.

(ii) Lacerated wound 1/2 cm in diameter, depth could not be ascertained, on the left temple 2 1/2 cm above left ear. Margins inverted and blackened.

(iii) Lacerated wound 1/2 cm x 1/2 cm x 1/2 cm at the gum of lower jaw in the right lateral incisor region near the root of tooth. Margins irregular and inverted. Laceration inside lower lip present in front of the injury.

(iv) Abrasion 1/2 cm x 1/4 cm horizontally present at the upper lip in the middle part 1 1/2 cm below nose.

(v) Abrasion 1/2 cm x 1/4 cm longitudinally present at the front part of lower lip 3 cm away from left angle of mouth.

No tattooing and no scorching of surrounding skin of wounds of face and temple present.

7. Appellant Fatta is reported to have died during the pendency of appeal, as such, his appeal stands abated.

8. Narrating the prosecution story P.W.2 Kewal Ram, informant, has stated that the dacoits came in the evening at about 8.00 p.m., on the day of incident, in his house and after causing injuries to him, his wife Smt.; Kasturi, his son Balwant, son-in-law Rajendra Singh and daughter-in-law Smt. Bala, looted the property mentioned above. It is also stated by him that the dacoits fired at his wife and daughter-in-law. The witness has also stated that he identified the appellants in the test identification parade correctly.

9. P.W.3 Balwant Singh, P.W.4 Rajendra Singh (both injured eye-witnesses), P.W.6 Jahid, P.W.7 Janak Singh and P.W.8 Naurtu have corroborated the above prosecution story as mentioned earlier.

10. In the test identification parade, appellant Ibrahim was identified correctly by as many as four witness, namely Smt. Bala, Rajendra Singh, Jahid and Naurtu. The test identification report (Ext. A-2) is proved by P.W. 1 S. B. Srivastava, Executive Magistrate, who has stated that he got conducted the parade as per the rules.

11. Learned Counsel for appellant Ibrahim argued that the witness Smt. Bala was not examined by the prosecution. As far as evidence of P.W.4 Rajendra Singh is concerned, it is argued that his identification value is 40%, as he has correctly

identified only one person, out of the three. It is also contended that value of the identification made by P.W.8 Naurtu is only 66%, as he identified only two persons correctly, out of three. On its basis, it is contended that the prosecution story should not be treated as true and, benefit of doubt should be given to the accused. But, I am unable to accept the contention advanced on behalf of the appellant Ibrahim, for the reason that from the evidence on record, it is established that the aforesaid witnesses had an opportunity to identify the accused/appellant at the time they committed dacoity. And, if their identification value is taken together the same is sufficient to prove the charge as against the accused/appellant.

12. Mr. K.S. Verma, learned Counsel for the appellant drew attention of this Court to the case of *Soni v. State of U.P.* reported in 1983 SCC (Cri) 49 (I) and that of *Subash and Shiv Shanker v. State of U.P.* reported in 1987 Allahabad Criminal Cases 507 : 1987 Cri LJ 991 and argued that since there had been 60 days interval between the date of arrest and identification parade, as such, the identification made after such delay should be treated doubtful. In the case of *Subash and Shiv Shanker (supra)* the delay was of four months, while in the present case it is within three month's interval. As to case of *Soni (supra)*, the said reported case is of one paragraph, in which the facts of case are not narrated, as such, it is difficult to accept it as final ratio on the point. On the other hand, in the recent judgment of *Lal Singh v. State of U.P.* reported in MANU/SC/0871/2003 : 2004 CriLJ378 , the Apex Court has held that where the witness had opportunity to see the accused committing the robbery and have correctly identified the accused from whom looted articles were also recovered, should not be rejected lightly. In the present case also, a part of looted property (clothes, tensils, silver jewellery etc.) has been recovered from the accused/appellants. Regarding the property recovered from the appellants an identification was held, as is clear from the statement of P.W. 1 S.B. Srivastava, Executive Magistrate read with the memo of recovery of stolen articles (Ext. A-5).

13. For the reasons as discussed above, I see no reason to disagree with the conviction and sentence recorded by the trial Court on the charges framed against appellant Ibrahim, and the reasons discussed therefor in the impugned judgment.

14. In the opinion of this Court, the appeal is liable to be dismissed. The same is dismissed. The appellant Ibrahim is on bail. His bail is cancelled. He shall be taken into custody forthwith by the Court concerned to make him serve out the sentence. (Appeal of appellant Fatta, in view of his death during the pendency of this appeal, stands abated).

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