

Mohan Singh Vs. State

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Court : Delhi

Decided On : Mar-18-1987

Reported in : 1987(13)DRJ176

Judge : M.K. Chawla, J.

Acts : [Indian Penal code, 1860](#) - Sections 391

Appeal No. : Criminal Appeal No. 182 of 1985

Appellant : Mohan Singh

Respondent : State

Advocate for Pet/Ap. : R.N. Kapur, amices Curiae and; P.S. Sharma, Advs

Judgement :

M.K. Chawla, J.

(1) On 24-2-1981 three persons are alleged to have committed trespass into the house of Smt. Sham Lata Goel to commit an offence of robbery. They were armed with deadly weapons like knife and in the process of committing the robbery they caused injury to Sham Lata and decamped with Gold Bangles, Ear Rings, Diamond set, cash and other valuable articles. The fourth person dealt with and disposed of stolen articles.. Charan Singh accused was arrested on 6-9-1981 in some case and on 15-9-1981 Police was able to apprehend Mohan Singh

accused. Ram Pal Singh was able to delay his arrest till 12-11-1981. Sher Singh accused has not yet been arrested and so rightly declared as proclaimed offender. The charges under Sections 392/394/34 read with Section 397 Indian Penal Code against the accused persons. were framed on 23-3-1983. They pleaded not guilty and claimed trial. The accused faced a protracted trial for a period of more than two years. Accused Charan Singh and Mohan Singh were held to have committed the offences punishable under Section 395/450 read with Section 397 Indian Penal Code and sentenced to R.T. for a period of seven years each while Ram Pal Singh was held guilty of the offence under Section 411 Indian Penal Code and sentenced to R.I. for two years, by a judgment dated 16-7-1985. This very judgment is under challenge in the three appeals bearing Criminal Appeal No. 216/85, Criminal Appeal No. 179/85 and Criminal Appeal No. 182/85. By this judgment I propose to dispose of all the three appeals as they arise out of the same occurrence and the impugned judgment.

(2) Public Witness 2 Smt. Sham Lata Goel is the most material witness. She has given in detail the circumstances leading to the commission of the robbery in her house. She is the wife of Shri Devinder Kumar Goel a practicing Advocate at Tis Hazari Courts. According to her on 24-2-1981 at about 10.30 Am she was all alone in her house. Her husband had left for the courts at about 9.30 AM. Near about that time somebody knocked at the door. Sham Lata without opening the door enquired as to who was there. The man standing outside asked that he wanted to see the Advocate. Sham Lata told him that her husband had already left for the courts and that they should come in the evening. The person, however, wanted to hand over the file of his case and requested Sham Lata to open the door. She fell a victim of this rseceipt and opened the door. Immediately she noticed that the man who had asked her to take the file was a clean shaven person, having a knife in his hand. Behind him there were two other Sikh gentlemen. They forcibly entered the house and pushed Sham Lata aside. The person armed with knife attacked Sham Lata but she warded of the blow and caught hold of the knife with her left hand, as a result of which she received injuries on her thumb. The other two Sikh gentlemen also took out knives and threatened to cause bodily injuries. All the three persons then took her to a room and threatened to kill her in case she does not hand over the valuable articles lying in the house. Sham Lata then

requested them not to harm her and take away whatever was in the house. The accused then tied the hands and feet of Sham Lata and gagged her mouth with a piece of cloth. They then threw her in a small room. Without wasting any time the accused broke open many of the trunks and searched the almirahs. The accused succeeded in removing a sum of Rs. 15,000 in cash and many other items of Gold and Diamond Jewellery. They also removed the Ear Rings which she was wearing at the time. The whole act was completed within minutes and after collecting the valuables all of them left the house leaving her tied gagged in the room. The room was closed from outside.

(3) It is the case of the prosecution that at about 1.00 p.m. one old woman by the name of Asharfi came there and finding the door open entered the house. She noticed that almost all the items were lying scattered all over the house. She heard screams of Sham Lata coming from the closed room. Asharfi then untied Sham Lata and brought her out of the room. An information was immediately sent to Shri Devinder Kumar Goel and the police was also informed. As Sham Lata was bleeding she was taken to the Hospital where the police recorded her statement on the basis of which a case under the above said provisions of the Indian Penal Code was registered. Sham Lata was discharged from the Hospital on 27-2-1981. She then searched for the missing articles and on the same day they filed a list of the articles which had been taken away by the accused persons. No progress in the case could be made and it was filed as untraced.

(4) Fortunately for the victims of the robbery Charan Singh was arrested in another case on 6-9-1981 and at his disclosure statement the remaining two accused namely Mohan Singh and Ram Pal Singh were arrested on 16-9-1981 and 12-11-1981. All the accused for the reasons best known to them refused to take part in the Test Identification Parade. At the instance of Ram Pal Singh accused, articles of Jewellery consisting of three Gold Bangles and Ear Rings were recovered from one Mahesh Chander of Ghaziabad. They were got duly identified from the complainant. As observed earlier Sher Singh accused who originally was with the first two accused could not be arrested and is an absconder. After investigation the Challan was filed in the Court.

(5) In support of the case prosecution examined as many as 23 witnesses, including Public Witness Smt. Sham Lata Goel, Public Witness 3 Smt Asharfi Devi, and Shri Devender Kumar Goel, Public Witness 5 and Shri Mam Raj, Public Witness 4 to prove the commission of the robbery. Public Witness 6 Mahesh Chander and Public Witness 7 Hari Kishan Sharma are the witnesses to prove that Ram Pal Singh had pledged the gold jewellery with Mahesh Chander for a sum of Rs. 10,000. Two of the Metropolitan Magistrates deposed about the holding of the Identification Parade of the accused persons as well as of the items of jewellery. The remaining witnesses even though are formal in nature yet of some importance in their respective spheres.

(6) In his statement under Section 313 Criminal Procedure Code . Charan Singh took up the stand on 3-9-1981 the Police arrested him from the house of Ram Pal Singh at Ghaziabad who is his near relative. He was brought to Delhi and compelled to become a witness against Ram Pal Singh. On his refusal he has falsely been involved in this case. Mohan Singh accused pleaded that in the year 1980 he stood surety for one Karmuddin in a case of Crime Branch. For that reason the Police of Roshaoara. Police Station became inimical towards him and has unnecessarily been involved in this case. Ram Pal Singh stated that in the year 1981 many cases were planted on him by the Police after he was brought from District Etah, U. P. However, all of them denied that the Gold Bangles and Ear Rings belong to them. In their defense evidence they produced two witnesses. Sunder Singh D.W. 1 deposed about the good character of Mohan Singh while D.W. 2 Narottam Lal Gupta deposed that Mohan Singh and Ram Pal Singh both were arrested from his house at Seelampur, Shahdara on 4-9-1981 and involved in this case Ram Pal Singh succeeded in examining DW3 Rama Devi. According to her on 3-9-1981 while she was present in the house of Ram Pal Singh the Police party came there and arrested him Along with Charan Singh.

(7) The learned lower Court on consideration of the entire material on record as stated earlier believed the prosecution version and convicted and sentenced the accused persons which order is under challenge in these three appeals.

(8) The first and foremost contention of the learned counsel for the accused Charan Singh and Mohan Singh is that the disclosure statement allegedly made by them that they committed this dacoity Along with their coaccused Sher Singh or thereafter Ram Pal Singh disposing of the jewellery inadmissible in evidence as having been made to the Police. All the accused also doubted their having been identified at the trial as Sham Lata had not seen them prior to the date of incident for their names find mention in the First Information Report. Ram Pal Singh accused denied having made any disclosure statement which led to the recovery of the items of Jewellery. He also challenged the correctness of the events leading to his involvement in the sale of the said jewellery. The submission of the learned counsel for the State on the other hand is that the disclosure statement of the accused were recorded as per the procedure laid down in the Criminal Procedure Code Their authenticity cannot be challenged which lead to the recovery of the stolen articles. According to the learned counsel for the State all the accused have been identified by Sham Lata Goel and their refusal to join the identification parade is a circumstance which proved the ir involvement in this case. The impugned judgment of conviction and sentence is very well reasoned one and does not call for any interference.

(9) Before discussing the evidence on the record I first propose to dispose of the legal objection against e framing of charge. Learned counsel for the appellant submits that even if the case of the prosecution is taken on its face value, no offence under Section 395 or 397 Indian Penal Code is made out. To elaborate his submission his contention is that as per the prosecution story itself only three persons entered the house of Sham Lata Goel and not five as required in a case of dacoity. Furthermore, according to him knife alleged to have been used in causing hurt to Sham Lata Goel has not been recovered and it is not shown if it is a deadly weapon, which is one of the main ingredients of a charge under Section 397 of Indian Penal Code.

(10) There appears to be much substance in the submission of the learned counsel for the appellants. Section 391 of Indian Penal Code defines 'dacoity' in these words:

'391-DACOITY.-WHEN five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit 'dacoity'.

(11) One of the essential ingredients of the offence under this section is that five or more persons must conjointly act, whether directly or indirectly as aiders. Unless this requirement is proved no offence can be said to have been established against anybody, in this case the evidence of Sham Lata goes to show that three persons had at a time entered her house, gagged her and decamped with the valuable jewellery. There is no other evidence and in my opinion rightly so. Except the statement of Sham Lata that as many as three persons were responsible for the commission or robbery. In view of these circumstances accused cannot be charged or punished under Section 395 IPC.

(12) On the second aspect even though there is some evidence to suggest that at the time of the committing of dacoity one of the offenders caused injury by knife on the left hand of Sham Lata Goel but unfortunately the said knife has not been recovered. In order to bring home a charge under Section 397 the prosecution is duty bound to produce convincing evidence that the knife used by the accused in this case was a deadly weapon, it is no doubt true that knives are weapons available in various sizes and may just cause little hurt or may be a deadliest. There are deadly weapons parse as much as would ordinarily result in death by their use. M.L. Jain, J. in the case reopenn as Balak Ram v. State 1983 Dlt 142 on this aspect observed that what would make a knife deadly is its design or the method of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact to be proved and prosecution should prove that the knife used by the accused was a deadly weapon. Applying the said principle on the facts .of the present case I find that there is not an iota of evidence on record to suggest that the knife used by the accused way a deadly weapon. Even Sham Lata Goel has not given its description. We are probably in the dark to conclude if the knife was a but tender knife, a kitchen knife or a pen knife or the knife used could possible cause the death of the victim, in the absence of such an evidence

and particularly the non-recovery of the weapon will certainly bring the case of the accused out of the ambit of Section 397 Indian Penal Code. The accused could, under the circumstances, be convicted under Section 392 Indian Penal Code.

(13) That apart, the cumulative effect of the prosecution oral as well as documentary evidence on record does indicate that accused Charan Singh and Mohan Singh and Along with their third accomplice Sher Singh-absconder were responsible for the commission of a dacoity in the house of Sham Lata Goel on the day and time alleged by the prosecution. There is sufficient evidence to involve Ram Pal Singh as the person who tried to dispose of the items of jewellery forcibly taken at the time of the commission of robbery.

(14) On the question of identification of the accused persons the submission of the learned counsel is that mere refusal on their part to join the 181 test identification parade no adverse inference can be drawn. The accused according to learned counsel had a justifiable excuse not to join the identification parade as they had already been shown to the prosecution witnesses. In this behalf reliance is placed on a judgment reported as Tan Singh v. State 1987 C L J 53. The relevant observations on this aspect read as under :

'IT is settled law that the accused is not to prove conclusively that he was shown to the prosecution witness before he declined to participate in the identification parade. It is enough if he brings on record cogent circumstances to show that he was or could have been shown to prosecution witnesses while he was in police custody or when he was produced before Court for remand. In the instant case the accused was produced before the Court for remand in unmuffled face and he was in police custody for about 5 days before he was required to participate in the identification parade. Further he was taken to the locality where the occurrence took place and where the complainant who was injured was residing. The accused was given benefit of doubt observing that the circumstances proved in the case made the plea plausible.'

Further in support of this contention learned counsel for the accused submits that at the time of the commission of the offence Mohan Singh was a Sikh gentleman, but at the time of the holding of the identification parade he has become a clean

shaven. This fact alone will nullify the evidence of Sham Lata Goel who alleged by identified this accused in court.

(15) This submissions carry weight due to a laudable object which the court normally follow. But it all depends on the facts of a particular case. Charan Singh accused was arrested on 6-9-1981 in case Fir No. 268 of 1981 of Police Station Shakurpur under Section 395 Indian Penal Code by Public Witness S.I. Chander Hans. During the course of the interrogation this accused disclosed about various instances of thefts and robbery including the case in hand. He also named Ram Pal Singh as one of their associates who disposed of the jewellery and was paid a sum of Rs. 1,300. His disclosure statement in this behalf was recorded in the presence of two witnesses. In court Chander Hans deposed that since accused Charan Singh was wanted in enormous dacoity and robbery cases and his identity was involved he directed him to keep his face muffled and covered and a report to this effect was lodged in the Police Station, Original Road N.D. where he was locked. On the next day this very witness produced Charan Singh in the Court of Shri G.P. Thareja in muffled face. He moved an application for the holding of the test identification parade. This application was forwarded to the court of Shri R.K. Yadav where again the accused was produced in muffled face. Surprisingly the evidence of Chander Hans on this part of the case was not challenged by the accused in the cross-examination. Neither any question has been put nor there is any suggestion to this effect. This is no reason to disbelieve this witness.

(16) Public Witness 18 S.I. Khairati Lal was responsible to arrest of accused Mohan Singh near Swam Cinema. From his personal search one spring actuated knife was recovered, regarding which a case Fir No. 455/81 under Sections 25 of the Arms Act registered at Police Station, Farsh Bazar. During interrogation this accused disclosed about the commission of three dacoities including the one in the present case. He was also directed to keep his face muffled so that his identification parade could be arranged. At that time accused took off his own shirt which he was wearing and muffled his face with the same. In that very situation he was produced before the court. Khairati Lal has denied the suggestion that the accused was shown to any of the prosecution witnesses either at the Police Station or while being produced before the court. Besides that there is no

worthwhile cross-examination of this witness.

(17) Shri Satnam Singh, Metropolitan Magistrate, Delhi had gone to the Central Jail, Tihar on 21-9-1981 for holding the identification parade of this accused. The accused, when called refused to take part in the identification parade of this accused. The accused when called refused to take part in identification proceedings and in token of his refusal the learned Magistrate recorded the statement of the accused. Before that he had explained and warned the accused that his refusal may be used as circumstantial evidence against him. Similar is the evidence of Public Witness 23 Shri R.K. Yadav, Sub-Judge, Delhi. He had gone to Tihar Jail on 10-9-1981 for conducting the test identification parade of accused Charan Singh and Ram Pal Singh. Both the accused were called and enquired whether they were ready to take part in identification parade to which they expressed their unwillingness. Accordingly their statements were recorded.

(18) From the above said evidence it cannot be said that Sham Lata Goel had any opportunity or an occasion to see any of the accused before they were lodged in the judicial custody for their identification parade. Not a suggestion has been put to any of the Police Officers that they intentionally or otherwise created a situation under which Sham Lata could have the glimpse of any of the accused persons. In such circumstances, adverse inference can be drawn from their refusal to take part in the identification parade. Sham Lata would not have failed to identify them in case they had agreed to join the identification parade. The Supreme Court has gone to the extent of holding that failure to hold an identification parade will not make inadmissible the evidence of identification in court. It all depends on the intelligence and memory of observation of an individual. Sham Lata identified each and every accused in court and also gave minute details of part played by each of them. Under the circumstances, I have no hesitation to accept her statement and to hold that the accused were responsible for the commission of the act of robbery.

(19) Learned counsel for Ram Pal Singh has not seriously challenged the recovery of the gold ornaments and their identification in court by Sham Lata. The evidence of Public Witness 8 S.I. Bir Singh, Public Witness 19 H.C. Ajit, Public Witness 2 S.L. Puran Singh and Public Witness 18 Shri Kuldip Kumar Sub-Judge is very specific

which leave no doubt that the articles stolen from the house of Sham Lata were the same which were recovered from the possession of Mahesh Chander at the pointing out of the accused Ram Pal Singh. It may be that the list of missing articles was handed over to the police after 3/4 days of the occurrence but for that there is a valid Explanation. Immediately after the occurrence Sham Lata was got admitted in the Hospital and was only discharged on 27-2-1981. As she was the only person who could verify the missing articles, it was only thereafter that the list of the articles was prepared and handed over to the police. The items of jewellery recovered are the same which find mention in the said list and for that reason its genuineness cannot be doubted. That list forms part of the report lodged by her and rightly was so considered as such. The evidence of the witnesses concerned with its recovery is not under challenge and need no further comments.

(20) The evidence of the accused persons in defense that they have been falsely roped in this case or that police was inimical to them is neither here nor there. This defense has only to be stated and rejected. Sham Lata had no grudge or enmity against any of these accused and there was no reason for her to falsely identify or involve them in this case. I am in entire agreement with the conclusion of the learned lower court that the prosecution evidence sufficiently connects accused Mohan Singh and Charan Singh with this crime. They committed trespass into the house of Sham Lata to commit an offence and succeeded in decamping with the gold bangles, ear rings and diamond set and cash etc. However, their conviction under Section 385/450 read with Section 397 Indian Penal Code is altered into an offence punishable under sections 392/394 Indian Penal Code.

(21) There is also a convincing evidence to hold Ram Pal Singh accused guilty of the offence under Section 411 Indian Penal Code.

(22) On the question of sentence the submission of the learned counsel for the accused Mohan Singh is that he had already suffered an imprisonment of more than 2 years. He has two small children. His wife is dead and there is no other made member except his father to look after his children. He also contends that two of the brothers of the accused were killed during riots and for that purpose he had to become a clean shaven person. On behalf of Charan Singh accused it is

contended that he had five minor children who are living with his wife at Jahangirpuri. She is working as labourer and it is very hard for her to bring up the children. Learned counsel submits that during the course of the trial no legal assistance was provided to him as a result of which his case could not be properly defended. Ram Pal Singh accused is suffering from Laqua and T.B. He is reported to be in bed for the last many months. He is unable to work. He has also been deprived of his earning from his cycle repair shop. This accused had already suffered an imprisonment for a period of more than 4 months. In nutshell the submission of the learned counsel for the accused is that to useful purpose will be served to send them behind the bar at this late stage of the day to serve the remaining part of their sentence. The learned counsel for the State has nothing much to offer as according to him this is a matter between the accused and the court. On giving my careful thought to the submissions of the accused persons and keeping in view the fact that none of the accused is a previous convict or is facing charge in any other case, the end of justice, in my opinion, will be fully met if their sentences are reduced to the one already undergone. Ordered accordingly. All the accused are directed to be released forthwith unless wanted in any other case.

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