

Ram and ors. Vs. State

Ram and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/692878

Court : Delhi

Decided On : Mar-22-1991

Reported in : 44(1991)DLT241

Judge : S.C. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395

Appeal No. : Criminal Appeal No. 91 of 1989

Appellant : Ram and ors.

Respondent : State

Advocate for Pet/Ap. : K.B. Andley,; B.B. Sharma and; S.R. Bhatia, Advs

Judgement :

S.C. Jain, J.

(1) The charge against the appellants Siri Ram, Rati Ram @ Ratia, Leela Ram @ Leelu is that they along with other co-accused (eight in all) conjointly committed robbery of the property, i.e. pair of bangles necklace, pair of ear tops chain of platinum, eartops with ruby stones and three rings with stones and other articles belonging to Smt.Shiv Parbha Singh and Smt Yogeshwari Devi, on the intervening night of 7th and 8th June, 1983 at. house No. A-65, Gulmohar Park, New Delhi, and while committing this offence they were armed with deadly weapons and they

made use of the same in causing grievous hurt to Mrs Shiv Parbha Singh, (Public Witness 4), and Anant Narain Bhanjedev, who were occupant of the house at that time. Leelu Ram, Deep Chand @ Deepa, Rati Ram. Randhir and Sri Ram were arrested and were challaned and prosecuted under Section 395 read with Section 397 Ipc, whereas Puran. Ram Chander and Vidya Ram. other co-accused could not be arrested and they were declared proclaimed offenders. The challan against them was filed under Section 299 Cr. P.C.

(2) In support of its case, as many as 17 witnesses were produced by the prosecution. The defense of the accused persons was common and that of innocence, According to them they were lifted from their houses and were not arrested in the manner shown by the police and nothing was recovered at their instance and they have been falsely implicated in this case. However, none of them produced any witness in their defense or to support their version.

(3) The trial Court i.e. Addl Sessions Judge, New Delhi, after appreciating the evidence on record and discussing the relevant provisions of law found Leela Ram, Rati Ram, and Siri Ram guilty of the offence punishable under Section 395 read with Section 397 Indian Penal Code and convicted them there under. The other two accused persons Randhir and Deep Chand were, however, acquitted, as their identity could not be established. Against accused Puran, Vidya Ram and Ram Chander, the case was ordered to be consigned to record room under Section 299 Cr. P.C. by his judgment dated 11-7-1989. After giving an opportunity of hearing the learned Addl Sessions Judge sentenced Leela Ram and Rati Ram and Siri Ram to ten years rigorous imprisonment each and a fine of Rs. 2,000.00 each and in default of payment of fine further six months rigorous imprisonment. The period already undergone by them in custody was ordered to be set off.

(4) Aggrieved ; Siri Ram, Rati Ram and Leela Ram filed this appeal challenging the judgment and the order dated 11-7-1989 and 13-7-1989 Passed by the learned Addl Sessions Judge on various grounds.

(5) The first question which needs answer is whether the prosecution has succeeded in establishing the identity of the appellants as robbers who participated in the crime?

(6) By now it is well settled that the question of identification is a primary matter for consideration in a case of dacoity by unknown persons and a hard and fast rule can be laid down that in every case of dacoity if there is identification by only one witness, that identification should never be accepted. Every instance of identification which usually accompanies a case of dacoity has to be judged on the facts of that particular case presented by the prosecution and if after a careful scrutiny, there is slightest hesitation in the mind of the Court that there was possibility of mistaken identification or that the statement of the sole witness was influenced by some other cause, the accused is entitled as a matter of course to the benefit of a reasonable doubt. The fact of the identification is admissible in evidence under Section 9 of the Evidence Act. Substantive evidence regarding identification is given by a witness during trial.

(7) In this case record shows that the incident of robbery took place on the night intervening 7th and 8th June, 1983. Rati Ram and Leela Ram appellants were arrested on 2nd October, 1983. Immediately after their arrest, Si Gurdeep Singh, I.O. of the case moved an application before the Metropolitan Magistrate concerned on 3.10.1983 (EX. PW3/A) requesting for identification parade. It was also mentioned that the accused persons were directed to take their faces muffled. Shri J.K. Pali, MM who appeared as PW3 deposed that on 3.10.83, Gurdeep Singh Si produced these accused persons before him in muffled faces along with an application PW3/A. They were asked separately whether they would like to participate in the test identification parade but they refused despite the warning that their refusal to participate in the test identification parade may be used against them during trial. According to the MM he was satisfied that the refusal made by the accused persons was voluntary in nature and he proved his endorsement to that effect PW3/3. This witness has not been cross-examined on this point by any of the accused persons meaning thereby that the version given by Shri J.K. Pali, MM. remains unchallenged and unshattered. Regarding the appellant Siri Ram, he was arrested in another case Fir No. 358 dated 6.5.84 under Section 25 of the Arms Act and was sent to the judicial custody and from there he was arrested in this case by sending the production warrant but he got himself released on bail on 13.6.84. His identification parade could not be held in these circumstances nor he himself made any request for the same.

(8) The next witness who has deposed about the identity of the appellants is Mrs Shiv Parbha Singh. PW4 who is the victim in this case. She correctly identified Siri Ram, Leela Ram and Rati Ram appellants as robbers who participated in the crime along with other persons. She also deposed that Leela Ram was armed with a hockey. She gave an Explanationn that she was in a position to identify the appellants because they remained inside the room for a considerable long time and they were not having any cover on their faces, while the others were having covers on their faces and they were coming and going out of the room. She further stated that the accused Leela Ram gave a hockey, blow to her. In her cross examination the version given by this witness remained unshattered. Her version was corroborated by the fact that light of the kitchen was on at that time and in the drawing room where the incident took place, light of the kitchen was coming as the wall between the kitchen and drawing room was common. Though the appellants Leela Ram and .Rati Ram refused to participate in the identification parade and no identification parade was even requested for Siri Ram who was arrested later on and got himself released on bail, yet to arrive at the correct conclusion about the identity of the accused persons 1.0. of the case took the witness to jail for identification of the accused persons before putting the challan in the Court. The accused persons were mixed with 10 or 12 inmates of the jail and even there she could identify the appellants as the offenders. This fact of identification of the appellants in jail has not been challenged by them in the course of cross-examination of this witness. She had denied the suggestion that at the time of identification parade in the jail other persons were not mixed up with the accused persons. It shows that besides identifying these appellants in the Court they were earlier identified by this witness in the jail. Regarding identification parades. Supreme Court in Ram Nathan v.State 1978 Cr. Law Journal 1137 has observed as under:

'IDENTIFICATION parades have been in common use for a very long time, for the object of placing a suspect in a line up with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more-necessary where the name of the offender is not mentioned by those who claim to be eye witnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details and would be able to

identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the suspect or the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The line up of the suspect in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has, worked well in actual practice.'

(9) The Supreme Court has further held in the case of Harbhajan Singh v. State, 1975 CrL J 1553 that absence of test identification parade would not be necessarily fatal where there were other corroborative circumstances pointing to the guilt of the accused. In this case, the prosecution has taken all the necessary steps for establishing the identity of the accused persons as perpetrator of the crime.

(10) The learned counsel for the appellants only challenged the identification aspect by arguing that this fact was not put to the appellants in their statements under Section 313 Cr. P.C. and as such these circumstances cannot be used against the appellants. He cited the decision of the Supreme Court in the case of Sharad Birdi Chand v. State : 1984 CriLJ1738 , wherein it has been held that circumstances not put to the accused cannot be used against him. According to the learned counsel no adverse inference can be drawn against the appellants on their refusal to join the test identification parade in the circumstances of the case.

(11) The object of Section 313 Cr. P.C. is to enable the accused to explain each and every circumstance appearing in the evidence against him. It is, however, not necessary that each separate piece of evidence in support of a circumstance should be put to the accused. Every error or omission does not vitiate the trial. Only inadequate examination of the accused vitiates the trial and conviction, if because of such inadequate examination, the accused is prejudiced. The question

of prejudice being a matter of inference is based on facts and surrounding circumstances of each case.

(12) In *Harijan Megha Jasha v. State* : 1979 CriLJ1137 , the Supreme Court has observed that when an incriminating circumstance against an accused is not put to the accused in an examination under this Section and he is not afforded an opportunity to submit an Explanation to it, these circumstances must be excluded from consideration in the trial. In *Sharad Birdi Chand v. State* : 1984 CriLJ1738 the Supreme Court relying upon its various earlier decisions also took the same view and observed that circumstances not put to the accused cannot be used against him.

(13) A perusal of the impugned judgment shows that the learned Addl. Sessions Judge while holding that these appellants were amongst others who had committed dacoity at house No. A. 65, Gulmohar Park and had caused grievous injuries to Mrs Shiv Prabha Singh and had beaten brutally the brother of Shiv Prabha Singh causing several injuries after arming themselves with hockey sticks and iron rods-deadly weapons, not only relied upon the circumstances of refusal of Leelu and Rati Ram. appellants to participate in the test identification parade and their identification later on in the jail by the complainant, but also on the statement of the complainant, who is the eye witness and victim of the crime. If this circumstance of refusal to participate in the identification parade and their subsequent identification in jail is excluded having not been put to them in their statements under Section 313 Cr. P.C. even then the statement of Mrs. Shiv Prabha Singh (Public Witness 4) coupled with other circumstances is more than sufficient to establish the identity of the appellants Leela Ram and Rati Ram as the perpetrator of the crime.

(14) The involvement of the appellant Leela Ram and Rati Ram in this crime is further fortified with the fact which stands proved on record that during their interrogation they disclosed that they could get jewellery and other articles of different dacoities committed by them recovered from a jeweller at Secunderabad, U.P. The disclosure statements are Ex. Public Witness 11/B and Public Witness 11/c In pursuance of these disclosure statements, they led the police party to

Secunderabad on 12.10.1983 and pointed out the shop of Banarsi Dass, but the shop was found locked at that time. Again on 14.10.1983 these two appellants led the police party to Secunderabad. but again the shop was found locked. Ultimately, on 27th October, 1983, Shri Banarsi Dass Jeweller of Secunderabad in the presence of recovery witnesses produced some jewellery items mentioned in Ex. PW5/A which were taken into possession by the police. These ornaments taken into possession have been proved EX.P 1 to P 14. Again on 23.12.83, this jeweller produced more jewellery items involved in the dacoities which were taken into possession vide memo Ex. PW6/B. The document relating to entries of the items purchased from the appellants were also taken into possession, These were the pages of Bahi Ex. PW7/A. Jewellery Ex. P1 and P 2 i.e. gold kare, necklace Ex P 3, ear-rings Ex. P 4 and P 5, platinum chain Ex. P 6 with pendulum of diamond and ruby. diamond Jhumka, Ex. P 7 and P 8, three rings Ex. P 9 to P 11 were identified by Smt Shiv Prabha Singh, PW4, and Smt Yogeshwari Ghai, Public Witness 7, sister of the complainant as belonging to Smt. Yogeshwari Ghai, which were robed at the time of dacoity. Smt. Yogeshwari Ghai, Public Witness 7, at the time of giving a list of the stolen articles also gave sketches of these ornaments in the list Ex. PW7/A showing that she. had given the description of the property robed just after the robbery. The only contention raised by the counsel for the appellants regarding the recovery of the ornaments at the instance of the appellants was that they were not taken to Secunderabad when the recovery was made. This contention is without any force. In pursuance to the disclosure statement they were taken to Secunderabad and they pointed out to the shop of Banarsi Dass to whom they had sold the ornaments. On two occasions when they took the police party and pointed to the shop of the jeweller to whom they had sold the jewellery, the shop was found locked. Pointing out the shop and later recovery of the articles from that shop prove the conscious possession of the appellants of the stolen property. . The recovery Was in the presence of recovery witnesses and it was not necessary to take the appellants at the time of recovery when they had already pointed out to the shop where the stolen property was sold by the appellants.

(15) The other contention of the counsel for the appellants that the identification of the articles by PW7 Yogeshwari Ghai was not properly and legally done is also

devoid of any force. It has come in the statement of Shri J. P. Sharma, Si, that ornaments recovered from the shop of Banarsi Dass at Secunderabad were sealed on the spot and a request for holding test identification parade of the ornaments was made and the a test identification parade was done by Shri J.K. Pali Metropolitan Magistrate and he proved the proceedings Ex.PW :15/C. The original was filed incase No.511/83 P.S. defense Colony. He proved that ornaments Ex. P1 to P 11 are the same which were recovered by him. Proceedings of test identification parade coupled with the statement of PW4 Shiv Prabha Singh, PW7 Yogeshwari Ghai and J.P. Singh PW16 proved that the identification of the stolen property was correctly held. The identification of these two appellants Rati Ram and Leela Ram by PW4 Smt Shiv Prabha Singh who is the victim of the crime, their disclosure statements resulting in the pointing of the shop of Banarsi Dass at Secunderabad and subsequent recovery of the part of the jewellery which was the subject matter of the dacoity from the son of Banarsi Dass, because Banarsi Dass died during investigation, identification . of the jewellery by its owner and test identification held before the Metropolitan Magistrate and prior to that Yogeshwari Ghai had drawn sketch of the ornaments in the list given by her to the police containing the details of the Jewellery and ornaments found missing from her house, establish the factum of involvement of these two appellants Rati Ram and Leela Ram as perpetrator of the crime.

(16) Regarding appellant Siri Ram, there is not sufficient evidence of his involvement in the crime.His disclosure statement was not recorder nor anything was recovered at his instance. The record shows that he was arrested subsequently when the challan was in the process of being filed and there is. no sufficient evidence against him of his involvement in this crime.

(17) In view of the circumstances discussed above, I confirm the conviction of Rati Ram and Leela Ram for the offence punishable under Section 395 read with Section 397 Ipc, but the conviction of Siri Ram cannot be sustained and he is entitled to be acquitted on the basis of benefit of doubt. J, thereforee acquit him of the said charge.

(18) Regarding the sentence awarded by the learned Addl Sessions Judge to Leela Ram and Rati Ram, it cannot be said to be disproportionate to the crime and the culprits do not deserve a lenient view. Not only the dacoity was committed but grievous injuries were caused to the inmates of the house. I find no grounds to interfere in the findings of the learned Addl Sessions Judge on the point of sentence awarded to appellants Rati Ram and Leela Ram and I confirm the same.

(19) As a result, I accept the appeal on behalf of Siri Ram and dismiss the appeal filed by Rati Ram and Leela Ram.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com