

Samunder Singh Vs. the State

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Court : Rajasthan

Decided On : Feb-29-1952

Reported in : AIR1953Raj182

Judge : Ranawat and; Sharma, JJ.

Acts : [Evidence Act, 1872](#) - Sections 9 and 133

Appeal No. : Criminal Appeal Nos. 132 and 139 of 1951

Appellant : Samunder Singh

Respondent : The State

Advocate for Def. : C.B. Bhargava, Deputy Govt. Adv.

Advocate for Pet/Ap. : C.L. Mishra and; J.K. Mathur, Advs.

Disposition : Appeals allowed

Judgement :

Sharma, J.

1. These are two appeals, one from jail by Nanga and Samunder Singh, and another on behalf of Samunder Singh, and arise out of a case under Section 395, Penal Code.

2. The case for the prosecution was that on 22-3-1949, at about 4 in the evening, a dacoity was committed in village Unti at the shop of one Motilal and at the houses of Gulab Chand and Bansilal. They were all given serious beating, and a lot of valuable property was taken away from them on camels' back by five persons, viz., Karan Singh, Samunder Singh, Nanga, Kalyan Singh and Bheria. A report of the occurrence was lodged at the police station Bagru in the early hours of 23-3-1949, and during investigation Samunder Singh, Nanga, Bajrang Singh, Dheer Singh, Nanda and Bheria were arrested. Some property is alleged to have been recovered at the instance of Bajrang Singh from a Bara belonging to him and a camel is also alleged to have been recovered at the instance of Nanga from the possession of one Ladu Jat of village Sarawari in Bika-ner. Although Bajrang Singh, Dheer Singh and Nanda were not alleged to be actually present at the time of dacoity, but the prosecution was launched against them because it was alleged that they were also abettors in the crime. In all, six accused were challaned, viz., Bajrang Singh, Dheer Singh, Nanda, Bheria, Nanga and Samunder Singh. Karan Singh was also alleged to be one of the offenders, but he turned an approver. Of the accused, who were put up for trial, all, excepting Samunder Singh, were arrested shortly after the occurrence.

Nanga and Karan Singh were put at an identification parade on 16-5-1949, before Shri Mahavir Sahai, Tehsildar-Magistrate, Toda-Rai-Singh. Nanga was identified by six witnesses, viz., Jagannath P. W. 1, Ramgopal P. W. 2, Nathia P. W. 3, Nolia P. W. 6, Motilal P. W. 9, and Gulab Chand P. W. 15. Karan Singh was identified by Nolia P. W. 6. Again on 23-5-1949, Nanga was identified by P. W. 3, Nathia, before Mr. Tara Chand Bakshi, Extra Magistrate, Jaipur. Samunder Singh was arrested on 18-12-1949, and he was put up at an identification parade on 29-12-1949. He was identified by Nolia P. W. 6. The six accused, Bajrang Singh, Dheer Singh, Nanda, Bheria, Nanga and Samunder Singh were ultimately challaned in the Court of Extra Magistrate, Jaipur, who committed them to Sessions. All the accused denied the charge. The learned Sessions Judge, Jaipur District, found that the case was not free from doubt against Bajrang Singh, Dheer Singh, Nanda, and Bheria, and consequently acquitted them. He, however, convicted Nanga and Samunder Singh under Section 395, Penal Code, and sentenced them to seven years' rigorous imprisonment each. Each of them has filed an appeal against his

conviction and sentence. As they both arise out of the same judgment, they are being disposed of by a single judgment.

3. Taking up the appeal of Samunder Singh first, it was argued by the learned counsel for Samunder Singh that the only evidence against him was that of identification by Nolia, P. W. 6, which can be said to be the evidence in corroboration of the evidence of the approver, Karan Singh. Nathia P. W. 3, who identified this accused before the Court did not identify him at the identification parade. His identification in the dock is, therefore, of no value. Bhanwar Singh P. W. 8, who has given evidence against Samunder Singh is no better than an accomplice, because he has stated that he had complicity in the crime. Nolia's identification too is not of much value, as the accused was kept for four or five days in police custody, and it has not been shown that during that time there was no opportunity for any witness to use the accused. Further, it has been admitted from Nolia himself that Samunder Singh had white spots, which could easily distinguish him from other persons. No precaution was taken to hide these spots at the time of identification parade, and, therefore, it was very easy for the identifying witnesses to single out this accused from among others with whom he was mixed up.

4. On behalf of the State, it was argued by the learned Deputy Government Advocate that undoubtedly there was the independent evidence of Nolia alone to corroborate the evidence of the approver, Karan Singh, so far as Samunder Singh was concerned, but there was no reason to disbelieve Nolia.

5. I have given my anxious consideration to the case. No property was recovered from the possession of Samunder Singh, and there is no other evidence against him excepting the identification evidence. The evidence of Karan Singh approver cannot be made the foundation for the conviction of the appellant, unless it is corroborated in material particulars by independent evidence. Karan Singh had a grievance against the appellant, as they were both employed in military training centre, where Samunder Singh borrowed a sum of Rs. 200/- on the guarantee of Karan Singh. Out of this sum, Rs. 100/- were paid by Samunder Singh, but there is still a balance of Rs. 100/- against him, which he has not paid in spite of the

demands of Karan Singh. This has not only been alleged by Samunder Singh, but has been admitted by Karan Singh in his evidence. There is, therefore, still greater ground for caution against the evidence of Karan Singh, and unless there is independent evidence, which may corroborate the approver's evidence in material particulars, it would not be safe to maintain the conviction of this appellant. As has been stated above, the only evidence in support of the approver's evidence is that of identification by Nolia. In the first place, identification by a single witness can hardly be relied upon to convict the appellant in a serious case like the present.

Moreover, there is evidence on the record in the shape of the evidence of the approver, which shows that he and some of the dacoits had their faces wrapped up at the time of the dacoity, and this was done so that the dacoits might not be capable of identification. Karan Singh does not say that Samunder Singh had not his face muffled at the time of the dacoity. He has not been identified by the three important victims of dacoity, Jagan Nath, Motilal and Bansilal. Nolia says that he was at a certain distance from the dacoits. It would be very difficult to believe that out of all the six persons present at the time of the dacoity, Nolia alone would be able to identify Samunder Singh under the circumstances which prevailed at that time. Moreover, I cannot feel certain that identification by Nolia was the result of his having identified this accused at the time of dacoity, and is not due to some other reasons. It is in evidence that Samunder Singh had very perceptible white spots on his face and neck, and there is no evidence to show that they were covered up at the time of the identification parade, Nolia has stated that he had seen those spots at the time of the dacoity, but he did not give those distinguishing marks as 'Hulia' of Samunder Singh, when he was examined before the police. Had Samunder Singh been one of the dacoits, nothing would have been easier to give an exact description of his than to say that one of the da(sic) had very perceptible white spots on his (sic) and neck. This is a very grave omission, and furnishes a ground for doubting the statement of Nolia.

Moreover, the fact that no precaution was taken for covering these spots at the time of the identification parade very much detracts from the value of the identification at that parade. At the time of identification, so far as possible, the accused and the persons with whom he is mixed up should not be easily

distinguishable from each other. If there is any distinguishing mark in the features of the accused, precaution should be taken to conceal and the same precaution should be taken in the case of other persons with whom he is mixed up, so that the identifying witnesses may not easily distinguish the accused from others. In the present case, with the white spots open to the view of the identifying witnesses and the persons with whom he was mixed having no such distinguishing features, it was very easy for Nolia to single out the appellant from others who were mixed up with him. Under the circumstances, the value of identification by Nolia to my mind is very little. As regards Nathia, although he identified the appellant at the trial, yet he did not identify him at the identification parade. Such identification too has little value. The evidence of Bhanwarsingh is worthless. At the trial he altogether exonerated the appellant, and as regards his statement before the committing Magistrate which has been placed on the record by the learned Sessions Judge under Section 288, Criminal P. C., he stated that it was made out at the instance and pressure of the investigating officer. It is very difficult to say which of these two statements of Bhanwarsingh is correct, and it cannot be taken assistance of for the conviction of the accused.

6. I do not find that the case has been proved beyond a reasonable shadow of doubt against Samunder Singh, and I cannot, therefore, maintain the conviction of Samunder Singh. His appeal should be allowed, and he should be acquitted.

7. Coming to the appeal of Nanga, there is similar evidence against him, which is against Samundersingh, only with this difference that he has been identified by six witnesses, whereas Samunder Singh was identified by only one. No doubt the number of identifying witnesses is quite large, and ordinarily Court would not be unjustified in convicting the accused on the evidence of the approver read with the evidence of these six witnesses. There are, however, some very strong suspicious circumstances in the case. Nanga had very conspicuous black marks on his forehead and cheeks. It was not stated before the police that among the dacoits any dacoit had such marks. The marks were so prominent that nobody, who could identify this accused at the time of the dacoity, could have failed to take notice of these marks, It is, therefore, a very suspicious circumstance that it was not said before the police that one of the dacoits had black marks on his forehead and

cheeks. A person who had such distinguishing features-could easily be identified and it has not been shown by the learned Magistrate in his proceedings of identification that any precaution was taken fay him to conceal these marks at the time of identification parade. The learned Magistrate first haltingly said at the time of examination before the Court that he might have taken sufficient precautions in the case of this accused, so that these distinguishingfeatures might not lead to any easy identification of him by the identifying witnesses. Further he said positively that he took precautions so that there might be no assistance to the identifying witnesses in identifying this accused by reason of his distinguishing marks. In the face of omission in the proceedings for identification in the face of the halting statements in the beginning, such a positive statement at the end can scarcely be given much weight.

It is the duty of the Magistrate before whom the accused are produced for identification to make a faithful record of the steps he takes at the time of identification. It is not easy to believe that after the lapse of a year or so, a Magistrate before whom identification parade look place could say from his memory that he took a certain kind of precaution, which is not noted in his proceedings. There is a good deal of doubt about the complicity of this accused also, and I am constrained to give him the benefit of the doubt.

8. Both the appeals are accepted, the conviction and sentence are set aside, and the appellants, Samunder Singh and Nanga, are acquitted. They shall at once be released, unless required in connection with some other case. The fines, if paid, shall be refunded.

Ranawat, J.

9. I agree.