

Uda and ors. Vs. State

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Court : Rajasthan

Decided On : Jan-29-1974

Reported in : 1974WLN(UC)250

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Jail Appeal Nos. 95, 96 of 1974

Appellant : Uda and ors.

Respondent : State

Disposition : Appeal dismissed

Judgement :

K.D. Sharma, J.

1. These two jail appeals filed by Uda and Gopiya convicts arise out of a single Judgment of the learned Additional Sessions Judge, Udaipur, where by Uda appellant was convicted Under Section 397. I.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 100/-, in default of fine to further suffer rigorous imprisonment for two months and Gopiya appellant was convicted Under Section 394, I.P.C. and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 100/-, in default of payment of fine to suffer further rigorous imprisonment for two months.

2. The prosecution case against the two appellants was that on 28th October, 1971, at about 10 or 11 a.m. Mitha Lal visited Madhu Lal's house in village Giloond. He took his food there with Madhu Lal and after a short stay left for village Jashma on a bicycle. When he started from the house of Madhu Lal, he had a small bag also with him. He reached village Joshma and from there proceeded to his village Guda in the evening. In the way when he reached near village Bhootar Khadi the paddle of his cycle gave way, so he got down from his bicycle and began to walk on foot, In the way he met Shanker and Mana co-accused, in this case, who were acquitted by the trial court. Both Shanker and Mana were coming from the side of village Giloond and were going towards village Dhamana. Shanker and Mana did not say anything to Mitha Lal. As Mitha Lal proceeded further and hardly covered a distance of ten or fifteen paces, he came across Uda and Gopiya appellants who had lathis in their hands. Uda on seeing Mitha Lal demanded a 'Biri' from him for smoking, Mitha Lal put his hand into his pocket to take out a 'Biri'. Meanwhile Uda appellant all of a sudden gave him a lathi blow, which fell on his head As a result of this blow Mitha Lal fell down Gopiya appellant there-upon threw the bicycle on one side after taking the bag into his possession, which was hanging on its handle. Uda appellant then inflicted several blows with a lathi on the person of Mitha Lal and took out currency notes of the value of Rs. 300/-, from his pocket, along with a one rupee note and two letters Exs. P 12 and P 13. While running away with the booty, these two appellants robbed Mitha Lal of his shoes also, which he was wearing on his feet. After Uda and Gopiya had disappeared from there' Mitha Lal picked up his bicycle and started for going to village Giloond. Before he he could reach village Giloond, the villagers some how or the other heard a rumour that a Mahajan had been beaten and robbed of his belongings by some miscreants near Dindoli canal. On hearing these news Madhu Lal accompanied by some persons came out of the village to know as to what had actually happened He saw Mitha Lal coming towards village Giloond having no shoes on his feet. Mitha Lal narrated the whole of the incident to Madhulal and others, who he took him to Kapasan, where he was medically examined by Dr. Gopal Krishna the very day at 11 p.m. The Medical Officer found as many as twelve injuries on Mitha Lal's body. Out of these injuries, injury No. 5 was suspected to be grievous. It was later on confirmed to be a grievous injury

upon X ray examination at the General Hospital, Udaipur.

3. A report of this incident was lodged with the police at police outpost Giloond by Madhu Lal on 31st October, 1971. On basis of this report Ex. P. 7 a criminal case Under Section 391, I.P.C. was registered and investigation commenced. During the course of investigation, it was found that the two appellants along with their companions namely, Shanker and Mana were seen moving in the vicinity of the place of occurrence in the very night by Sohanlal Patwari and Labu Ram. It also came to the notice of the investigating agency that all the four accused had visited the house of Gokul PW 8 and had also met Virdhi Chand Head Constable, PW 19. The police arrested the four accused in due course and recovered lathis and the (sic) property. A pair of shoes, two letters and currency notes of the value of Rs. 100/-, were recovered from the house of Uda appellant at his instance and in consequence of an information furnished by him to the Investigating Officer. Likewise currency notes of the value of Rs. 100/-, and a bag were recovered from the house of Gopiya in pursuance of his information recorded Under Section 27 of the Evidence Act. These articles recovered from the houses of Uda and Gopiya were later on put up for identification in a test identification parade held by Shri Govind Lal Sharma, Munsiff-Magistrate, Rajsamand on 17th November, 1971 and were correctly identified to be of Mitha Lal by him and other identifying witnesses. The two appellants also were put up for identification (sic) Shri Abbas Khan, Tehsildar, P.W. 16. They were identified by Mitha Lal & others to be the same miscreants who had robbed Mitha Lal of his property and who were seen moving near the place of occurrence that very night. After collecting other necessary evidence the police put up a challan against all the four accused including the two appellants in the court of Munsiff Magistrate, Rajsamand, who, after conducting an inquiry preparatory to commitment, committed all of them to the court of Sessions Judge, Udaipur, for trial.

4. The learned Additional Sessions Judge, Udaipur who tried all the four accused, ultimately found Uda and Gopiya only guilty of the offences punishable Under Sections 397 and 394, I.P.C. respectively. The other two accused namely Shanker and Mana were acquitted of the offences, with which they were charged, because, according to the trial Judge the prosecution could not bring guilt home to these

persons beyond reasonable doubt. Aggrieved by their conviction and sentences, the two appellants' have filed separate appeals. As common questions of fact and law are involved in these two appeals, they are disposed of together by this one judgment.

5. I have carefully gone through the record, and heard the Deputy Government Advocate. Notice was given to the two appellants also but no body has appeared on their behalf. It is fully proved by the evidence of Mitha Lal P.W. 13, that both the appellants had met him in the way while he was going on foot with bicycle towards his village. According to the version given out by Mithalal, Uda accused demanded 'Biri' from him. He placed his hand in his pocket to take out a 'Biri' for the purpose of giving it to Uda. Meanwhile Uda all of a sudden gave him a lathi blow, which fell on his head. As a result of the blow he fell on the ground. His bicycle was thrown aside by Gopiya appellant after taking the bag into his possession. Uda accused thereafter gave him two or three blows more and forcibly took out currency notes of the value of Rs. 300/-, from the pocket of his 'Bandi' along with two letters Exs. Exs. 12 and 13 and a currency note of Rs. 1/7- Gopiya also beat him with lathi. Both the appellants then robbed him of his shoes, which he was wearing on his feet and then disappeared from there. Mitha Lal's, testimony is worthy of credence as it has not been shaken at all in cross examination and as it finds support from the medical evidence. Mithalal was medically examined soon after the occurrence at 11 p.m. The Doctor, who examined him found as many as twelve injuries on different parts of his body, out of which injury No. 3 was found and confirmed grievous upon X-ray examination. Injury No. 5 was a fracture of Mitha Lal's mandible bone The evidence of Mitha Lal is further corroborated by the testimony of Midhu Lal, who (sic) seen him bare footed having injuries on his mandible, head and back, outside village Giloond Although both the appellants were not previously known to Mitha Lal, but they were correctly identified by him in the test identification parade to be the same miscreants who had robbed him of his money, letters, bag and shoes.

6. The prosecution has further led evidence to prove that on the date of the occurrence at about 6 or 6.30 p.m. both the appellants were seen by Lalu Ram Sarpanch, P.W. 13. near Dindoli feeder canal, where the latter was sitting for

washing his hands and mouth. Lalu Ram saw both the appellants standing in a pit having lathis in their hand. He asked them as to who they were. The appellants at first did not reply to his query, but later on told him that they were Banjaras of Sangapur and that they were going to Kapasan. Lalu Ram told them that they appeared to be scoundrels. There upon they started running on the road. Lalu Ram then went to his village Giloond where he came to know that one Mahajan of village Guda had been robbed of his belongings. On hearing these news, he disclosed to the villagers that he had seen two persons in the way, who might have committed the robbery. Thereupon ten or fifteen persons of the village went in pursuit of the miscreants. In the way they saw four persons coming to village Giloond from the side of village Dhamana. Lalu Ram and the villagers asked these four persons to which place they were going. These persons replied that they were going to Mali Kheda. Lalu Ram recognised the two appellants out of those four persons as he had seen them the very day near Dindoli feeder canal. Lalu Ram later on identified the two appellants in a test parade also to be the same persons who had met him near the canal, and on the way from Dhamana to Giloond. Similarly Sohan Lal Patwari P.W. 2 also claimed to have seen Uda appellant on the day of the occurrence at about 6 or 6.30 p.m. According to his version Uda demanded match box from him. As Sohan Lal had no match box, he replied in the negative. Sohan Lal correctly identified this man Uda in the test identification parade to be the same person, who had demanded match box from him on 28th October, 1971 at 6 or 6.30 p.m. Likewise Gokul P.W. 8 stated on oath that in the night of occurrence all the four accused including the two appellants had visited his house and smoked tobacco. He asked the accused why they had come, to which they replied that they had come to collect honey. The evidence of Lalu Kam, Sohan Lal and Gokul negatives the plea of alibi set up by the appellants in their defence, because from their evidence it is established beyond reasonable doubt that soon after the commission of the robbery these two appellants were seen in the vicinity of the place of incident. There is no reason to disbelieve the evidence of these witnesses, especially when they had no ill will or grudge against the appellants. Apart from this, there is reliable evidence of Mohan Lal P.W. 17 on the record that after his arrest Gopiya appellant gave the S.H.O. an information that he had concealed currency notes of Rs. 100/-, and a bag inside his house and that he

would get them recovered at his instance. The Station House Officer recorded the above information in Ex. P. 8 and thereafter recovered the bag and the currency notes from the house of Gopiya in the presence of Motbirs vide memo of recovery Ex. P. 13, Gehrilal P.W. 3 has corroborated the statement of Mohan Lal Station House Officer by stating that the bag and the currency notes were recovered from the house of Gopiya in his presence. Similarly, there is ample proof on the record that a pair of shoes, Ex. 11, two letters Exs. 12 and 13 and currency notes of Rs. 100/-, were recovered from the house of Uda at the latter's instance in pursuance of his information recorded Under Section 27 of the Evidence Act by Mohan Lal, Station House Officer on 10th November, 1971. The pair of shoes, Ex. 11, the two letters Exs. 12 and 13 and the bag Ex. 10 had been put up for identification in a test identification parade held by Shri Abbas Khan, Third Class Magistrate, Ratlamagra and Madhu Lal correctly identified the bag (Thela Ex. 10) to be the same bag which he had given to Mitha Lal on the day of the occurrence when the latter had started from his house. Mitha Lal also correctly identified this bag to be the same, which was in his possession at the time when he was robbed of his belongings. Likewise the pair of shoes recovered from the house of Uda were correctly identified by Mitha Lal and Kishore to be of Mitha Lal. Kishore P.W. 11, identified the shoes, in the parade and in the court because he had prepared them. Mitha Lal identified them in the parade and in the court to be his own, because he was wearing those shoes at the time of occurrence. The identification of these articles is duly proved by the testimony of Abbas Khan, Third Class Magistrate in whose presence the identifying witnesses had correctly identified these articles. The trial court rightly believed the evidence relating to the recovery of these articles and their identification by the identifying witnesses. Both the appellants could not afford any reasonable explanation for their possession of these articles, which proved to have been forcibly removed from the possession of Mitha Lal at the time of the occurrence. The appellants merely denied the recovery of these articles at their instance & in consequences of their information recorded Under Section 27 of the Evidence Act. Mere denial of recoveries on their part is not sufficient to rebut the presumption of guilt arising from their recent and unexplained exclusive possession of these looted articles.

7. The evidence relating to identification of the appellants also is free from doubt. They were identified by Mitha Lal in a test identification parade held on 17th November, 1971, before Shri Govind Lal Sharma, Munsiff Magistrate, Rajasamand & thereafter in the trial court. Mitha Lal could identify these two appellants as he had seen them committing the robbery and causing injuries to him. Similarly, Lalu Ram and Sohan Lal could correctly recognise Uda appellants as he had talked to him for sometime shortly after the occurrence. There is no material on the record to show that these two appellants were previously shown to the identifying witnesses before they were put up in the test parade for identification. The trial court has given good reasons, with which I agree, for repelling the contentions of the appellants that they had been shown so Mitha Lal, Lalu Ram and Sohan Lal prior to the test identification parade. After going through the evidence led by the two appellants in their defence, I have no hesitation in holding that the trial court rightly rejected the evidence of Lalu, D.W. 1, Kishna, D.W. 2, and Jawahar Mal D.W. 3. Lalu gave a fantastic story by stating in his deposition that the police had arrested Uda in connection with some case of 'Marpeet' & that when he asked the Head Constable to release Uda, the latter demanded a bribe of Rs. 200/-, from him. He gave a sum of Rs. 100/-, to Head Constable Viradhichand, but the S.H.O. directed him to place currency notes of Rs. 100/-, in the 'Ala' of Uda accused outside his house. He put the note in the 'Ala' from where they were recovered by the police. This witness was cross examined by the Public Prosecutor. He admitted that he did not lodge a complaint about this incident with any person. Lalu is the father-in-law of Uda appellant. It appears that he had given false evidence to save his son-in-law from the clutches of police. Kishna D.W. 2, stated on oath that on the day of the occurrence Gopiya and Uda appellants were cultivating land with him and that they were present in his field right up from morning to evening. This type of oral evidence is not sufficient to prove alibi set up by the accused-appellants especially when there is reliable prosecution evidence on the record that the two appellants had committed the offence of robbery at the time and place alleged by the prosecution. D.W. 3 Jawahar Mal gave out a different version, which is highly unbelievable. According to his version, the Head Constable had asked him to tell the mother of Gopiya to keep Rs. 100/- in her house. He claimed to have delivered this message to Gopiya's mother, who

replied that she had no money. Thereupon this witness readily offered her this sum. but she declined to accept it. This witness then put the currency notes of Rs. 100/-, on a pag outside the house of Gopiya, wherefrom they were recovered by the police. This story narrated by Jawahar Mal is nighly improbable. It does not stand to reason why he had kept the currency notes on the pag outside the house of Gopiya when his mother had refused to accept them. The evidence produced by the appellants in their defence was rightly held untrust-worthy by the trial Judge. There is, therefore, cogent and unimpeachable evidence on the record from the side of the prosecution that both the appellants robbed Mitha Lal of his money, Thela, pair of shoes and letters and there at the time of committing robbery Uda caused grievous injury to his person with a lathi. Gopiya was the person jointly concerned in committing the robbery. He also caused simple hurt to Mitha Lal with a lathi. In view of these facts, both Uda and Gopiya were rightly convicted Under Section 397 and Section 394 I.P.C. respectively. As regards sentence, it may be observed that it is not excessive in the circumstances of the case.

8. Consequently, the jail appeals have no force and are hereby dismissed. The appellants be informed accordingly.

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