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**Court :** Rajasthan

**Decided On :** Dec-14-1982

**Reported in :** 1982WLN(UC)319

**Judge :** Kanta Bhatnagar, J.

**Appeal No. :** S.B. Criminal Appeal No. 199/77

**Appellant :** The State of Rajasthan

**Respondent :** Bajranglal and ors.

**Advocate for Def. :** Mr. Bhagwati Prasad

**Disposition :** Appeal dismissed

**Judgement :**

**Kanta Bhatnagar, J.**

1. Respondent Bajranglal, Amilal and Annesingh were tried for the offences under Sections 406, 420, 394 and 129(b) of the Indian Penal Code by the Chief Judicial Magistrate, Bikaner and were acquitted of the charges by the judgment dated December 3, 1976. The State of Rajasthan felt aggrieved by the judgment of acquittal and preferred this appeal in this Court after seeking leave to appeal.

2. Briefly stated the facts of the case relevant for the disposal of this appeal are as under: Ramchander (P.W. 1.) complainant had settled the marriage of his daughters and therefore, in the month of 'Vaishakh' S Y. 2028, he asked Rameshwar (P.W 6.) to arrange for some gold for him. Rameshwar informed Ramchander that Amilal had been married in his village and he would arrange for the gold at a cheap rate. Rameshwar then informed Ramchander that Amilal would arrange for the gold at the rate of Rs 200/- per tola. At the instance of Rameshwar, Ramchander, Amilal, Annesingh and Chorulal (P.W. 2.) went to villages Chhatargarh. Rupees 5000/- were given by Ramchander to Amilal. Amilal and Rameshwar went to bring the gold. Amilal, Annesingh and Ramchander returned after sometime and informed that the gold will be available on the next day as the person concerned was not available that day. All the persons then returned to the Bikaner. On the next day Rameshwar came to Ramchander and informed him that Amilal has informed about Annesingh bringing the gold so he may take the money. Ramchander took Rs. 5000/- and accompanied Rameshwar to the shop of Amilal. They reached there at 7.15. P.M. Rameshwar gave Rs. 15000/- to Amilal in presence of Rameshwar and Annesingh. Amilal told Ramchander that it would not be proper to have the transaction at the shop and so they may go outside Bikaner. Amilal, Annesingh and Ramchander went towards Shiv-badi. Rameshwar and Amilal stayed near the statue of Jai Narayan Vyas and Annesingh went away from there. After ten minutes Annesingh returned with gold and passed over ten pieces of gold to Ramchander. Ramchander was then asked to go alone because his going with these persons was not considered advisable. Ramchander proceeded towards the city. When he had got to a little distance, two persons on cycles reached there. They surrounded him and enquired of him as to what he had with him. He denied to possess any thing. Then those two persons gave a beating to him and snatched the ten pieces of gold from his pocket. Ramchander went to Amilal's shop and found it closed. He then went to his own shop where Rameshwar was available. He narrated what he had suffered to Rameshwar. On the next day they had a talk with Amilal through Jagganath and asked him either to return the gold or the money. Amilal assured to return the money after collecting it from the persons amongst whom it had been distributed. As Amilal did not fulfil the assurance, Ramchander, after waiting for

some days reported the matter to Yaswant Singh (P.W. 9), Station House Officer, Kotwali, Bikaner on February 15, 1972. His statement Ex. P.1 was recorded and case was registered. During the course of investigation Rs. 6000/- were recovered from Amilal, Rs. 6000/- from Annesingh and Rs. (sic)650/- from Bajranglal. After completion of investigation, charge sheet against the respondents was filed in the Court of the Chief Judicial Magistrate, Bikaner. The learned Magistrate, charge-sheeted the respondents for the aforesaid offences. On their denial of the indictments, trial proceeded Nine witnesses were examined by the prosecution. The respondents in their statements under Section 313 of the Code of Criminal Procedure totally denied the allegations levelled against them and stated that the Sub-Inspector, Yaswant Singh had forcibly taken the money belonging to them. No defence witness was examined. The learned trial Magistrate did not place reliance on the prosecution evidence and acquitted the respondents by the judgment under appeal.

3. I heard Dr.S.5.Bhandawat, learned Public Prosecutor for the State, assisted by Shri S R. Singh, learned Counsel for the complainant and Mr. Bhagwati Prasad, learned Counsel for the respondents and carefully examined the record of the case.

4. The learned Public Prosecutor has assailed the findings of the learned trial Magistrate on the ground that there was no reason to discard the testimony of Ramchander and Rameshwar regarding the transaction. That, Ramchander has identified Bajranglal in the Court and had explained as to how he was able to do so. According to the learned Public Prosecutor in such circumstances, the trial Judge should have atleast believed the case against Bajranglal about his being one of the robbers.

5. The learned Counsel for the respondents controverting these contentions submitted that there is no evidence or that the gold which is said to have passed to Ramchander was not pure and therefore, there arises no question of any cheating. The learned Counsel stressed that the prosecution has failed to establish that there was any regular parade held for the identification of Bajranglal by Ramchander and therefore, the identification in the Court has been rightly

disbelieved by the learned trial Magistrate.

6. The learned Magistrate has discarded the prosecution case on sound reasonings. The delay of 9-10 months in lodging the first information report has rightly been taken seriously by the learned Magistrate. The incident is said to have taken place in the month of Vaisakh SY 2028 (the equivalent being April, 1971). Though Ramchander has stated about reporting the matter to Station House Officer Yaswant Singh five or seven days after the incident, his version stands falsified by the document Ex. P.1 which is dated February 15, 1972. Yaswant Singh(P.W. 9), the then Station House Officer, Police Station, Kotwali, Bikaner who had investigated this case, has also stated about receiving the report from Ramchander on February 15, 1972. If after a period of five or seven days of the incident, Ramchander came to know that his efforts for regaining the money or the gold have failed, there could not be any reason for his keeping quite for a period of nine or ten months. The learned Magistrate has therefore, rightly placed reliance on the defence version that, during the course of investigation in another case. Ramchander had given a statement to the police which was made the basis to the investigation in the case.

7. Another important factor which had weighed with the learned Magistrate was the unnatural story advanced by Ramchander and Rameshwar and the inconsistencies and contradictions occurring in their statements. It has rightly been considered to be unnatural for Ramchander to go alone with Annesingh to get the gold leaving his companions at the shop. It is still more unnatural for him not to verify the purity of the gold at the time. Be it as it may, the prosecution case about cheating still remains unestablished. Ramchander himself has stated that the gold, Annesingh had given to him was pure. Otherwise also when the transaction was complete there was no question of any cheating or devouring the money by deceitful means.

8. The learned Public Prosecutor could not convince as to how it can be held that there was any deception either by Amilal or Annesingh in the transaction. There is no evidence to connect Amilal and Annesingh with the persons said to have looted Ramchander in the way. This is the admitted position that Amilal and Annesingh

were not there with the complainant when the two persons on cycles had given a beating to him and snatched the gold. It is pertinent to note that though Ramchander has stated about 25-30 injuries on account of the beating given by the miscreants, he did not get himself medically examined.

9. The learned Public Prosecutor has laid much emphasis upon the case against Bajranglal on the ground that he had been correctly identified by Ramchander in the court at the trial.

10. The prosecution case against Bajranglal hinges on the solitary testimony of Ramchander. The pertinent question to be determined would be whether Ramchander was in a position to identify the miscreants or any one of them and whether the parade for identification test prior to the trial could be dispensed with. Ramchander has admitted that identification parade was not arranged for Bajranglal. In the next breath he stated that he does not recollect. There is no evidence about any identification parade being held for Bajranglal. Ramchander has stated that it being dark he could identify only one of the two assailants. According to him 10-15 days thereafter, he had identified that man in the jail. He further stated that Sub-Inspector had told him that the person who had robbed him of his gold, has been apprehended and he may go and identify him. According to this witness this was told by the Station House Officer at the Kotwali. The witness further admitted that he had seen the accused in the Kotwali. In the next breath, he had corrected himself by saying that he had not seen him at the Kotwali rather at the jail. The witness stated that even in the dark he could see Bajranglal properly but could not see the other person. It is pertinent to note that Ramchander has stated that immediately after being attacked by the miscreants he had closed his eye. This being the position, the learned Counsel for the respondents has legitimate argument to advance that in the dark it could not have been possible for Ramchander to identify any body. Even assuming for the sake of argument that Ramchander could identify one of the miscreants, still his not knowing Bajranglal previously, it was expected of the prosecution to put the accused at the test identification parade. It can be also inferred from the statement of Ramchander discussed above that he had the occasion to see Bajranglal at Kotwali. The fact as to when and by whom Bajranglal was arrested has not been

brought on record. It is pertinent to note that according to Ramchander, he had identified Bajranglal in jail 10 or 15 days after the occurrence. This version stands falsified by the fact that for 9-10 months he did not report even about the incident and therefore, there arises no question of any identification of the accused by Ramchander, at the instance of the Police Station House Officer, Yaswant Singh has also admitted that no identification proceedings were held for Bajranglal.

11. From this type of evidence of Ramchander, it would not be safe to hold that identification of the accused at the trial was sufficient to hold him guilty for the alleged offences.

12. From the above discussion, I am inclined to hold that the learned Magistrate has discussed the evidence in its proper perspective and the judgment based on sound reasonings does not warrant any interference.

13. Consequently, the appeal filed by the State of Rajasthan has no merits and is dismissed.