

Nar Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-24-1984

Reported in : 1984WLN259

Judge : G.M. Lodha and; G.K. Sharma, JJ.

Appeal No. : D.B. Criminal Appeals Nos. 116 and 57 of 1980

Appellant : Nar Singh and ors.

Respondent : State of Rajasthan

Judgement :

G.K. Sharma, J.

1. Appeal No. 116/1980 has been filed by Narsingh, Deo Lal and Tulshi Ram. Appeal No 57/1980 has been filed by Gordhan, Chatra, Ramcharan and Malkhan. Both these appeals arise from the judgment of learned Addl. Sessions Judge, Baran, dated, 23-1-1980, in Sessions case No. 106/77, State of Rajasthan v. Tulshya and Ors. under Sections 395 396 and 397 IPC, hence, both these appeals are disposed off by this common judgment. After filing appeal the appellant accused Malkhan has died, as such his appeal has abated.

2. Jagan Nath lodged a written report on 2-6-1977, at the police station Mangrole, to the effect that on the intervening night of first and second June, 1977, at about

12-1 a.m. when he was sleeping in his house with his wife Mst. Panchi and his son Babu; he saw two persons making a lurking house trespass by scaling over the wall. He challenged them but these three persons entered into house after threatening him with dire-consequences. They gave beating to his son. He cried, so 10-20 villagers came at the scene of occurrence. The miscreants snatched the 'Rakhadi' from the hair of his, wife. The villagers attempted to rescue them but Chandlal S/o Khema and Deo Lal S/o Jagan Nath were beaten severally by these persons. They also snatched away, Ramnami locket from Chandlal. The miscreants were armed with guns, Gandasi and crackers etc which they used at the spot. They were about 7-8 in number, 3-4 persons entered into his house while the others remained out-side the house. When the villagers arrived at the scene the dacoits escaped. The injured Chanda Lal and Deo Lal were taken to hospital, Chanda Lal received serious injuries. On this report a case under Sections 395, 397 IPC was registered.

3. The Dy. S.P. along with the S.H.O. inspected the site and prepared the site-memo Ex. P. 2, From the place of occurrence empty cartridges of revolver and 12 bore gun were recovered vide memos exhibits P. 3,4 and 5.

4. Chandlal injured who was admitted in the hospital succumbed to his injuries so section 396 IPC was also added. The post mortem of the dead body of Chandlal was conducted and the post mortem report is Ex. P. 40. The injury report of Chanda Lal is Ex. P. 41 and that of Deo Lal is Ex. P. 42 Ex. P. 43 is the regular first information report, which was prepared on the basis of report Ex. P.1. Accused Tulsi Ram, Ramcharan, Nar Singh, Raghunath, Sita Ram and Chatra were arrested vide arrest memos Ex. P. 34 to Ex. P. 39. The accused Gordhan and Malkhan were also arrested. As the accused persons were not known to the complainant and other witnesses, their identification parade was done before the Munsif Magistrate on different-different dates.

5. Accused Deolal gave information to get the recovery of one pistol. This information was reduced into writing vide Ex. P. 16 and on the basis of this information and at his instance the pistol was recovered vide memo Ex. P. 17. The accused Tulshya gave information, which is Ex. P. 29 for the recovery of one. 12

bore gun. On this information, at his instance gun was recovered from the house of Malkhan vide memo Ex P. 18. On 3-9-77, Tulshya gave information for the recovery of the one Gandasi, which is Ex. 30 and on the basis of his information, Gandasi was recovered vide memo Ex. P. 21. The accused Nar Singh on 3-9-77 gave information Ex. P. 31 for the recovery one Lathi. On his information gave at his instance, Lathi was recovered. On 28-7-1977 the accused Gordhan while in custody gave information to get the recovery of one 'Rakhadi' which he has given to Chatra s/o Pancha. This information was reduced into writing which is Ex- 32. On the basis of his information Chatra was interrogated and on 29-8-1977, Chatra gave information that Gordhan has given him one 'Rakhadi', which he has kept in his house and he is prepared to get it recovered. This information is Ex. P. 33 and on the basis of this information and at the instance of Chatra, 'Rakhadi' was recovered vide memo Ex.P. 19.

6. The empty cartridges of 12 bore gun and pistol were sent to the Forensic Science Laboratory for examination and the report is Ex. P. 27 and Ex.P. 28.

7. The identification with regard to 'Rakhadi' was also done, which was identified by the complainant, his wife Mst. Panchi and his son Babu Lal and Chanda Lal. After completing the investigation, police filed a challan against the eight accused persons under Sections 396 and 397 IPC.

8. Learned Addl. Sessions Judge Baran, framed charge against all the accused persons under Sections 397 and 396 IPC. The accused persons pleaded not guilty and claimed trial. In their statement under Section 313 Cr. PC. they have denied allegations of the prosecution witness. Accused Chatra claimed the 'Rakhadi' as his own and in support of this claim he examined one witness Ratan Lal.

9. To prove the case against the accused persons the prosecution has examined 24 witnesses. The accused persons had examined one witness. Learned Addl. Sessions Judge after considering the entire evidence and hearing both learned Counsel for the parties held that a case against Gordhan, Malkhan Chatra, Ramcharan, Narsingh, Deolal, and Tulshya Ram has been established. It was also held that the prosecution has failed to prove the case against Surajmal, hence he was acquitted from the charge under Sections 396-397 IPC.

10. This is a case of dacoity, armed with deadly weapons. This incident took place in the night where there was no light. The accused persons were not known to the complainant Jagan Nath, Mst. Panchi and Babu Lal and others of the villages, hence the entire case depends on the circumstantial evidence. As the prosecution case is that the accused persons were identified by the witnesses so the offence has been established against these accused persons. It was also alleged that 'Rakhadi' which Mst. Panchi was wearing and which was snatched away by the miscreants was also identified by Mst. Panchi, Jagannath and others. This 'Rakhadi' was recovered at the instance of Gordhan accused and from the possession of Chatra accused. This recovery and identification of 'Rakhadi' also established the case against the accused person. Learned Public Prosecutor has argued that the accused were identified by the witnesses and the 'Rakhadi' was also identified by Mst. Panchi and others and hence, the case against the accused person has been fully established. Learned Addl. Sessions Judge has correctly held them guilty under Section 396-(sic)387 IPC.

11. Learned Counsel for the accused persons argued that the identification parade of the accused is not according to law. The accused persons were shown to the witnesses prior to the identification parade and as such this parade has no value. It was also argued that the 'Rakhadi' which was recovered from the possession of accused Chatra is a very common ornament which is available in the village and which is worn by ladies very commonly. It was also argued that the statement of the witnesses regarding 'Rakhadi' is most unreliable. It has not been established that this 'Rakhadi' belongs to Mst. Panchi. Accused Chatra claims that the 'Rakhadi' was his own. Thus identification of 'Rakhadi' is also of no value. On the basis of this identification the accused persons cannot be held guilty. Learned Addl. Sessions Judge has committed an error in holding the accused persons guilty of the charges levelled against them.

12. We have considered the 'rival contentions of the learned Counsel for the parties. We have also perused the entire evidence in this case. The whole depends upon the identification of the accused persons and the ornament 'Rakhadi'. Whether the evidence of the prosecution with regard to this identification is reliable and whether the conviction can be based on such evidence is the only

crucial point to be looked into.

13 After filing the appeal, accused Malkhan has expired so there is no necessity to examine his case. Learned Amicus-Curiae has argued that the witnesses who have identified the accused persons in jail have failed to identify them in court during the trial. It was also argued that the prosecutions witnesses have admitted that they have seen the accused persons in police-Thana before conducting their identification parade. It was also argued that the accused Ram Charan was identified by Babu Lal PW 4, Badri Lal PW 7, Mukat Behari, PW 11 and Deo Lal PW 18 but none of these witnesses have identified the accused in court while giving statements. Accused Tulsi Ram was identified during the parade by Deo Lal PW 18 but in court he was identified by Jagannath PW 1, who again identified him in the parade. Accused Chatra was identified by Jagannath PW 1, Badri Lal PW 7 Babu Lal PW 4, Panchi PW 9, Gauri Shanker PW 10 and Deo Lal PW 18 but in the court, Panchi PW 9 could not identify him. The accused Narsingh who was identified during the parade by Babu Lal PW 4, Laxmi Narain PW 5, Chanda Lal PW 6, Badri Lal PW 7 and Mukat Behari PW 11 but in court, he was identified by Chandlal and Babu Lal only. The other witnesses Jagannath PW 1, Gaurishanker PW 10 and Deolal PW 18 also identified him while they could not identify him during the parade in jail. The accused Gordhan was identified during the parade by Jagannath PW 1, Babu Lal PW 4, Laxmi Narain PW 5 Chanda Lal PW 6, Badri Lal PW 7, Panchi PW 9 and Mukat Behari PW 11 but while giving statement in court only Jagannath PW 1 and Panchi PW 9 could identify him. PW 10 Gauri Shanker who could not identify this accused in jail but he could identify him in Court while giving statement, The accused Deolal was identified during the parade by Babulal PW 4, Chanda al PW 6, Badrilal PW 7, Mukat Behari PW 11 and Devi Lal PW 18 but in the court during the statement, Babulal PW 4, Chanda Lal PW 6 and Devilal P W 18 could identify him. While referring this fact the learned Amicus Curiae had argued that such type of identification should not be believed and the witness who could not identify the accused at the time of identification parade but could identify in the court cannot be believed. Apart from this, it was argued that PW 4 Babulal PW 5 Laxmi Narain and PW 10 Gauri Shanker have admitted in their statements that the accused persons were shown to all the witnesses at the police station. PW 4 Babu Lal in his cross-examination has stated that this is

correct that the accused were shown to him at the Thana before conducting the identification parade. He has also stated that his mother Panchi, Jagannath, Chandlal, Badrilal, Mukat Behari, and Laxmi Narayan went to Thana to see the accused persons. All the witnesses have seen the accused persons at the Thana. Laxmi Narayan PW 5 has stated in the cross-examination that they saw the dacoits- running in the night from a distance of 50 paces. He could not identify their faces. He has also stated that it is clear that the police have shown them all the accused persons. He has specifically stated that Gauri Shanker, Badari Lal, Mukat Behari, Jagannath and Panchi Bai went along with him to see the dacoits at the police station. Gauri Shanker PW 10 has also stated in the cross-examination that he was taken in jeep to the police station by Dy. S. P. and the S. H. O. The S. H. O. showed him all the accused persons at the Police Thana.

14. From the statement of these witnesses who are the prosecution witnesses and who have not been declared hostile, it is clear that the accused persons were shown to these witnesses and other eye witnesses at the police station before the identification parade was conducted by the Magistrate. Thus from the statement of these prosecution witnesses. It is clear that the identification parade was fake. When all the witnesses were shown to accused persons at the police station before conducting the identification, there remains no value of such identification parade. From the prosecution evidence it has been established that the accused persons were shown prior to their identification parade. When the accused persons were shown, it became easy for the witnesses to identify them in parade. Actually this identification parade has no value, It cannot be relied at all, even apart from the fact that the accused persons were shown to the witnesses at the police station prior to their identification parade, it is in the report that in the night the witnesses could not see the faces of the accused. The evidence is that some miscreants were inside the house and some were standing outside the house. When villagers arrived at the place of occurrence, the miscreants ran-away. The villagers saw them while running. As it was dark night, there was no light, it was not possible for the villagers to see their faces. It is common that in the night when dacoits came for dacoity, they took all precautions to hide their faces. It is not possible to recognize their faces in the night where there is no sufficient light and when the persons are not known to the complainant and the villagers.

15. It was also argued that the accused persons were arrested on different dates and the identification parade was conducted after 28 days of their arrest. This delay in identification parade creates doubt in the parade. When the dacoits were not known to the villagers and they were only identified by faces, the identification parade should have been conducted immediately without any delay. The prosecution has not given any explanation for the delay in this identification parade. Hence the delay in such identification after the arrest of the accused is fatal to the prosecution case.

16. We have considered this argument and we found sufficient force. The accused persons were arrested in the month of August, 1977 but the identification parade was conducted on 23-9-1977, 11-10-77 and 15-10-77. This shows that the parade was conducted after delay and there is no explanation for this delay. Apart from this it is in the evidence that the accused persons were shown to the witnesses at the police station before their identification parade. It was also argued that the witnesses did not give any description of the accused persons before identifying them in the parade. They could not give the structure of the accused persons, did not give their marks and bodily structure. As such the identification by the accused by the witnesses is unbelievable. To support his argument learned Amicus Curiae has referred the case of *Wakil Singh v. State of Bihar* : 1981 CriLJ1014 . In this case it has been observed that:

none of the witnesses in their earlier statements or in oral evidence gave any description of the dacoits whom they have alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz. structure of the accused or whether they were fat or thin or of a fair colour or of black colour. In absence of any such description, it will be impossible for us to convict any accused on the basis of a single identification.

17. We were also read over the statement of witnesses by learned Amicus Curiae. Jagannath PW 1 examined in chief has stated that he saw some faces of these persons while they were running. In the report lodged at the police station, he did not give the description of these persons. Thus from this statement it is clear that he could not see the faces of the accused persons who came to his house in the

night for committing dacoity. He only saw some part of their faces that too in the moon light while they were running. It is not possible that the persons could be identified in night, in the running capacity and specially when the complainant was horrified by the dacoits. Babulal who is the son of complainant PW 4 has staged that three persons came inside the house while he cannot give a number of the persons who were standing out-side their house. In spite of this Babu Lal could identify six persons at the identification parade, how can it be possible. He only saw three persons inside the house. He had not seen the persons who were standing out-side the house but still he identified them. The only reason is that he was shown all the accused persons at the police station before the identification parade. As such the identification parade has no value.

18. Thus after perusing the entire prosecution evidence and the argument of both learned Counsel with regard to the identification parade of accused persons, we are of the opinion that the identification parade has no value. The accused persons were shown to the witnesses at the police station before conducting the identification parade. The learned Additional Sessions Judge who have believed the identification parade and he has based his conviction on this belief has committed error in convicting the accused persons. The argument of learned Amicus Curiae with regard to identification of accused persons has great force and on this basis the accused persons could not be held guilty of the charges levelled against them.

19. The another aspect of the case is identification of 'Rakhadi', which was alleged to have been taken away by the miscreants from the hair of Mst. Panchi PW 9 wife of complainant Jagannath. This Rakhadi was also put in identification parade conducted before the Sarpanch. It was identified by Jagannath PW 4, Mst. Panchi PW 9. Learned Amicus Curiae has argued that this Rakhadi is a common ornament worn by ladies in general. Apart from this, the statement of the witnesses is unreliable so far as this Rakhadi is concerned. Jagannath PW 1 has stated that golden Rakhadi was taken by dacoits and he identified that Rakhadi in the parade before the Sarpanch. In the cross-examination he has stated that this Rakhadi was got prepared by his brother Bherulal some five or seven years before. This shows that Rakhadi in question is not an old one but is a new

ornament which was got prepared some five or seven years prior to its theft. This Rakhdi was worn by Mst. Panchi wife of Jagannath, who is P.W. 9. She has stated that she identified the Rakhadi pr sent in Court. This was snatched away by the dacoits. In the cross-examination she has stated that this Rakhadi was got prepared by her father-in-law. It is with her for the last 50 years. It means that this Rakhadi is very old one which was got prepared by her father-in-law some 50 years before. Thus she has contradicted the statement of P.W. 1 Jagannath who is her husband. P.W.4 Babulal is the son of Jagannath and Mst. Panchi He has stated that the dacoits had snatched away the Rakhadi which his mother was wearing in the night. In the cross-examination he has stated that his mother is wearing this 'Rakhadi' since her marriage. Thus he has also contradicted the statement of his father Jagannath P.W. 1 who has stated that this Rakhadi was got prepared some 5 or 6 years before. From the statement of these witnesses, it is clear that it is not definite as to who had prepared the Rakhadi which is in the court. Whether this Rakhadi is of Mst. Panchi, is also doubtful. The dacoits might have snatched way the Rakhadi but it was for the prosecution to establish that the Rakhadi present in court is the same which was worn by Mst. Panchi and it was snatched away by the dacoits. Such Rakhadi is a common ornament which is being worn by ladies generally. No speceific description has been given about the 'Rakhadi' by Mst. Panchi. The type and description given in the statement in court is of general character and such Rakhadi of his description is being prepared in that area. Thus the prosecution has failed to prove that the Rakhadi which was recovered from the possession of accused Chatra is that of Mst. Panchi.

20. The another important aspect is that according to Jagannath P.W. 1 'Rakhadi' present in court was got prepared by his brother Bherulal. Thus Jagannath cannot say whether the Rakhadi present in court is the same which was got prepared by Bherulal. It was the duty of the prosecution to produce Bherulal to prove that Rakhadi was got prepared by him. 'Sunar' who prepared this Rakhadi should have been examined. Thus there is no proof that the Rakhadi which is in Court was got prepared by Jagannath through his brother Bherulal We, therefore, agree with the arguments advanced by learned ^Amicus Curiae and do not agree with the prosecution that 'Rakhadi' in court is of Mst. Panchi. We do not agree to this point that this is the same Rakhadi which was worn by Mst. Panchi on the night of

occurrence and this was the same Rakhadi which was snatched away by the dacoits. The identification of Rakhadi before Sarpanch by these witnesses is of no value. On the basis of such identification and the contradictory statement of the witnesses the conviction of the accused persons is not legal.

21. The accused Chatra in his statement Under Section 313 Cr. P.C. has stated that the Rakhadi which was recovered from his possession is his own and he got it prepared from Sunar Ratan Lal of Baran. To support this contention, he has examined Ratan Lal as D.W. 1. We have gone through tin- statement of Ratanlal D.W. 1. He has stated that he does business of preparing ornaments. He can identify the ornament prepared by him. After seeing Rakhadi Article 2, he has stated that this was prepared by him and accused Chatra got it prepared. In the cross-examination he has stated that he used to keep Bahi-Khatas at his shop. He makes entries in the Bahi-Khatas of the purchase and sell as well as the ornaments prepared by him. This Rakhadi was prepared by him some 15 or 16 years before but he cannot say whether he made entry about his Rakhadi in his Bahi-Khata if not. He has also stated that so many customers got prepared Rakhadi from him. He could not give the names of persons who got prepared the Rakhadi from him but he can do so after seeing their faces. He has admitted such type of Rakhadi Article 2 could be prepared by other Sunars also. He has stated that accused Chatra told him some 4 or 5 years before that his Rakhadi has been stolen. He then in the next breath stated that Chatra told like this some 2 (sic)o. 3 years before. He has also stated that Chatra gave him some ornament and from that he prepared this Rakhadi.

22. We have gone through this statement and we are of the opinion that this witness is most unerliable one. Chatra accused as has not stated that he got prepared this Rakhadi. He has not stated that his Rakhadi was stolen-away by some-body. He has also not stated that he got prepared this Rakhadi by giving some ornament. Hence such type of statement as deposed by Ratanlal D.W. 1 carries no value and weight. Such witness be procured at any time. There is no report from Chatra on record about the theft. Article 2 is being prepared by other Sunars also. There is no particular identification mark on this Rakhadi Article 2 of witness Ratanlal D.W. 1, by which he identified that it was prepared by him. Thus

the statement of Ratan Lal is roost unreliable and we do not agree with the contention of accused Chatra that Rakhadi Article 2 which was recovered from his possession belonged to him.

23. The accused Gordhan while in custody gave an information to the police that he gave one Rakhadi to accused Chatra which he could get recovered. On the basis of this information, the accused Chatra who was in custody was interrogated and on the basis of the information of Gordhan, Rakhadi was recovered from Chatra, We have held above that this Rakhadi Article 2 does not belong to Chatra. Accused Gordhan did not claim it to be his own. So Gordhan who gave this Rakhadi to Chatra is certainly some stolen property. Who is the owner of this Rakhadi has not been established. It is not clear from where Gordhan received this Rakhadi. So as the accused Chatra failed to prove that Rakhadi Article 2 belongs to him and we also do not agree that he is the owner of this Rakhadi, it is ordered that the Rakhadi. Article 2 be confiscated to the State.

24. The conviction of the accused persons is based on their identification and also on the identification of Rakhadi Article 2.

25. As discussed above, we hold that both identifications i.e. of the accused persons as well as of Rakhadi Article 2 has no value. It is unbelievable and no reliance can be placed on that. The conviction of the accused persons based on the basis of these identifications by learned Addl. Sessions Judge is bad in law and cannot be sustained.

26. As a result of the above discussion, we are of the opinion that the conviction of the accused persons is illegal. The prosecution has failed to prove the case against them.

27. Both appeals are, therefore, accepted. The judgment of learned Addl. Sessions Judge is set aside.

28. As a result, both appeals (DB Criminal Appeal No. 116/1980, Nar Singh v. State of Rajasthan) and D.B. Criminal Appeal No. 57/1980 Gordhan v. State of Rajasthan) are accepted. The accused persons Narsingh, Deolal, Tulshi Ram,

Gordhan, Chatra, Ramcharan are acquitted from the offence under Section 396-397 IPC. The appeal of accused Malkhan has abated as he has expired. Their conviction and sentence awarded by learned Addl. Sessions Judge is set-aside. The accused persons are in jail, they be released forthwith, if not needed in other case. The Article 2, Rakhadi is confiscated to the State.

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