

**Gopal Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-07-2008

**Reported in :** 2008CriLJ3272; RLW2008(3)Raj2058

**Judge :** Shiv Kumar Sharma and; Mahesh Chandra Sharma, JJ.

**Appellant :** Gopal Singh

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

**Shiv Kumar Sharma and Mahesh Chandra Sharma, JJ.**

1. Flood of troubles entered the house of Ram Dayal in the odd hours of night of February 10, 2002 while he was sleeping with his family members. Dacoits with mask on, broke open the gate, killed Ram Dayal, gave beating to women and snatched their ornaments. As many as nine accused including appellant Gopal Singh were nabbed for the said dacoity and put to trial before learned Sessions Judge Karauli. Learned Judge vide judgment dated July 14, 2006 while acquitting co-accused persons, convicted and sentenced appellant Gopal Singh as under:

Under Section 396 IPC:

To suffer imprisonment for life and fine of Rs. 7000/-, in default to further suffer rigorous imprisonment for one year.Under Section 458 IPC:

To suffer rigorous imprisonment for five years and fine of Rs. 1000/-, in default to further suffer rigorous imprisonment for one month.Under Section 459 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs. 2000/-, in default to further suffer rigorous imprisonment for three months.Under Section 395/397 IPC:To suffer rigorous imprisonment for ten years ,and fine of Rs. 5000/-, in default to further suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. The prosecution story runs as under:- On February 10, 2002 at -6.15 AM informant Sonu (Pw. 1) handed over a written report (Ex.P-1) at Police Station Man-draval to the effect that around 2.30 AM in the preceding night while he was sleeping in the room along with his brothers and sisters, he suddenly woke up by the noise of shutter of his room. He saw Gopal Singh (appellant), who inflicted knife blow just below his left eye. Gopal Singh snatched earrings and nose-pins and inflicted knife blows on the person of his sisters Asha and Rubi. Thereafter Gopal Singh went upstairs where 5-6 miscreants were already there. They gagged the mouth of his uncle Ramdayal and squeezed his neck as a result of which he died. On that report a case was registered under Section 460 IPC and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Karauli. Charges under Sections 458, 359, 395, 396 and 397 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 26 witnesses. In the explanation under Section 313 Cr.P.C., the appellant claimed innocence. Three witnesses in support of defence were examined. Learned trial Judge on hearing final submissions while granting benefit of doubt to co-accused persons, convicted and sentenced the appellant as indicated herein above.

3. Death of Ramdayal was undeniably homicidal in nature. As per Post Mortem report (Ex.P-41) following ante mortem injuries were found on the dead body:

1. Ligature mark size 13cm x 1.5cm site mark extend from anterior border of Rt. hapyzious muscle to Middle part of Rt. neck. Post mortem finding subcutaneous hematoma found under ligature mark.

2. Bruise 6cm x 2 cm on antero medial aspect of Lt. forearm just above the wrist joint.

3. Multiple abrasions over the medial middle malulous.

In the opinion of Dr. Khemraj Banshiwal (Pw.22) the cause of death was asphyxia due to strangulation.

4. Super structure of prosecution case is founded on the eye witness account of Sonu (Pw. 1), Asha (Pw.4), Rubi (Pw. 5), Dipo (Pw. 8) and Lokesh @ Banti (Pw. 7). All of them had sustained injuries at the time of incident and the prosecution has placed on record their injury reports (Ex.P-3, Ex.P-8, Ex.P-9, Ex. P. 18 and (Ex.P-43). Dr. Ramesh Chand Sharma (Pw. 11) Dr. Shri Ram Meena (Pw. 12), Dr. Preetam Chand Gupta (Pw. 13) and Dr. Khem Raj Banshiwal (Pw.22) proved medical and post mortem reports whereas Bhagwan Sahai (Pw. 14) and Sahab Singh (Pw. 26) were examined as witnesses of investigation.

5. We have given our anxious consideration to the submissions advanced before us and with the assistance of learned Counsel, scanned the evidence on record.

6. Informant Sonu (Pw. 1), supporting the contents of FIR, deposed that on February 9, 2002 around 2-2.30 AM while he was sleeping in the room along with his brothers and sisters, he suddenly woke up by the noise of shutter of his room and saw Gopal Singh. He climbed on his chest and threatened him not to raise alarm. Gopal Singh inflicted knife blow just below his left eye and snatched earrings and nose-pins from the person of his sisters Asha and Rubi after inflicting knife blows. Thereafter Gopal Singh went upstairs where five six miscreants were already there. The miscreants gagged the mouth of his uncle Ramdayal and gagged his, neck as a result of which he died. Lokesh (Pw. 7) stated that on

February 9, 2002 he and his mother were sleeping in one room whereas his father Ram Dayal was sleeping in another room. Hearing noises when he woke up he saw 7-8 persons beating his father and mother. One person armed with iron rod made attempt to inflict iron rod on him but he caught hold of that person as a result of which Dhata (Mask) got removed. He was Gopal. Gopal gave blow with iron rod on his face and right hand. Gopal and other persons snatched golden ornaments from the person of his mother. It was Gopal who killed his father. In his cross examination Lokesh deposed thus:

Eksjk MkDVjh eqvk;uk djkSyh vLirky esa 9-35 ij gqvk Fkk A MkDVj us eqls iwNk Fkk fd vkidks pksV fdlls vk;h A eSus MkDVj dks bu pksVks dh fgLVh es crk;k Fkk fd esjs firKth dks xksiky flag us eQyj ls xyk nck dj ekjk Fkk A vkSj eSus xksiky flag ds eqag dk kVv [kksy fn;k Fkk A

Statement of Lokesh gets corroboration from the testimony of Dipu (Pw.6), mother of Lokesh, who stated as under:

tkS O;fDr esjs ifr jken;ky dk eQyj ls xyk nck jgs Fks muesa ls ,d us esjs csVs cUVh ij lfj;s ls okj fd;k] rks ml O;fDr dk kVv [kqy x;k] fQj geus ml O;fDr dks igpku fy;k tks xksiky flag gkftj vnkyr eqyfte gS A

7. It is contended by learned Counsel for the appellant that in the facts and circumstances of the case it was incumbent on the investigating officer to conduct test identification parade. Not holding of test identification parade was a serious lapse and it is fatal to the prosecution case.

8. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court as is observed by the Apex Court in *Munshi Singh Gautam v. State of M.P.* (2005) 9 SC 631 : RLW 2005(2) SC 209, as under:

It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identify of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the

statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court.

9. Next contention of learned Counsel is that since there was no reference of source of light in the FIR, possibility that the appellant was not seen by the victims could not be ruled out and benefit of doubt goes to the appellant. We find no merit in this submission. In *S. Sudershan Reddy v. State of A.P.* : 2006 CriLJ4033 , the Apex Court observed as under:. Non mention in the FIR about the source of light is really non consequential. It is well settled that the FIR is not an encyclopedia of the facts concerning the crime merely because the minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that the minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging the FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR. Therefore merely absence of indication about the source of light does not in any way affect the prosecution version....

10. In *Nathuni Yadav v. State of Bihar* (1998) SCC 238, the Apex Court observed that lack of moonlight or artificial light does not per se preclude identification of the assailants. It was indicated thus:

Even assuming that there was no moon light then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eye witnesses being well acquainted with physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who are sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focused their eyes on the faces of the intruders standing in front of them. What is sauce for the goose is sauce for the gander.

11. Having closely scanned the testimony of injured eye witnesses we find that there was enough visibility at the place of occurrence and in that visibility the assailants could see the ornaments on the person of Dipo, Asha and Rubi. At the time of incident the witnesses had just not a fleeting glimpse of appellant but they had occasion to watch the activities of appellant, who was not a total stranger for them.

12. On behalf of appellant plea of alibi was raised to show that appellant was not present at the place of occurrence. In support of this plea Thanedar Singh @ Dhanno Singh (Dw.3) was examined. Thanedar Singh stated that on February 9, 2002 from 8 PM till 12 noon of February 10, 2002 Gopal Singh was with him at his field. In his cross examination Thanedar Singh admitted that village Mandrayal was less than one kilometer away from his field. This fact goes to show that even if appellant was present from 8 PM on February 9, at the field of Thanedar Singh, he could reach to house of deceased at 2 AM of February 10, leaving behind

Thanedar Singh sleeping in the field. We thus find that even the statement of Thanedar Singh does not provide any assistance to the appellant.

13. The Latin word 'alibi' means 'elsewhere' and this word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it was extremely impossible that he would have participated in the crime. Alibi is not an exception envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue, are relevant. Illustration (A) given under the provision is worth reproducing in this context:

The question is whether 'A' committed crime at Calcutta on a certain date, the fact that on that date, 'A' was at Lahore is relevant.

The burden is on the accused to show that he was somewhere else other than the place of occurrence at the time of the incident. The accused has to establish his plea of alibi by positive evidence. The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reasons of his presence at another place. The plea can succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. It follows, therefore, that strict proof is required for establishing the plea of alibi, which is lacking in the instant case.

14. In so far as discrepancies pointed out by learned Counsel for the appellant in the testimony of eye witnesses are concerned, they do not go to the root of the matter and shake the basic version of witnesses, therefore cannot be annexed with undue importance. Contradictions and embellishments noticed by us in the testimony of the prosecution witnesses are neither glaring nor serious. The evidence adduced against the appellant, in our opinion, is worthy of acceptance. The prosecution is able to establish charges against the appellant beyond reasonable doubt.

For these reasons, we find no merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence of the appellant under sections 458,

459, 395/397 and 396 IPC are maintained.

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