

Sunil and ors. Etc. Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/771764

Court : Rajasthan

Decided On : Jan-11-2001

Reported in : 2001CriLJ3063

Judge : N.N. Mathur and; D.N. Joshi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8; Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302, 323, 324, 325, 342, 395, 396, 397, 449, 458 and 460

Appeal No. : Criminal Appeal No. 273 of 1996 and Cri. Jail Appeal No. 292 of 1996

Appellant : Sunil and ors. Etc.

Respondent : State of Rajasthan

Advocate for Def. : A.R. Nikub, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh and; Suresh Kumbha, Adv.

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. Appellants Sunil Sindhi, Lokendra Singh both residents of Delhi Mahesh resident of Muradabad in D.B. Cr. Appeal No. 273/96 and Sunil Gupta in D.B. Cr. Jail Appeal No. 292/96 were charged and put to trial for committing dacoity along with one Joraram alias Vinod in the intervening night of 2nd and 3rd July of 1993 in the house of PW-4 Satidan Singh in village Arang District Banner and in the course of dacoity committed the murder of Nag Singh.

The Additional Sessions Judge, Banner convicted and sentenced the appellants as follows :-

302 /149 IPC Sentenced to imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo one year's simple imprisonment.

395/149 IPC Sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo one year's simple imprisonment.

396/149 IPC Sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo one year's simple imprisonment.

460/149 IPC Sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo one year's simple imprisonment.

325/149 IPC Sentenced to 7 years rigorous imprisonment and to pay a fine of Rs. 1,000/- and in default of payment of fine to further undergo one month's simple imprisonment.

324/149 IPC Sentenced to 3 years rigorous imprisonment and to pay a fine of Rs. 1,000/- and in default of payment of fine to further undergo one month's simple imprisonment.

323/149 IPC Sentenced to 1 years rigorous imprisonment and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo 15 days simple

imprisonment.

342/149 IPC Sentenced to 6 months rigorous imprisonment and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo 15 days simple imprisonment.

458/149 IPC Sentenced to 10 years rigorous imprisonment and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo six months simple imprisonment.

449/149 IPC Sentenced to 5 years rigorous imprisonment and to pay a fine of Rs. 1,500/- and in default of payment of fine to further undergo three months simple imprisonment.

148/149 IPC Sentenced to 3 years rigorous imprisonment and to pay a fine of Rs. 1,000/- and in default of payment of fine to further undergo one month's simple imprisonment.

2. All the sentences have been ordered to run concurrently. It is also ordered that out of the recovery amount of Rs. 1,90,000/- a sum of Rs. 1,00,000/- shall be paid to the legal representatives of deceased Nag Singh. Rs. 10,000/- each shall be paid to Satidan Singh, Bhag Singh, Hanwant Singh, Sawai Singh, Dhapu and Gwari as a compensation for the injuries sustained by them.

3. The prosecution case is that in the intervening night of 2nd and 3rd July of 1993 the dacoity with murder took place in the house of PW-4 Satidan Singh aged 70 years in village Arang near village Rajmathia, Tehsil Shiv District Banner. The FIR (Exhibit P-9) was lodged by PW-7 Bhag Singh at Police Station, Shiv, stating inter alia that he was sleeping at the western corner of the Dhani and his father PW-4 Satidan Singh was sleeping in front of the Dhani in the compound. His mother PW-3 Smt. Gwari aged 60 years, wife PW-1 Dhapu, brother PW-8 Hari Singh, his deceased brother Nag Singh and son PW-2 Sawai Singh were sleeping inside the dhani. He was awoken on a lathi being struck on his leg by somebody. On opening the eyes, he found three persons standing near the cot. Sooner he tried to get up one of the miscreant gave a sword blow which was warded off by him

causing injuries on his thumb. The another miscreant sat on his chest and pushed cotton in his mouth. The eyes were fastened by a piece of cloth. He was tied by a rope. Thereafter, all the three miscreants having tied him with the cot placed before the rear side of the dhani. He was also given a threat of life in case of making any effort to get up. Thereafter, all the miscreants entered in the dhani and looted the property. They stayed there for about 1.30 hours. After their departure his son Sawai Singh came close to him and untied his ropes, He went inside the dhani and bound Hanwant Singh and Nag Singh lying unconscious. The other persons i.e., Satidan Singh, Gwari and Dhapu were locked in a room, He broke the lock and brought them out. He found his mother Gwari lying unconscious. He was told by his wife that in total Si persons came armed with swords, iron rods, lathis and knives. They had covered their faces by cloth, however, their eyes were open. Thereafter, he went to the Dhani of Mangal Singh. There he met with Kheem Singh and Anop Singh. He narrated the incident to them and asked them to take care of the members of his family at the dhani. Thereafter, he went to the dhani of Inder Singh. He returned to the house and prepared the list of articles missing. Kheem Singh brought the cart and took the injured persons to the hospital. However, till then Nag Singh had succumbed to the injuries. He also stated that though two accused persons had covered the faces but he could still identify them. On this information police registered a case under Sections 395, 396, 397, 302, 460, 324 and 149, IPC and proceeded with the investigation. The police prepared the inquest and send the dead body of Nag Singh for post-mortem. All the accused persons except Jor Singh alias Vinod were arrested. In spite of best efforts, Jor Singh could not be arrested. As such the charge-sheet was laid against the four accused persons.

4. All the accused persons denied the charges levelled against them and claimed trial. The prosecution in support of the case examined 36 witnesses and produced number of documents. The appellants in their statement under Section 313, Cr.P.C. denied the correctness of the prosecution evidence appearing against them. The appellant took the plea of alibi. In support of defence, they examined DW-1 Sumer Chand and DW 2 Omi Seni. The prosecution examined PW 1 Smt. Dhapu, PW-2 Sawai Singh, PW-3 Smt. Gwari, PW-4 Satidan Singh, PW-7 Bhag Singh and PW-8 Hanwant Singh all the members of family to establish that a

dacoity took place in the intervening night of 2nd and 3rd July, 1993 in their house and it was committed by the appellants. PW-3 Smt. Gwari and PW-7 Bhag Singh correctly identified all the four accused persons in the Court preceded by identification in the proceedings held before PW-35 Brijesh Purohit and PW-33 Omi Purohit. The prosecution also examined PW-15 Ladu Khan and PW-26 Papu to show that all the four appellants and one more person were seen in the area just after the incident. All the four appellants have been identified by the said witnesses. The prosecution also examined PW-9 Babudan, PW-10 Chainaram, PW-17 Gulam Rasul, PW-18 Hanif and PW-19 Baludan to further show the presence of the appellants with one more person in the area after the incident. The prosecution has also produced evidence to establish other incriminating circumstances against the appellants. The prosecution examined PW-25 Dr. Alkendra Mohan Singh and PW-28 Dr. M.M. Purohito to show that Nag Singh died of homicidal death and the other witnesses namely Satidan Singh, Bhag Singh, Hanwant Singh, Sawai Singh, Gwari and Dhapu sustained injuries. Analysing the evidence on record, the trial Court found the accused persons guilty and as such convicted and sentenced each of them as noticed above.

5. Assailing the conviction Mr. Doonger Singh, learned counsel for the appellants contended that the evidence of the identification cannot be relied upon as it has been admitted by the prosecution witnesses that the accused persons were muffled face. He has also described identification proceedings as farce. He has also criticized the evidence of recovery. It is submitted that as far as the appellant Mahesh is concerned, there is no evidence of recovery except that of the shoes, it cannot be said to be incriminating. As regards appellant Sunil Sindhi, it is submitted that there is no blood on the pant and shirt alleged to have been recovered from him. Regarding Lokendra Singh, it is submitted that the evidence of recovery of two ornaments namely pair of 'Timaniya' and Murky cannot be relied upon for the reason that they were straightway produced in the Court from the possession of the prosecution witnesses. In alternative, it is also submitted that in absence of finding that there was fifth man, the trial Court has committed error in convicting the appellants for various offences with aid of 149, IPC. On the other hand, learned Public Prosecutor supported the judgment of the trial Court.

6. We have scanned, scrutinised and analysed the prosecution evidence carefully and also considered the rival contentions. PW-1 Smt. Dhapu w/o Shri Bhag Singh stated that hearing the out cry of her father-in-law, she wake up and found that some miscreants were threatening her father-in-law. They proceeded towards her. She pushed them and ran towards dhani of neighbours and called them. One of the miscreants caught and slapped her. She was brought inside the dhani. She was pushed in a room along with her father-in-law, her son and Nag Singh. Her mother-in-law was taken out and the room was. locked. Mother-in-law was taken to a room in which ornaments were lying. Her mother-in-law was forced to disclose the place of treasure. Three miscreants opened the boxes and one remain standing outside with sword in hand. She further stated that three persons had caught her mother-in-law with torch in hand and another person was on guard. She also stated that Nag Singh was killed on the spot. After collecting the entire treasure, they asked her mother-in-law to disclose the hidden place of golden dangi. Thereafter, they brought Hanwant Singh and threatened that there is still some breath in him, if she wants to save him she should disclose the place of further treasure otherwise he would be killed. On this, her mother-in-law disclosed everything and asked them to collect the entire treasure and leave her son. After collecting the entire treasure, she along with other persons was brought to the room in which they were locked and they were relocked in another one. Thereafter, they brought Hanwant Singh. He was tied with ropes. They also took out 'karas' from the legs of her mother-in-law with the help of a weapon known as 'halbani'. After their departure, she along with her mother-in-law opened the lock and took out the other members of the family. Her husband was untied, cotton was taken out from his mouth. Hearing the commotion, 10-15 persons from nearby dhanis collected. She also gave the details of the looted articles as :-

^tks vkneh gekjs ;gka vk, osgekjs ?kj ls <+kbZ fdyks pkanh] 120 rksyk yaxj] 40 rksyk lkVh] 42 rksyk ctcy]nks ux esjs ikao ds 40 rksyk] 15 rksyk danksjk o dkty dh MCch] 6 rksyk esjsikaoksa dh foNqMh] nks esjs gkFk dh vaxqfB;ka] nks esjs gkFk ds xtfj;ka] ,d esjkcksfj;ka rksys dk] rksys ds lksus ds dkuksa ds] MsV+ rksyk daBhs lksus dh] 6rksyks dk fref.k;k] nks ukd dh ykaxks dh tksMh] lksus dh] rhu rksyks ds >wejikap eqjfd;ksa dh tksfM+;ka lksus dh] rhu rksyks ds >wej ikap eqjfd;ks;a dhtksfM+;ka lksus dh] ,d uo vkuh Hkj yksaxks dh tksMh rhu rksys VksVs]

cksfj;kalksus ds] 22 rksyk esjs lklq ds vkaoyk] 25 rksyk Maxh lksus dh] 200 :i;s pkanhds] 9 rksys tatfj;k cPpks ds] 20 rksyk esjh cPph ds pkanh dh pSu] nks rksyklksus ds Qwy vkfn lkeku ys x;s A**

7. She also stated that it was not possible for her to identify the accused persons as after she was being slapped, there was a darkness in front of her eyes. In the cross-examination, she admitted that only one person was muffled face and others had not covered their faces.

8. PW-2 Sawai Singh s/o Bhag Singh has stated that on the date of incident five persons had entered in the house and committed daeoity. He also stated that it was not possible to identify the accused persons. He also stated that he had sustained sword blow.

9. PW-3 Smt. Gwari w/o Satidan Singh and the mother of PW-7 Bhag Singh has stated that five miscreants had entered in the house. Hearing the out cry of her husband, her daughter-in-law got up and run outside the house. She was slapped by one of the miscreants and then she was brought inside. Her son Hanwanta and Nag Singh grappled with the accused persons. Nag Singh was killed by them. Hanwanta also sustained serious injuries. She along with her grandson was pushed in a room. The accused persons took out the earrings from the ears of her husband. Thereafter, they took out the earrings from the ears of Nag Singh. They also snatched a golden kanthi from her neck. They also looted the property from the body of her daughter-in-law. All the members of the family were locked into a room and she was taken outside. In the flash of torch they broke the locks of the boxes with the help of kulhari. They took out the ornaments from the boxes. She has given the details of the ornaments. Hanwant Singh was also brought before her. She was threatened to disclose more treasure. After their departure, the ropes of Bhag Singh were untied. Bhag Singh broke open the lock of the room. Her husband and Bhag Singh were taken to the Shiv. She identified all the four accused persons. She further stated that fifth person was Jora s/o her elder brother-in-law. In the cross-examination she admitted that one of the miscreants was muffled face. However, she stated that all the accused persons were not muffled face. She also stated that she was not aware which person was muffled

face. Thereafter, she stated that she could identify Jora by his voice. She also stated that she had identified the accused persons in identification proceedings in jail. She further stated that Jora was brought up in the village but later on he settled in Delhi.

10. PW-4 Satidan Singh gave statement almost in the line of FW-3 Smt. Gwari. PW-7 Bhag Singh has repeated what he has stated in the FIR.

11. PW-25 Dr. Alkendra Mohan Singh has stated that on 3rd of July, 1993 he examined Satidan Singh and prepared the injury report (Exhibit P-19). On his person, he found two injuries simple in nature caused by blunt edged weapon. He also examined Bhag Singh and noticed three injuries. All the injuries were simple in nature caused by blunt object. He has proved injury report (Exhibit P-20).

12. PW-28 Dr. M.M. Purohit has stated that he has examined Hanwant Singh and noticed eight injuries. Except injury No. 5 which was a fracture on the head, all the injuries were simple in nature caused by blunt object. He has proved the injury report (Exhibit P-23). He has also proved the Ex-ray report (Exhibit P-24). He further stated that he examined Sawai Singh and noticed two injuries. Both the injun were simple in nature caused by sharp edged weapon. He has proved injury report (Exhibit P-25). He also examined Smt. Gwari and found two injuries. Both the injuries were simple in nature caused by sharp-edged weapon. He has proved the injury report (Exhibit P-26). On the person, of Smt. Dhapu, he noticed three injuries. All the injuries were simple in nature caused by blunt object. He has proved the injury report (Exhibit P-27).

13. PW-29 Dr. Mohanlal Morya has stated that on 3rd of July, 1993 he conducted the post-mortem of the dead body of Nag Singh aged 22 years. He found two injuries on his person caused by sharp-edged weapon. He also stated that dimension of the injuries cannot be given as all the intestines had come out. He further stated that damage was caused to the intestines. The injuries were caused by a sharp-edged weapon. They were anti-mortem in nature. He further stated that cause of death was serious injury on head and cutting of intestines. He has proved the post-mortem report (Exhibit P-28).

14. Thus from the evidence of PW-1 Smt. Dhapu, PW-2 Sawai Singh, PW-3 Smt. Gwari, PW-4 Satidan Singh, PW-7 Bhag Singh and PW-8 Hanwant Singh it is established beyond doubt that a dacoity had taken place in the intervening night of 2nd and 3rd of July, 1993 in the house of PW-4 Satidan Singh. The statements of these witnesses find cor-roboration from the medical evidence of PW-25 Dr. Alkendra Mohan Singh and PW-28 Dr. M.M. Purohit. The witnesses sustained injuries in the said incident and Nag Singh died of homicidal death in course of dacoity has also been firmly established. The prosecution right from the lodging of FIR is consistent that the dacoity was committed by five persons.

15. It is contended by Mr. Doongar Singh, learned counsel for the appellants that introduction of Jor Singh alias Vinod Bhatia is nothing but an imagination of police. It is submitted that the participation of Jora Singh alias Vinod has been introduced only to implicate the four appellants. It is also stated that no person named .Jora Singh alias Vinod has been arrested. It is urged that the conviction of the appellant for various offences with add of Section 149, IPC and the offences of dacoity is not sustainable as the prosecution has failed to establish the participation of the fifth appellant. On thoughtful consideration, we are unable to agree with the learned counsel. In the FIR itself, it is stated that a dacoity has been committed by five persons. PW 1 Smt. Dhapu has stated. [^]rhu vknfe;ksa us vUnj rkys [kksys] ,d vknehus csVjh idM+ j[kh Fkh vksj esjh lklq dks idM+ dj j[kk Fkk vkSj dgk fd /ku crk],d vkneh igjk ns jgk Fkk A**

This clearly shows that there were five persons in the dacoity. PW-2 Sawai Singh has stated [^]ge lks;s gq, Fks rc ikap vkneh vk;s Fks A**

PW-3 Smt. Gwari has stated rc ikap vkneh vk, tks ejs ifr dks ekjihV /kksnsfn, A

She has further stated [^]ml le; tks ikap vkneh vk, Fks] ftues pkj vktgkftj vnkyr gS ftudks eSa ifgpkurh gwW A mu ikapksa vknfe;ksa esa tksjk Hkh 'kkfeyFkk tks esjk tsB dk yM+dk gS] vksj ogha bu lcdks 'kkfey djds yk;k A**

PW-4 Satidan Singh has stated [^]jkr esa ikap vkneh vk, vkSj vkrs gh esjs lkFkryokjksa o lfj;ksa ls ekjihV 'kq: dh A**

PW-7 Bhag Singh has stated ^esjh vkSjr /kkiw us eq>s crk;k fd vius ?kjkap vkneh vk, Fks] mUgksaus ywVekj djds /kueky lc ys x;sA**

There is also evidence of PW-9 Babudan, PW-10 Chainram, PW-15 Ladu Khan, PW-17 Gulam Rasul, PW-18 Hanif and PW-26 Papu to show that four appellants and one more person was seen moving around the village Arang at different places of Shergarh Tehsil. The four appellants have been charged that they committed the dacoity and murder along with one more person, in total five. Thus, simply because one of the accused has not been arrested it cannot be said that the alleged crime was not committed by less than five persons. Accordingly, the contention raised by the learned counsel for the appellants is rejected.

16. As regards, the participation of appellants in incident of dacoity and murder, the prosecution has examined two sets of witnesses. The first set of witnesses consisted of PW-1 Smt. Dhapu, PW-2 Sawai Singh, PW-3 Smt. Gwari, PW-4 Satidan Singh, PW-7 Bhag Singh and PW-8 Hanwant Singh who have identified the accused persons having participated in the actual crime. The second set of witnesses is of PW-15 Ladu Khan, PW-26 Papu, PW-9 Babudan, PW-10 Chainaram, PW-17 Gulam Rasul, PW-18 Hanif and PW-19 Baludan who have stated that the appellants were seen in the area after the incident.

17. Out of the eight witnesses of the incident, PW-3 Smt. Gwari and PW-7 Bhag Singh have remained firm and identified the appellants in Court as well as in identification parade. PW-35 Brijesh Purohit has stated that on 17-8-1993, he was Additional Judicial Magistrate No. 2 at Barmer. He has received a letter from the Chief Judicial Magistrate, Barmer that the SHO, Police Station, Shiv has submitted an application before the CJM, Barmer for arranging the identification parade in Criminal case No. 61/93, on which he issued a summon to the witnesses for their appearance on 25-8-1993. He has also issued instruction for Jailer for making necessary arrangement for holding identification parade. He has proved identification memo (Exhibit P-51) wherein PW-3 Smt. Gwari identified appellant Sunil Sindhi, Sunil Gupta and Mahesh. He has also proved identification memo (Exhibit P-52) whereby PW-7 Bhag Singh identified all the three appellants i.e., Sunil Sindhi, Mukesh Kumar and Sunil Gupta. PW-33 Omi Purohit has stated that

on 7-1-1994 he was Additional Civil Judge, Jr. Division and Judicial Magistrate, 1st Class, Barmer. On the said day in Cr. Case No. 61/93, the SHO, Police Station, Shiv submitted an application (Exhibit P-31) for arranging the identification parade for the appellant Lokendra Singh. He accordingly issued summons to the witnesses for appearing in the identification parade. Therefore, he issued summons to the witnesses for their appearance on 20-1-1994. PW-7 Bhag Singh identified appellant Lokendra Singh vide Exhibit P-35. PW-3 Smt. Gwari also identified the appellant vide identification memo (Exhibit P-36). He also stated that he took the necessary precautions for the correct and faithful identification parade. Both the witnesses i.e., PW-3 Smt. Gwari and PW-7 Bhag Singh identified four appellants Sunil Sindhi, Sunil Gupta, Mahesh Kumar and Lokendra in the Court.

18. As regards the second set of evidence is concerned, PW-9 Babudan has stated that he runs a hotel in village Bhikhodai on the Pokharan road. In the morning at about 8.00 a.m. five persons came from the side of Rajmathai road. The jeep of Mathur Khan was parked outside his hotel. Papu was driver on the said jeep. All the five persons were requesting Papu to drop them at Falsund as they missed the bus. Thereafter, Papu proceeded to drop all the live persons at Falsund. He further stated that in the evening at about 5.00 police and some persons arrived and inquired about the live persons. They told the police officials that five persons were seen in the jeep of Mathur Khan. He has identified all the four accused appellants in the Court. He has also stated that at the time of arriving of jeep of Mathur Khan Chainaram was also sitting in his hotel. The next witness PW-10 Chainaram has given the statement almost in the line of PW-9 Babudan. He could not identify the accused persons present in the Court. He expressed suspicion on Lokendra Singh as one of the person among five. PW-15 Ladu Khan has stated that in the morning when he was at Falsund circle, five persons arrived and they inquired about the jeep parked outside the hotel of Jetharam. They wanted to hire a jeep for going to Shergarh. He took all the five persons in the jeep to Shergarh from where they boarded a local bus for going to Jodhpur. He has also stated that out of five persons four persons were present in Court. When he returned to Falsund, the police inquired about the five miscreants. PW-26 Papu has stated that he was the driver of the jeep of Mathur Khan bearing No. RJ-

19/T0048. He has given the statement almost in the line of PW-9 Babudan. He has also stated that he had taken five persons in the jeep and dropped them at Falsund. He has identified all the four appellants in the Court. The identification of all the four accused persons by PW-15 Ladu Khan and PW-26 Papu is preceded by identification parade. PW-35 Brijesh Purohit has stated that Ladu Khan identified Sunil Sindhi, Sunil Gupta and Mahesh vide identification parade memo (Exhibit P-49). Similarly, PW-19 Baludan identified all the three appellants vide Exhibit P-50 and similarly, PW-26 Papu identified all the three appellants vide Exhibit P-53. PW-33 Omi Purohiths has proved the identification memo (Exhibit P-38 and P-39) wherein appellant Lokendra was identified by PW-26 Papu and PW-15 Ladu Khan respectively.

19. PW-17 Gulam Rasul has stated that his jeep was hired by five persons at the Pokharan Taxi Stand or going to Rajmathai. He took five persons and dropped them at Bhikhodai as it was not possible (to drive the jeep up to Rajmathai. He has identified all the three appellants Sunil Sindhi, Sunil Gupta and Mahesh. He has proved the identification memo (Exhibit P-48) whereby Gulam Rasul identified all the three appellants. Similarly, PW-18 Hanif and PW-19 Baludan has identified vide Exhibit P-50. PW-33 Omi Purohit has stated that appellant Lokendra Singh was identified by Hanif Khan vide Exhibit P-39 and PW, 7 Gulam Rasul vide Exhibit P-49.

20. PW-34 Sudhir Prakash has stated that on 25-8-1993 to 20-1-1994 he was Jailer at section, Barmer. He has stated that identification proceedings had taken place in jail in his presence. He has given the details of the identification proceedings. He has also proved his signatures on all the document pertaining to identification.

21. The principal contention of the learned counsel for the appellants is that PW-3 Smt. Gwari and PW-7 Bhag Singh could not have identified the four appellants as per their own saying and particularly the statement in the FIR that the miscreants were muffled face. We find no substance in the contention. PW-3 Smt. Gwari has categorically stated that out of five only one had covered his face. She has also stated that four appellants had not covered their faces. She has also stated that

she could identify Jora by voice. This shows that since Jora was known to the victim family he had covered his face to conceal his identity. This is the reason that Smt. Gwari could identify Jora by voice. Thus, rest of the four accused persons had not covered their faces. Thus, the prosecution has succeeded in establishing firmly the identity of all the four accused persons and their participation in the dacoity which took place in the intervening night of 2nd and 3rd of July, 1993 at the house of PW-4 Satidan Singh. It is not in dispute that none of the appellants are resident of Barmer. These persons were seen near the village Arang before and after the incident. They have not explained the reason of their presence in Barmer District more particularly when they belong to Delhi. The presence of appellants, before and after the incident in the Barmer District i.e., in the vicinity of the village in which the dacoity took place is relevant and admissible under Section 8 of the Evidence Act. This corroborates the evidence of identification showing the presence and participation of appellants in the dacoity and murder.

22. It is further contended that there is a delay in arranging the identification parade and as such the possibility of witnesses seeing the appellants cannot be ruled out. It is urged that in view of the delay in arranging the identification, the evidence of the identification parade deserves to be rejected. It is pointed out that Sunil Sindhi was arrested on 24-7-1993 vide Exhibit P-61 but the identification parade was arranged as late as on 25-8-1993. Therefore, there was a delay of about one month. Similarly, Sunil Gupta was arrested on 4-8-1993 vide Exhibit P-65. There is a delay of about 20 days. Mahesh was arrested on 24-8-1993 vide Exhibit P-62. As far as, the delay is concerned, after the arrest of Sunil Sindhi on 24-7-1993, the police was busy outside the Barmer District for arresting four other accused persons. Sunil Gupta was arrested on 4-8-1993. Thereafter, again the police remained busy in arresting Mahesh and Lokendra Singh and Jora alias Vinod. However, on 15-8-1993, an application was submitted before the Chief Judicial Magistrate for arranging the identification parade. The summons were issued on 25-8-1993. Mahesh was arrested on 24-8-1993. Thus in the facts and circumstances of the case, we are of the view that the prosecution has explained the delay in arranging the identification parade. Similarly, Lokendra Singh was arrested on 22-12-1993 vide Exhibit P-71 from Delhi. And when he was brought to Banner there were winter vacation in the Court and on reopening of Court on 4-1-

1994 an application was submitted by the Investigating Officer for arranging the identification parade. The learned Magistrate issued the summons on 20-1-1994. Thus in this case also there is a delay which has been properly explained by the prosecution. Thus, this contention also does not survive and the same is rejected.

23. As regards the evidence of recovery, according to the prosecution only a pant and T-Shirt was recovered from the possession of Sunil Singhi. Admittedly, there was no blood either on the pant or the shirt. This recovery cannot be said to be an incriminating in nature. Similarly, from Sunil Gupta, there is a recovery of knife and shoes. No blood is found either on the knife or the shoes. This can also not be said to be an evidence of incriminating in nature. From Mahesh also there was a recovery of shoes but that recovery of shoes does not in anyway connect Mahesh with the alleged crime. As regards Lokendra Singh, there is an evidence of recovery of golden timaniya and murky. Investigating Officer PW-36 Sohan Singh has stated that golden timaniya and murky were recovered vide Exhibit P-30 in pursuance of the information given by the appellant Lokendra Singh vide Exhibit P-72. PW-33 Omi Purohit has stated that in Criminal case No. 61/93, identification of property was arranged. Similar articles were mixed and all necessary precautions were taken. PW-3 Smt. Gwari identified timaniya and murky vide Exhibit P-41. PW-7 Bhag Singh identified both timaniya and murky vide Exhibit P-42. It is contended by the learned counsel that evidence of identification of property cannot be relied upon because both the articles were produced in the Court from the possession of witnesses. The contention is not sustainable in view of the order of the Additional Sessions Judge dated 15-7-1994. It appears from the order dated 15-7-1994 that an application was filed on behalf of the victim complainant party that ornaments which were recovered may be delivered to them on superdagi. A copy of the application was also given to the learned counsel for the appellants. The counsel for the appellants did not objected to the delivery of the articles to (he complainants. The contentions made by the learned counsel for the appellants is extracted from the afore said order as follows :-

^eSaus i=kofydk iw.kZ :i ls voyksdu fd;k AeSausa i{kdkjksa fo}ku 3 oDrkvksa dh cgl lquh bls i'pkr~ eSa bl fu'd'kZ ijigqapk fd vfHk;qDr Jh yksdsUnz flag ds fo}ku~ vf/koDrk us viuh cgl ds nkSjkuU;k;ky; ds le{k ;g fuosnu fd;k fd ;fn bl izdj.k esa

cjkenlqnk fref.k;k vkSjeqYhZ tksM+h vxj ifjoknh dks ykSVk nh tk;s rks mUgsa fdlh izdkj dh vkifRr ughagS blfy, mi;qZDr izkFkZuk i= ij xq.kkoxq.k ij cgl lquus dh dksbZ vko'kdrk ughagksus ls ifjoknh dh rjQ ls is'k fd;k x;k izkFkZuk i= Lohdkj fd;s tkus ;ksX; g SA**

Therefore, the prosecution has succeeded in establishing the evidence of recovery only as against Lokendra Singh.

24. In view of the aforesaid discussion, in our view, the learned trial Court has rightly held all the four appellants namely Sunil Sindhi, Sunil Gupta, Mahesh and Lokendra Singh guilty for committing dacoity and murder by judgment dated 12-4-1996.

25. Consequently, we do not find merit in both the appeals being D.B. Criminal Appeal No. 273/96 and D.B. Criminal Appeal No. 292/96. Both the appeals are dismissed. Appellants are in jail. They will serve out the remaining part of their sentence.

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