

Chander Singh

Vs

The State of U. P.

Criminal Appeal No. 122 of 1969

(J. M. Shelat, I. D. Dua, H. R. Khanna JJ)

23.08.1972

JUDGMENT

SHELAT, J. -

1. This appeal, by special leave, is by Chander Singh, one of the five persons who were tried for the offence punishable under Section 396 of the Penal Code by the Civil and Sessions Judge, Hardoi. Of the five accused put up for trial before the Sessions Judge, two, Ganga Ram and Lal Singh, were acquitted, while the appellant and two others were found guilty and were convicted under Section 396 and sentenced to imprisonment for life. Their appeal before the High Court failed and was dismissed.

2. There was no dispute that on the midnight between January 19 and 20, 1966, a dacoity took place in the house of the deceased Munshi Lal in the village Bejha Basti Nagar, District Hardoi, in the course of which property belonging to Munshi Lal was looted and one of the culprits sprinkled kerosene on the person of Munshi Lal and set fire to his body. Munshi Lal died the next day as a result of severe burns while he was being removed to the District Hospital, Hardoi. The house was being used by Munshi Lal partly as a shop and partly as residence for himself and his wife Mst. Rani. While Munshi Lal was being assaulted by the culprits after they had made their forcible entry into the house for eliciting information from him as to whereabouts of valuables in the house, Munshi Lal was said to have raised an alarm which brought his nephew, wit. Mewa Ram, his son Ram Kishan and a number of neighbours near the house. These persons, however, could not intervene, nor could enter the house for fear of being beaten up by the culprits. The result was that they had to remain silent spectators watching the crime being committed. They could, however, see the culprits with the aid of light thrown by torches which three of them had, as also the light from the torches which the dacoits had and were using and by the light of dry sugar-cane leaves heaped nearby which were set on fire by one of the witnesses.

3. The first information report was lodged by Mewa Ram at 9.40 a.m., on January 20, 1966 at Shahabad Police Station, three miles away from Bejha Basti Nagar. In that report Mewa Ram named two culprits, Lajja Ram and Ganga Ram, who were known to him as being responsible for the decoity together with five or six other unknown dacoits. The report, however, stated that Mewa Ram and the witnesses had properly seen the culprits while the decoity was being carried out with the light available from the torches and the dry-sugar cane leaves which had at that time been set on fire, and therefore, would be in a position to recognize them if shown to them, especially as the culprits were at the scene of the offence for nearly half an hour. Mewa Ram also gave the names of

the neighbours who had come out as a result of the alarm raised by him and the deceased and seen the incident and its perpetrators. Two lists of property looted during the incident were furnished by Mewa Ram to the police, but none of the items taken away by the culprits was recovered. Ganga Ram and Lajja Ram, the culprits named by Mewa Ram, were arrested, on January 25, 1966. The appellant was arrested, on February 1, 1966, near the District Hospital at Hardoi. He was at once placed under a Purda and was also warned to keep his face covered as he would be put up in an identification parade shortly. He was first taken to the Kotwali Police Station, from where he was shifted the next day to the District Jail, Hardoi.

4. The prosecution examined in all 17 witnesses, out of whom four, Mewa Ram (P.W. 3), his son Ram Kishan (P.W. 4) Satish Chandra (P.W. 5) and Ram Narain (P.W. 6) claimed to be eye-witnesses. At the identification parade held by Magistrate Anand Kumar (P.W. 1), the appellant was identified by six identifying witnesses P.Ws. 4, 5 and 6 and by Gorai, Ganga Ram and Kallu. The last three were, however, not examined as witnesses.

5. The defence of the appellant, as revealed by him first in his statement before the committing Magistrate was one of denial. He alleged that he had been falsely involved in the case owing to ill-will of the witnesses and the police. He also alleged that he had a contract at Pipariaghat, which was only three furlongs away from Bejha village, and therefore, the witnesses knew and were acquainted with him. That was how, according to him, the police got him identified by the witnesses at the said parade. Before the Sessions Court, he repeated the same defence, adding that the police had shown him to witnesses before the identification parade was held and that in any event they had known him before.

6. Since the fact of dacoity was not in dispute, and in any event, was amply established, the only issue at the trial was one of identification of the culprits. As aforesaid, the Sessions Judge gave benefit of doubt to accused Ganga Ram, though named by Mewa Ram in the first information report and known to the other witnesses as well and who had deposed that he was one of the decoits, and also to accused Lal Singh, although he had been identified from the parade by as many as eight out of ten persons who figured as witnesses thereat. One of the arguments urged on behalf of the appellant in the High Court and repeated before us also was that it was that if the Sessions Judge refused to act on the identification of Lal Singh although he had been picked out from the parade by as many as eight witnesses, the same also ought to have been done in the case of the appellant as he was identified in the parade by a lesser number of identifying witnesses, namely, six only. That argument failed to commend itself to the High Court since the ground for which the Sessions Judge declined to rely on Lal Singh's identification, though by a larger number of witnesses, was that he had brown eyes and persons with such brown eyes had not been mixed in the parade. Consequently, if only a hint with regard to the colour of his eyes were to be given by some one interested in his identification, it was possible for him to be picked out from the parade by the identifying witnesses from that peculiar feature. The appellant had no such features which would distinguish him from the outsiders mixed with him in the parade. Consequently, the reason for which Lal Singh got the benefit of doubt could not apply to the appellant. That contention, therefore, could not prevail before the High Court and cannot be commended to us also.

7. In addition to that contention, counsel urged that the evidence as to the appellant having been identified at the parade could not be availed of by the prosecution for two reasons : (1) that he had a contract at Pipariaghat nearby, and therefore, could previously be known to the identifying witnesses, and (2) that the police had shown him to those witnesses both at the time of his arrest at Hardoi and thereafter. Therefore, it was argued that it was not surprising that as many as six

identifying witnesses had picked him out of the parade. The difficulty in accepting this contention is that there is nothing on record to show that the appellant held such a contract. Right from the time when the first information report was lodged till the trial of prosecution case consistently was that he was one of the unknown culprits responsible for the dacoity. Had he been previously known to Mewa Ram and the other witnesses it is certain that his name would have been mentioned by Mewa Ram in the first information report just as he mentioned the names of the other two, Ganga Ram and Lajja Ram. Further, if the appellant had such a contract, it was quite easy for him to establish that fact either by oral evidence or by some document which we have could have called upon the investigation officer to cause to be produced. It will be noticed that Mewa Ram did not identify the appellant in the parade, a failure which indicates that the appellant could not have been known to Mewa Ram or to the residents of Bejha village. It is also important to note that no question about the appellant having such a contract at Pipariaghat was put either to Mewa Ram or to the other witnesses although questions with regard to there being some quarrel about fishing in the river nearby between the accused Ganga Ram and the residents of the village Bejha were put to him and the other witnesses.

8. The only question, thus, which could be legitimately raised would be whether the Magistrate had held the parade with proper caution and safeguard. The evidence of the Magistrate (P.W. 1) shows that he held the parade, on March 11, 1966 at which several witness identified the appellant, accused Lal Singh and accused Bhagwan Singh. Some questions were asked to him in cross-examination regarding the identification of Bhagwan Singh and Lal Singh, but none was asked regarding the appellant's identification. That must mean that the appellant had no grievance to make regarding the manner in which the parade had been held. The evidence of the Magistrate shows that six identifying witnesses picked out the appellant from the parade. Out of these, three namely, wit. Ram Kishan (P.W. 4), Satish Chandra (P.W. 5) and Ram Narain (P.W. 6) figured as witnesses in the Court. The other three were not examined as witnesses at the trial. But, to the three witnesses who gave evidence in the Court and who testified that they had identified the appellant from the parade, no questions were asked challenging their identification. That meant that the appellant's identification from the parade remained unchallenged.

9. It was however, urged that in another case, Sessions Case No. 107 of 1966, also a case of decoity in another village in District Hardoi wherein the present appellant was one of the accused, the Sessions Judge had declined to rely on the evidence of identification parade although the appellant had been identified there by four witnesses. The judgment in that trial, however, shows that the Sessions Judge there refused to act on that evidence because he was satisfied from the evidenced in that trial that by a reason of constant gunfire by the miscreants those witnesses had no chance to see properly the faces and the features of the miscreants. Therefore, even though the appellant and others were picked out from the parade by several identifying witnesses, identification by them was not beyond doubt and was therefore not relied upon. That is not the case in this appeal. As earlier pointed out there was hardly any challenge to the identification by the witnesses either in their cross-examination or the cross-examination of the Magistrate who held the parade. Besides, the fact that in an earlier case evidence of identification was not acted upon cannot be relied upon as a ground for not accepting identification in another case as the question as to whether such evidence is trustworthy or not depends upon the facts and circumstances of each case.

10. Lastly, reliance was placed on an unreported judgment in Komal Gope v. Bihar, (Cri. A. No. 45 of 1965, decided on November 23, 1967) where the two appellants were convicted of offence of dacoity on the strength of their having been identified by three witnesses from the parade. The reasons given by this Court for refusing to rely on the identification of parade were, (1), that the

witnesses had not previously given the description of the dacoits : (2) that no overt acts were attributed to either of the two appellants while the dacoity was going on, and (3) that although it was alleged that two petromax lights were burning, the identification of a particular dacoit was difficult on account of a large body of persons having been present in the house, and there being at the same time as many as 25 or many miscreants therein. The most important fact there was that the appellants were the residents of a nearby village and they had been released on bail by the Magistrate and were at large for a considerable time before the parade at which they were identified was held. The result was that there was every chance of their having been shown to or seen by the identifying witnesses before they appeared at the parade to identify. The cumulative effect of all these circumstance, it was said, rendered reliance on the identification parade difficult. It is true that the witnesses in the present case also had not previously given any description of the appellant and had also not attributed any particular part to the appellant except to say generally that all the seven or eight dacoits were taking out the goods from the house and bringing them out. But Mewa Ram in the first information report had clearly stated that he and the witnesses named by him therein had properly seen the miscreants and would be able to identify them if shown to them. Also, there was the evidence that the witnesses had taken up their positions around the house and there was adequate light especially when one of the witnesses set fire to the heap of dry sugarcane leaves nearby. The opportunity to mark the faces and the features of the miscreants was adequate also because those miscreants were at the scene of the offence for more than half an hour. Their number was seven or eight only and there was no crowd between them and the house of the victim which could stultify that opportunity. Further, barring the allegation that the witnesses could have known the appellant because he had a contract at Pipariaghat, for which there was no evidence whatsoever, there was hardly any worthwhile challenge to the validity or reliability of the identification evidence. The result is that there is no substantial reason, as there was in Komal Gope's case (supra), for us to reappraise the evidence a third time contrary to the practice of this Court not to do so except on exceptional grounds.

11. The appeal fails and is dismissed.

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