

Antar Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 516 of 1977

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

14.09.1978

JUDGMENT

SARKARIA, J. -

1. This appeal by Special Leave directed against a judgment, dated September 15, 1977, of the High Court of Madhya Pradesh arises out of these circumstances.

2. On the night intervening January 5 and 6, 1968, two dacoities were committed in the houses of Ramgopal Soni (PW 1) and Rampratit Saraf (PW 4) at village Nagama, and property consisting of gold and silver ornaments worth more than Rs. 3 lakhs was looted. In this connection 19 persons were arrested by the police. Out of them, 15 were charged with offences under Sections 395/397/109 read with Section 120-B, Indian Penal Code.

3. The Sessions Judge, Rewa, who tried the case, convicted two of the accused, namely, Jawaharlal and Munnilal under Sections 395 and 397 read with Section 109, Penal Code, and sentenced each of them to four years' rigorous imprisonment. He acquitted the remaining 13 accused, including Antar Singh.

4. Against the order of their acquittal, the State of Madhya Pradesh carried an appeal to the High Court, which set aside the acquittal of Antar Singh, Tulsi Ram and Ajijuddin, who were original accused 1, 4 and 8 respectively, and convicted and sentenced each of them under Section 395, IPC to four years' rigorous imprisonment. Antar Singh only is the appellant before us.

5. The main-stay of the prosecution case against Antar Singh was the testimony of the solitary witness, Diwakar son of Rampratit. The appellant and the co-accused were not known to the witness. The entire case, therefore, hinged on the question of identification. Diwakar's evidence was to the effect, that dacoits after beating Ramgopal, rushed into the rear rooms of the house and brought out all the valuables for being filled in gunny bags. Instead of running away, the witness followed the dacoits into the house, merely out of curiosity. Three of the dacoits stood by the side of the witness. One of them was holding a Tamancha, the other a gun and the third a lathi. The dacoits had battery torches which they were flashing. A lantern was also burning in the room.

6. Antar Singh appellant was arrested by the police on May 28, 1968. A test identification parade was held on November 17, 1968 before a Magistrate in respect of some of the co-accused of the appellant who were alleged to be concerned in the same dacoity. But, the appellant was not then put up for identification. A test identification in respect of 9 accused, including Antar Singh, was subsequently held on December 26, 1968. Diwakar is said to have identified Antar Singh only at

that parade. No explanation for this delay in holding the test identification was given by the prosecution. This unexplained delay, according to the learned trial Judge, was capable of leading support to the defence plea that the accused had been shown to the witness. In the opinion of the trial Judge, this belated test identification of the appellant "was not of high quality that could lend assurance or complete veracity to the identification of this accused by Diwakar in Court". He, therefore, accorded the benefit of doubt to the appellant and acquitted him. The High Court has reversed this finding of the trial Court with this reasoning :

The respondent 1 Antar Singh has alleged that at Allahabad he was shown to certain strangers by the police but surprisingly PSI, Tiwari (PW 59) who had arrested him has not at all been questioned on this matter. Naib Tehsildar R. K. Tiwari (PW 4) who conducted the parade had deposed that no such objection was taken before him. He also refuted the allegation that the accused persons were put in the parade manacled.

7. The High Court further observed that the Sessions Judge was in error in rejecting the evidence of identification, only on the ground of delay. However, the High Court appears to have reversed its reasoning with regard to the identification by Diwakar (PW 6) of the co-accused, Ram Abhilap. Diwakar and Ramgopal (PW 1) had both identified Ram Abhilap accused in the test identification parade and later in Court at the trial. On account of the inordinate delay (of about 20 months) in holding the test identification parade in the case of Ram Abhilap, according to the High Court, it "was not safe to convict this respondent".

8. Shri R. K. Garg, learned Counsel for the appellant, contends that the High Court had ignored the well-settled principles laid down by this Court, which a High Court has to keep in view while reversing an acquittal. It is pointed out that the evidence of Diwakar in regard to the test identification of the appellant was not reliable and the trial Court had given cogent and irrefutable reasons for rejecting the same.

9. On the other hand, Shri S. K. Gambhir, appearing for the State, maintains that the High Court was justified in reversing the acquittal because the reasoning of the trial Judge was manifestly erroneous, if not perverse.

10. It appears to us that the High Court was in error in reversing the acquittal of the appellant. This was not a case where it could be said that the view of Diwakar's evidence taken by the trial Court was unreasonable or unsound. The identification of the appellant by Diwakar at the parade and later at the trial, could not be safely relied upon for these reasons :

(1) His test identification was held about 12 months after the occurrence and seven months after his arrest. No explanation whatever, was furnished as to why the appellant was not promptly put up for test identification, after his arrest.

(2) A test identification in respect of some of the accused was held on November 17, 1968. No explanation was given by the prosecution as to why the appellant was not put up for identification at that parade along with his co-accused and why his test identification was further delayed by 22 days.

(3) Even at the test identification held before a Magistrate on December 26, 1968, Diwakar failed to identify eight co-accused who were allegedly concerned in the same dacoity. It was therefore, highly possible that Diwakar picked out the appellant

at the test identification merely by chance.

(4) In his previous statements (Ex. D6, dated February 8, 1968 and Ex. D7, dated March 26, 1968) made during the course of investigation, Diwakar had referred to only two dacoits whom he could identify and gave their description. Those two were identified by him as Gitty Singh and Munnial accused. In the said previous statements, Diwakar has not referred to any dacoit with a gun, and thus there was no reference to the particular role of the appellant in the dacoity. The witness made a deliberate improvement on this point at the trial.

(5) In his previous statements, Diwakar did not mention about the burning lantern in his room. At the trial, he advisedly introduced a burning lantern inside the room in which he was sleeping.

11. These are some of the infirmities in the evidence of Diwakar regarding the identification of the appellant, which we have sorted out from the judgment and record of the trial Court with the aid of the counsel. In the face of these infirmities, it could not be said that the reasons given by the trial Court for rejecting the evidence of Diwakar with consequent acquittal of the appellant, were unsound.

12. This Court has repeatedly held that although in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as of the trial Court, but before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal at the trial; and further, the opinion of the trial Court which had the advantage of observing the demeanour of the witnesses, as to the value of their evidence should not be lightly discarded. Where two views of the evidence are reasonably possible, and the trial Court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial Court, it would have taken the alternative view and convicted the accused accordingly. In the instant case, by any reckoning, the view of Diwakar's testimony taken by the trial Court could not be said to be unreasonable or erroneous.

13. For these reasons we allow Antar Singh's appeal, set aside his conviction and sentence, and acquit him of the charge levelled against him.

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