

State of Rajasthan

Vs

Sukhpal Singh and Others

Criminal Appeal No. 134 of 1973

(CJI Y. V. Chandrachud, V. D. Tulzapurkar JJ)

16.12.1982

JUDGMENT

CHANDRACHUD, C.J. –

1. The respondents were convicted by the learned Sessions Judge, Bharatpur, under Section 395 of the Penal Code and were sentenced to rigorous imprisonment for three years. By its judgment dated November 13, 1972, the High Court of Rajasthan has set aside that judgment and had acquitted the respondents. The State of Rajasthan has filed this appeal by special leave against the Judgment of the High Court.

2. The State Bank of Bikaner and Jaipur had a branch at Bayana in the district of Bharatpur. At about 1.30 p.m., on March 17, 1971, seven or eight persons looted the Bank. Jugal Kishore Paliwal, the Agent of the Bank, was working in his chamber, while Bhagwan Dass Goyal, Head Cashier, and Suresh Chand Goyal, Assistant Cashier, were in the cash cabin at that time. The dacoits, who were armed with country-made pistols, knives and a hand grenade, ordered these Bank employees to stand up and raise their hands. Three dacoits entered the Agent's room, beat him up and opened the safe and the almirahs. They could not find any money therein. They then took the Agent to the cash cabin, where they tore open the lid of an iron cash box and took away currency notes of Rs. 15,253 from it. They snatched a black-coloured confidential box lying on a nearby table, threw away the papers which were in that box and put the money in it. They carried away the black box, got into a blue Ambassador car and drove away.

3. The first information report of the occurrence was lodged by the Head Cashier, Bhagwan Dass Goyal, within about half an hour i.e. at 2 p.m., at Police Station Bayana. The Police Officer there sent wireless messages to the surrounding police stations as also to police outposts. On receipt of the message, the Head Constable in charge of the police station at Weir, posted police personnel to block the car on the road. Soon thereafter, an Ambassador car bearing No. DLJ 7458, in which seven persons were seated, arrived from the direction of Bayana. Driven in panic, the car dashed against an oil Barrel in front of a shop and was damaged. The occupants of the car were forced by that circumstances to come out of the car, whereupon they were surrounded by the police and the members of the public. The occupants of the car opened fire but the police and the public gave them a hot chase for over a mile and succeeded in surrounding them once again. The occupants of the car opened fire causing injuries to some members of the public. Ultimately, they were overpowered and caught. Babu Lal, Station House Officer of the Bayana Police Station, arrive on the scene and arrested the respondents. It transpired during the investigation that the Ambassador car which the respondents had used was stolen from New Delhi a day before the occurrence. The case of the prosecution is that the respondents before us were the very persons who looted the Bank, escaped in

the car and were chased and arrested.

4. The respondents admitted that they were arrested Weir, but they denied that they had any hand in the loot of the Bank. Each of them furnished a different explanation as regards his presence at Weir at the time of their arrest. They also examined four witnesses to show, principally, the reason of their presence at the place of arrest.

5. It would appear from the judgment of the learned Single Judge of the High Court of Rajasthan that three points were argued on behalf of the respondents : (1) There is no evidence regarding the identification of the respondents; (2) There is no trustworthy evidence regarding the recovery of the stolen property from their possession; and (3) There is no evidence to show that they; had escaped in the particular Ambassador car and had come out of the care after it met with an accident.

6. On the question of identification of the respondents, the High Court has rejected the evidence of the Agent of the Bank Jugal Kishore Paliwal (PW-4), Head Clerk Radhey Charan Bhargavea (PW - 5), Head Cashier Bhagwan Dass Goyal (PW-6), Agricultural Assistant Murari Lal (PW-7), Daftaries Radhey Shyam Sharma (PW-8) and Amba Prasad (PW-9), and the Assistant Cashier Suresh Goyal (PW-10), on the ground that through some of these witnesses had identified the dacoits in the jail, they had failed to identify them before the trial court. It appears that these witnesses had wrongly identified some of the accused in the committing court as also before the trial court. According to the High Court "the only irresistible conclusion which can be drawn from their statements is that their evidence regarding identification is not convincing".

7. On the question of recovery of the stolen property from the possession of the respondents, the case of the prosecution is that each of the respondents was carrying a bundle of hundred currency notes of Rs. 10/- each. It is further alleged that the black box lying in the Ambassador Car was found to contain currency notes of the value of Rs. 6800/- belonging to the Bank. In addition, live cartridges and knives are also alleged to have been recovered from the possession of some of the respondents. The High Court has rejected the whole of this evidence on the ground that the recovery memos "cannot be said to be genuine" and were prepared subsequently, that the knives and live cartridges were not produced before the court, that the story that each of the respondents was carrying currency notes worth Rs. 1000/-, while running away is unnatural and that, it is not like that the respondents would leave the sum of Rs. 6800/- in the black box in the car and would each carry a sum of Rs. 1000/-, as if to create evidence against themselves.

8. On the third question regarding the allegation that the respondents had escaped in the Ambassador car and had come out of that car after it met with an accident, the High Court has rejected the evidence that the respondents had fled away in the particular car on the ground that in the entry Ex. D-40, in the general Diary of the police station, relating to the first information report the number of the car was not mentioned.

9. If two views of the evidence were reasonably possible, we would not have substituted our own assessment of the evidence for that of the High Court in this appeal against acquittal. But, we are of the opinion that it is impossible on any hypothesis to accept the conclusion of the High Court that the prosecution has failed to establish its case. With respect, we regard the judgment of the High Court on the suspicion surmises. Witnesses who had no axe to grind and had no personal motive to implicate the accused on a false charge, have been disbelieved on feeble considerations. And the recovery of incriminating articles has been by-passed and disbelieved by characterising it as unnatural and incredible. Different crimes have different patterns and the offenders improvise their

strategy according to the exigencies of the occasion. The High Court has rejected the prosecution story as not fitting in with the common course of events on the supposition and insistence that a crime of the present nature had to conform to a pattern of the kind which the High Court harboured in its mind.

10. On the first question, that is to say the question of identification, the High Court gave an exaggerated importance to the infirmities attaching to the ability of the witnesses to identify the respondents. It was overlooked, and when an argument in that behalf was made it was rejected, that the respondents were arrested red-handed and, as a manner of speaking, on the spot. There was no dispute that the incident of the kind alleged by the prosecution had taken place in the premises of the Bank. And it requires no strong persuasion to hold that after the Bank was looted, the offenders, whosoever they may be, would try to escape. The lodging of the first information report within half an hour of the incident, the prompt flashing of the wireless message to the police stations and the police outposts, in the vicinity, the posting of the police guards on the road to stop the car bearing a particular description if it was detected, the accident which the car met with, the emergence from the car of six or seven persons, the pursuit which the police and the public gave them, the shots fired by those persons, the beating given by members of the public to them and the fact that they were ultimately overpowered, caught and arrested, are all matters which are proved by the most clean and cogent evidence. Respondents are the persons who got down from the car after it met with an accident and they are the very persons who bear tell-tale marks of the rather severe drubbing given by the public. We are unable to understand how, in these circumstances, the High Court could have held that since the accused were not arrested on the spot, the evidence regarding their identity must assume importance. The incident which took place in the Bank, the attempt made by the offenders to escape and their pursuit by the police and the public, are but links in the same chain of causation. They are parts of one and the same transaction. This, therefore, is a case in which the offenders were caught red-handed near the place of the offence while they were trying to escape. They fired while fleeing and caused injuries to those who were bravely trying to surround them but eventually, the police and the public got the better of them. No further question survives but, since the High Court has given great importance to some other aspects of the case, we must advert to them.

11. Equally significant is the circumstance that an office box (article 3) containing Rs. 6800/- was seized from the Ambassador Car from which the respondents came out after the accident. The Memo of Seizure is at Ex. P-22. The bundles of the Currency notes found in the box bore chits in the name of the Bank of Bikaner and Jaipur, Bayana Branch. The box also contained certain documents belonging to the Bank, including a passbook of Head Clerk Radhey Shyam Bhargva (PW-5). Some of the witnesses examined by the prosecution turned hostile, which only shows what terror a lawless group of dacoits can strike in the minds of men. But the evidence of Babu Lal, the Station House Officer, Bayana, who was examined as a court witness by the High Court itself, shows that the black box containing the money and the other articles was seized from the Ambassador car. The High Court has rejected this evidence with a broad and unfounded observation that the recovery memo was prepared subsequently. We are unable to share that view. The High Court says that "It is not easily believable that the accused would leave Rs. 6800/- in the box lying in the car and each would run away with a thousand rupees". The story that a sum of Rs. 1000/- was found on the person of each of the respondents may or may not be accepted. But there is no infirmity attaching to the evidence of Babu Lal regarding the recovery of the black box from the car. Shri R. K. Garg, who appears on behalf of the respondents, urged that the box could have been easily planted by the police after the respondents were arrested. This submission is wholly unjustified. The box containing the currency notes, which were a part of the loot, was not left in the car as a matter of sweet volition. The respondents had no option save to abandon it in the car which

they were traveling, when the car met with an accident and they were surrounded by the police and the public. What is natural by the test of common experience is that a biggish article containing the loot would be left by the thieves where it lies. They would not take it with them, while running away in order to escape from the clutches of the people who were chasing them.

12. The High Court has dwelt copiously on the question as to whether the number of the Ambassador Car was disclosed in the first information report. The number of the car may or may not have been mentioned to the police by Goyal who gave the FIR. But we consider that to be a petty matter in the midst of a large mass of good evidence connecting the respondents with the crime. the fact that the respondents escaped in an Ambassador car is specifically mentioned in the FIR, Ex. P-1. In fact, the FIR mentions that the Ambassador car bore the number DLJ 7458 but the High Court considered it as an interpolation since, the entry, Ex. D-40, in the General Diary of the police station relating to the FIR, does not mention the number of the car. The interference drawn by the High Court that the FIR was prepared later is unsustainable. The entry Ex. D-40 is after all a summary and summaries are not intended to be exhaustive. Then they would cease to be summaries.

13. It is difficult in an incident of this kind to have evidence as strong and clinching as we have before us. The only conclusion which one can come to upon that evidence is that the charge has been brought home to the accused. Accordingly, we allow the appeal, set aside the judgment of the High Court and restore the order of conviction recorded by the learned Session Judge against the respondents under Section 395 of the Penal Code. The Learned Judge had sentenced each of the respondents to rigorous imprisonment for three years. The judgment of the High Court is already a decade old. (We are beholden that we are not yet faced with cases in their Silver Jubilee Year.) Respondents have been on bail after undergoing a substantial part of the imprisonment. We understand that some of them are not working as Veterinary Doctors or Assistant and have settled down as married men with children. Taking these factors in to account, we sentence each of the respondents to rigorous imprisonment for the period already undergone by them. We however, impose upon each of them a fine of Rs. 3,000/- which shall pay within three months from today. Failing such payment the respondents shall each undergo rigorous imprisonment for a period of six months.

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