

Shiv Charan

Vs

State of Haryana

Criminal Appeal No. 42 of 1983

(A. P. Sen, B. C. Ray JJ)

13.11.1986

JUDGMENT

B. C. RAY, J. -

1. This appeal by special leave is against the judgment and order of conviction and sentence passed in Criminal Appeal No. 667-DB of 1981 by the High Court of Punjab and Haryana whereby the appeal was dismissed and conviction and sentence for life under Sections 395 and 396 of the India Penal Code were confirmed.
2. The prosecution case was that one Phool Khan deceased and Allah Baksh PW 4 who were residents of Rajasthan brought their sheep to Delhi and sold those through Nawab brothers of Delhi. Phool Khan received Rs. 28,000 for sale of his animals and Allah Baksh sold his animals for Rs. 28,670 and odd. Quim-Uddin PW 11, Illam Uddin, Shamshuddin and Sher Mohd. also accompanied them to Delhi from their native place. After collecting the money on March 2, 1981 Phool Khan deceased and Allah Baksh accompanied by Quim-Uddin PW 11 and their other labourers boarded Bikaner Mail from Delhi Railway Station in the same compartment. PW 9 Shri Ram and Narain Singh PW 10 were also returning to their native places. When the train Bikaner Mail, moved from Railway Station in Gurgaon at about 10.30 p. m. six persons emerged from the lavatory and started abusing the passangers. Of these persons two were carrying two pistols and four had knives. One of the accused caught Phool Khan from his head-hair and demanded money from him. Phool Khan replied that he had no money and further stated that he would not part with any money. The other accused who was identified by all the prosecution witnesses as Ramesh shot Phool Khan with his pistol. The accused then removed the money from the person of Phool Khan. The other accused who is identified as Shiv Charan by Allah Baksh PW 4, lifted the face of Allah Baksh PW 4, with the reverse side of the pistol. The third accused who was pointed as Rajinder by Allah Baksh cut the neoli and removed his money. Siri Ram PW 9 tried to conceal his money but one accused relived him of Rs. 100 and wrist watch Ex. P. 12. Ram Narain PW 10 was also awakened and was relieved of Rs. 7000 and the wrist watch at the point of pistol. The train stopped at Garhi Har Saran Railway Station. Two of the accused stood at the door of the compartment while the other accused got down. These accused persons threatened the occupants of the compartment with dire consequences if any alarm was raised. When the train started from Garhi Har Saran and picked up speed those two accused jumped from the running train. The train stopped at the next stoppage, that is, Pataudi Road and the occupants of the compartment informed the guard of the incident, whereby Virinder Kumar, Assistant Station Master of Pataudi Road Railway Station sent a telegram to the Station House officer, Police Station, G. R. F., Rewari about the incident. The compartment was detached at the railway station. Sub-Inspector Nihal Singh PW 26 went to the Pataudi Road Railway Station and after inspection of the compartment prepared the inquest report on the dead body of Phool Khan.

The five accused persons including the appellant were tried by the Sessions Judge under charges of Section 395, 396 and 412 of the Indian Penal Code. The Sessions Judge after considering the evidences of prosecution witnesses and also of the report of test identification parade whereon PW 4 Allah Baksh identified all the four accused persons, found the accused persons guilty of the offences under Sections 395, 396 and 412 of the Indian Penal Code and sentenced each of the five accused persons to imprisonment for life both under Section 395 IPC as well as under Section 396 IPC and also sentenced them to rigorous imprisonment for seven years under Section 412 IPC. All the sentences shall run concurrently. Against this conviction and sentence several appeals were filed including appeal No. 667-DB of 1981 by a accused Sukhdev and accused Shiv Charan. All these appeals were dismissed and the conviction and sentence under Section 395 and 396 of Indian Penal Code were affirmed. The order of conviction and sentence under section 412 of the Indian Penal Code, however, set aside and the appellants were acquitted of the said charge.

3. It is against this judgment and order of conviction the instant appeal on special leave has been filed before this Court.

4. We have heard the learned counsel Mr. R. L. Kohli for the appellant Shiv Charan. The only contention advanced by him is that there is no sufficient, reliable evidence to connect the appellant with the commission of the crime and, therefore, his convictions under Section 395 and 396 of the Indian Penal Code, 1860 cannot be sustained. The learned counsel has taken us minutely through the evidences and we see no reason to differ from the reasoning and conclusion arrived at by the High Court that the testimony of Allah Baksh PW 4 was sufficient to establish that the appellant was one of the dacoits who relieved him of a sum of Rs. 30,000 by putting the thread of the neoli. The dacoity was committed at night in the Bikaner Mail in electric lit compartment. Although three of the witnesses i. e. PW 9, PW 10 and PW 11 namely Siri Ram, Narain Singh and Quim-Uddin are not able to identify the appellant and each one of the dacoits, the fourth witness PW 4, Allah Baksh has no doubt recognised and identified all the accused. In his examination-in chief on the first day i. e. September 15, 1981 he no doubt stated that miscreants who shot Phool Khan i. e. Ramesh put the nozzle of the pistol under his chin, but on the next day, during the continuance of the examination-in chief the witness was further questioned. The accused were all in purdah and on their faces being uncovered, this witness identified the appellant Shiv Charan as the man who put the nozzle under his chin. His testimony in court identifying the appellant is corroborated by his testimony identification at the parade held by Shri Ashok Vasisht. The evidence shows that Allah Baksh PW 4 went around, took his time and identified all the five accused to be the dacoits. Special leave petition of four other persons namely Ramesh, Rajinder, Sukhdev and Om Prakash have all been dismissed by this Court and they are serving out their sentences of imprisonment for life on conviction under Sections 395 and 396 of the Indian Penal Code, 1860. The conviction of the appellant rests on the identification made by PW 4 Allah Baksh which evidence has been accepted by the High Court.

5. We do not see any reason to take a different view. The appeal is accordingly dismissed.

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