

State of Haryana

Vs

Uttam Alias Cheaku

Criminal Appeal No. 559 of 1983

(A. P. Sen, V. B. Eradi JJ)

21.04.1987

JUDGMENT

BALAKRISHNA ERADI, J. -

1. Uttam alias Cheaku, the respondent herein along with three others was tried by the learned Additional Sessions Judge, Gurgaon for alleged commission of offences under Sections 395, 397 and 412 of the Indian Penal Code. By judgment dated July 21, 1980, the learned Additional Sessions Judge held that the charge against Uttam under Section 395 IPC was proved beyond all reasonable doubt and he was accordingly convicted and sentenced to undergo rigorous imprisonment for four years. The other three accused were acquitted on the ground that their participation in the crime was not sufficiently proved and hence they were entitled to the benefit of doubt. The respondent carried the matter in appeal to the High Court of Punjab and Haryana. The High Court by its impugned judgment dated January 7, 1982 allowed the said appeal, extending the benefit of doubt to the respondent, and set aside his conviction and sentence. The State of Haryana has come up to this Court with this appeal against the said order of acquittal after obtaining special leave from this Court.

2. Briefly stated, the prosecution case is that on October 24, 1974, Om Parkash (PW 5) accompanied by his wife Jai Rani (PW 6) and their daughter Neelam left Delhi in the early hours of the morning for Jaipur by car. Om Parkash and his wife Jai Rani were in the front seat of the vehicle while their daughter was occupying the rear seat. When their car had reached about 10-12 kms. beyond Gurgaon on the Delhi-Jaipur Road, another car bearing registration No. DEA 2914 came from behind and attempted to overtake their vehicle. Even though Om Parkash had made way for the other car to pass, that car deliberately swerved to the left side and struck against the front wheel of his car, whereupon Om Parkash stopped his car on the left side of the road in the kacha portion. In the meantime, the other car also stopped at a distance of about ten paces ahead and five persons came out of that vehicle. It is stated that two or three out of them were armed with revolvers and others with daggers. Om Parkash got out of the vehicle and asked the assailants as to why they had caused the accident. In the meantime, Jai Rani also came out of the car. One of the assailants then gave a couple of knife blows on the chest of Om Parkash, whereupon he tried to raise an alarm. Hearing the said cry for help, some trucks which were passing along that road tried to stop but one of the assailants who was armed with a pistol, fired shots in the air and scared away those truck drivers. Thereafter one of the assailants removed the earrings, necklace and wrist-watch from the person of Jai Rani and in that process one of her ear lobes was cut asunder. The wrist-watch and purse of Om Parkash were also removed by one of the culprits. Apart from that, three attache cases which were on the luggage carrier of the car were also forcibly removed and taken away by the miscreants. Before the culprits left the spot in their car with all the booty, a shot was fired by one of

them which hit Om Parkash on his forehead. After inflicting the said injury, the miscreants made good their escape.

3. Om Parkash somehow managed to drive back his car to Gurgaon and there he contacted his partner Joginder Singh (PW 7) to whom he narrated the whole incident. Om Parkash was immediately taken to Civil Hospital, Gurgaon where he was medically examined and various injuries were found on his person. Jai Rani was also medically examined and the injury on her right ear lobe was declared to be grievous. The other injuries were found to be simple for which she was given first aid. The first information report was thereafter lodged with the police by Om Parkash and Sub-Inspector Tilak Raj (PW 21) carried out the investigation. He recovered empty cartridge cases (Exs. P-15 and P-16), one wad (Ex. P-17) and one ball point pen (Ex. P-18) from the place of occurrence. During the investigation it was found that the car used by the culprits had been stolen on October 23, 1973 from the house of its owner, one S. K. Mahajan. Subsequently, on October 27, 1978, the car was found lying abandoned in the Gaziabad factory area and it was taken into police custody.

4. The accused were arrested after a fairly long delay since it so happened that subsequent to the occurrence in question the accused persons had been allegedly involved in the commission of other crimes in the State of Uttar Pradesh and they were lodged in the Meerut jail. After the accused were brought from Meerut, two test identification parades were held, one separately for Uttam at his request and the other for the remaining suspects. In the first parade, Uttam was correctly identified by both Om Parkash and Jai Rani. In the second identification parade, Om Parkash failed to identify any of the other accused whereas Jai Rani identified Trilok Singh, who was accused 2. On the basis of the information furnished by the accused the Investigating Officer and the police party led by him recovered some of the articles which formed the contents of the suitcases removed from the car of the victims. They consisted of new suit length cloths, sarees, trousers, blouses, petticoats etc.

5. The prosecution examined in all 22 witnesses in its endeavor to establish the guilt of the accused in relation to the charges framed against them. The learned Additional Sessions Judge after an elaborate and analytical discussion of the whole evidence recorded the conclusion that the participation of the respondent-Uttam in the commission of the crime was established beyond all doubt inasmuch as he had been identified by both Om Parkash (PW 5) and Jai Rani (PW 6), and the testimony given by these two witnesses narrating the details of the incident of robbery and assault was not in any manner shaken in cross-examination and deserved to be accepted as wholly truthful. The remaining three accused were given the benefit of doubt mainly on the ground that excepting the second accused who had been identified only by Jai Rani at the identification parade, the others were not identified either by Jai Rani or by Om Parkash and hence there was no satisfactory proof of their participation in the crime. In the light of the aforesaid conclusion reached by him, the learned Additional Sessions Judge convicted the respondent-Uttam under Section 395 IPC and sentenced him to undergo rigorous imprisonment of four years.

6. The High Court by a judgment which we are constrained to characterise as most perfunctory has set aside the judgment of the learned Additional Sessions Judge insofar as he has convicted the respondent herein and acquitted him. We regret to have to remark that the High Court has dealt with the case in a very superficial and casual manner and has not even taken the trouble to discuss the evidence adduced in the case before it proceeded to interfere with the well considered judgment of the trial court. Both Om Parkash (PW 5) and Jai Rani (PW 6) had clearly identified the respondent at the test identification parade as well as in the court and they had clearly and unequivocally deposed that he was one of the assailants who took part in the robbery and assault. Their testimony

has been discussed at length by the learned Additional Sessions Judge and he has given sound and convincing reasons for accepting and acting upon the same. The whole discussion of the case by the High Court is contained in one short paragraph of its judgment namely, paragraph 6. It is not disclosed anywhere therein as to why the High Court considered that the testimony of these two witnesses who were the victims of the crime could not be accepted and why it could not form the foundation for the conviction of the respondent. A case of highway robbery, such as this, should have been dealt with the much more seriousness and care than has been bestowed on it by the High Court. The approach of the High Court to the case and the conclusion recorded by it cannot but be characterised as manifestly illegal and perverse.

7. In the absence of any discussion of the evidence by the High Court, we have ourselves gone through the entire evidence adduced in the case with the assistance of the counsel appearing on both sides. We are in complete agreement with the conclusion recorded by the learned Additional Sessions Judge that from the evidence of Om Parkash (PW 5) and Jai Rani (PW 6), the participation of the accused in the commission of the offence has been proved beyond all reasonable doubt. The respondent was, therefore, rightly convicted by the learned Additional Sessions Judge and the only mistake committed by the learned Additional Sessions Judge was in not awarding a more severe sentence commensurate with the gravity of the offence.

8. In the result, we allow the appeal, set aside the judgment of the High Court and restore that of the learned Additional Sessions Judge convicting the respondent under Section 395, IPC and sentencing him to undergo rigorous imprisonment of four years. The bail bond of the respondent will stand cancelled. He shall be taken into custody forthwith to serve out the remaining portion of the sentence.

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