

Chaman

Vs

State of U.P.

Criminal Appeal No.264 of 1980

(Kuldip Singh, Yogeshwar Dayal JJ)

26.11.1991

JUDGMENT

1. Chaman, the appellant before us, along with three others, was tried for an offence under Section 395 of the Indian Penal Code. The Trial Court convicted Chaman and Mangta and sentenced them to undergo rigorous imprisonment for seven years. The other two accused were acquitted. The High Court dismissed the appeal filed by Chaman and Mangta. Chaman has come up to this Court by way of special leave petition.

2. The prosecution case was that the complainant Jugmander and his father Samay Singh had a crusher at village Bhalswaganj. On the night between 28th and 29th March, 1975, at mid-night, Samay Singh and his sons Jugmander, Ranjit and Mam Chand were at the crusher which was working, Himmat, Munna and Mahendra were also there. Two bulbs of 100 watts were giving light. Six miscreants armed with pistols, lathis, spears and hockey came to the crusher, inflicted injuries on some of the persons present at the crusher and Samay Singh was relieved of Rs. 50/- and Himmat Singh of Rs.25/-. In the meanwhile Jugmander Singh who had entered the room inside the crusher fired shot from his licenced gun and thereby injured one of the miscreants. All the six persons ran away taking along with the injured. The dead body of the injured was found next morning in the adjoining sugar field. The First Information Report was lodged at 5.40 p.m. on March 29, 1975.

3. The conviction is solely based on the evidence of identification. Learned counsel for the appellant has taken us through the proceedings of the identification-parade conducted by the Sub-Divisional Magistrate in the jail premises on May 21, 1975. It has been mentioned in the proceedings that the following marks on the body of the appellant were covered with pieces of paper:

1. Mole on right cheek
2. Mole near the right temple
4. Both ears
5. Cut mark near right ear
7. Mole on left cheek
8. Peacock engraved on right forearm
9. Mole and pock mark on right nostril

4. Ten under-trials were mixed with the appellant for the purpose of identification. Similar paper-covering was done to them. All the eleven were made to close their eyes.

5. We are not satisfied with the manner in which the identification parade was conducted. We are of the view that paper makeup on the faces of the participants, to such an extent, has rendered the identification parade wholly unreliable. It was more of a drama than an identification parade. In our opinion it would not be safe to convict the appellant on the basis of the identification evidence.

6. The learned counsel has also invited our attention to the statement of Rajbir Singh, Constable, who took the appellant from Police Station to Sub-Jail after his arrest on April 24, 1975. The witness has stated that he took the appellant from Police Station, Roorki at 11.10 a.m. and got him admitted to the Sub-Jail, Roorki. It has not been mentioned at what time the appellant was admitted to Sub-Jail, Roorki. The, prosecution has failed to eliminate the possibility of the appellant being shown to the witnesses during the interregnum.

7. We, therefore, allow the appeal setaside the conviction of the appellant. His bail bonds are cancelled.

Appeal allowed.

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