

State of U.P.

Vs

Hardeo and others

Criminal Appeal Nos. 211-217 of 1989

(S. R. Pandian, Kuldip Singh JJ)

06.03.1992

JUDGMENT

1. The State on being aggrieved by the judgment of the Allahabad High Court, Lucknow Bench rendered in Criminal Appeals Nos. 65 / 83 and 278, 561, 563, 567, 823 and 824/82 reversing the judgment of the trial Court and acquitting all the respondents of the offence punishable under Ss. 396 and 412, I.P.C. has preferred these appeals. The occurrence admittedly had occurred in the dark midnight of 15/16-4-1980. To prove the prosecution version P.Ws. 1 to 4 and 6 were examined of whom P.W. 1 was inside the house along with the deceased. According to the prosecution after the dacoits had entered the house, Hardev Singh tried to run away but he was shot dead by the culprits. The evidence the prosecution has let in to substantiate & the charges levelled against the respondents is the test identification parade in which the witnesses are stated to have identified the culprits and the recoveries of certain articles which were the subject matter of dacoity. The trial Judge, namely, V Addl. Sessions Judge, Unnao convicted the respondents/accused under S. 396, I.P.C. and sentenced each of them to undergo imprisonment for life and also convicted the first respondent Hardeo under S. 412, I. P. C. and sentenced him to undergo rigorous imprisonment for seven years.

2. The High Court on various appeals preferred by the respondents set aside the conviction holding that the evidence as regards the identification proceedings cannot be said to be clinging for the reasons given in the judgment and that the features of the case taken as a whole, make it unsafe to record a finding that all the articles recovered were looted in this dacoity or at any rate that the prosecution has not successfully, established that the properties recovered from the appellant, Hardeo were looted property, in the result allowed all the appeals of the respondents. Hence this appeal by the State.

3. We have carefully gone through the records. Admittedly, the occurrence was during the dark midnight. The witnesses claimed to have identified the culprits stancing at distance of 150 feet with the help of light emanating from the straw-fire in the khandar of Rajendra which was at as distance of 40 steps (80 feet) towards the north-west of the door of the scene house. The High Court on appreciation of the evidence was not inclined to accept the evidence of the witnesses claiming to have identified the culprits with the help of that light and also the torches carried by the assailants. In our opinion, the High Court was right in rejecting that evidence.

4. So far as the recovery of the articles said to have been concerned with the case, as held by the High Court there is no satisfactory evidence to connect the first respondent so as to incriminate him with the offence under S. 412, I. P. C. In our considered opinion, the judgment of the High Court does not warrant any interference.

5. In the result, all the appeals are dismissed. Appeals dismissed.

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