SUPREME COURT OF INDIA

Ram Babu

Vs.

State of U.P.

Crl.A.No.475 of 2008

(P. Sathasivam and R. M. Lodha JJ.)

19.04.2010

JUDGEMENT

R.M.Lodha, J.

1. These two appeals by special leave arise out of trial of the appellants and three others, namely, Saudan Singh (A-3), Sher Singh (A-6) and Mangal Singh (A-1) for the commission of offence punishable under Section 395 of the Indian Penal Code (for short, `IPC'). They were alleged to have committed dacoity on April 7, 1980 at or about 9.30 p.m. in a temple - Totadhari Math, Gyan Gudari, Vrindavan, District Mathura. The appellants and A-1 were convicted by the 3rd Additional Sessions Judge, Mathura under Section 395 IPC and sentenced to undergo rigorous imprisonment for a term of five years. A-3 and A-6 were acquitted. The appellants and A-1 challenged their conviction by a common appeal to Allahabad High Court. The High Court vide its judgment dated September 14, 2007 dismissed the appeal. It is from this judgment that one appeal has been preferred by Ram Babu (A-5) and the other by Man Singh @ Mani (A-4) and Jagdish Upadhyay (A-2).

"We are informed that A-1 had died during the pendency of appeal before High Court."

2. Vrindavan is a holy and revered place having large number of public religious Maths. Totadhari Math (hereinafter referred to as `temple') is situate in Mohalla Gyan Gudari. Many silver idols adorn this temple. Ornaments and silver utensils for shringar and puja of the deities were used to be kept in the almirah in his room by the Mahant - Vishwast Sen Acharya. The disciples, students and teacher resided in the temple premises. On April 7, 1980 at about 9.30 p.m., the dacoits 2 (15/16 in number) armed with pistols, guns, knives and lathis entered the temple premises. At that time, in the courtyard (Chowk), Ram Ajor Pathak (PW-1), Jagdish Prasad (PW-2), Sudarshan Prasad (PW-3), Udhav Prasad (PW-9), Brijesh Kumar, Kaladhar Dwivedi, Narotam Kumar and three sadhus, namely, Damodar, Ram Prapan and Madhav Prasad were taking food (Prasad). The dacoits asked them to hand over the keys of the temple and the room where silver idols, ornaments and silver utensils etc.

were kept but they feigned ignorance as the Mahant was not in the temple. The dacoits then asked them to stay put in a small room. PW-9 escaped from room where he was confined and managed to reach the roof of the temple. The dacoits broke open the room and almirah and looted the ornaments, silver utensils, cash and other articles like clocks, clothes, etc. They also looted idols made of Astadhatu and silver. After looting the properties, the dacoits ran away towards river Yamuna. Before leaving, the dacoits also caused injuries to Madhav Das and Damodar Das by the butt of the gun. As soon as Mahant reached the temple, PW-1 went to the police station and lodged the first information report at about 10.15 p.m. in the same night against unknown persons.

3. Kashi Ram - a Sub Inspector commenced investigation immediately thereafter. He visited the place of occurrence and prepared site plan. Madhav Das and Damodar Das who were injured by the dacoits were medically examined on April 8, 1980 at the Government Hospital, Vrindavan. During the course of investigation, the Investigating Officer arrested number of dacoits. On April 29, 1980, A-1 was arrested at 4.30 p.m. On April 30, 1980, A-3 and A-2 were arrested at 6.15 a.m. and 9.00 a.m. respectively. On May 1, 1980, A-6 was arrested at 12.30 p.m. while on May 6, 1980, A-5 was arrested at 2.00 p.m. On May 29, 1980, accused A-4 was arrested at 5.30 p.m.

> "Besides them, three more persons namely, Biro, Chandar and Sundar were also arrested by the Investigating Officer. On June 4, 1980, the test identification parade was held under the supervision of L.P. Gupta (PW-14). Based on the result of the identification and the statements recorded under Section 161 of Criminal Procedure Code, a charge-sheet was filed against 7 4 persons including the present appellants. Biro (A-7) was discharged by the trial judge on August 30, 1980."

4. The prosecution examined as many as 35 witnesses. PW-1, PW-2, PW-3 and PW-9 are inmates of the temple and were present at the time of incident. PW-14 is the Special Executive Magistrate under whose supervision test identification parade was conducted. Munna Prasad Srivast (PW-15), Ramesh Chandra (PW-18) and Maharaj Singh (PW- 19) were examined to prove the arrest of the accused persons.

> "Jaipal Singh (PW-10) is the Investigating Officer who conducted investigation after transfer of Sub-Inspector Kashi Ram. Quite a few police constables were examined by way of link evidence to prove that right from the arrest till being lodged in jail, the faces of the suspects were kept veiled and nowhere was the opportunity to see them."

5. The statements of the accused were recorded under Section 313 of Criminal Procedure Code. The accused also produced four witnesses Jagdish Swarup (DW-1), Tejbir Singh Tyagi (DW-2), Purushottam (DW-3) and V.D. Gupta (DW- 5 4) in support of their defence that their identity did not remain secret and they have been falsely implicated.

6. The trial court held that guilt of A-1, A-2, A-4 and A- 5 for the offence under Section 395 IPC was proved beyond reasonable doubt. The benefit of doubt was given to A-3 and A-6.

7. Mr. Ashok Kumar Sharma, learned counsel for the appellants vehemently contended that the evidence against the appellants and A-3 and A-6 who have been acquitted and A-7 who was discharged is identical and if based on that evidence, the identification of A-3 and A-6 was held not established, the said evidence is liable to be rejected in respect of the appellants as well. He would also contend that the test identification parade was held belatedly and delay having not been explained sufficiently, the identification was doubtful and conviction improper. Lastly, learned counsel submitted that the incident took place 30 years back and half the sentence has already been undergone by the appellants and, therefore, interest of justice would be sub-served if the sentence awarded to the appellants is reduced to already undergone.

8. Mr. Pramod Swarup, learned senior counsel for the State supported the judgment of the High Court and submitted that the conviction of the appellants based on identification does not suffer from any legal infirmity warranting interference by this Court.

9. Section 9 of the Evidence Act, 1872 reads:

> "S. 9. Facts necessary to explain or introduce relevant facts.--Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

10. As per Section 9 of the Evidence Act, facts which establish the identity of an accused are relevant. Identification parade belongs to investigation stage and if adequate precautions are ensured, the evidence with regard to test identification parade may be used by the court for the purpose of corroboration. The purpose of test identification parade is to test and strengthen trustworthiness of the substantive evidence of a witness in court. It is for this reason that test identification parade is held under the supervision of a magistrate to eliminate any suspicion or unfairness and to reduce the chances of testimonial error as magistrate is expected to take all possible precautions.

11. In the present case, PW-14 supervised the test identification parade held in District Jail, Mathura on June 4, 1980. He proved identification memos in his deposition. He deposed that all possible precautions were taken in conduct of the test identification parade held on that date. As a matter of fact, there is no challenge to his testimony. Insofar as substantive evidence is concerned, all the three appellants (A- 2, A-4 and A-5) have been identified by PW-3 and PW-9 in the Court. A-2 and A-4 were also identified by PW-2 in the Court.

> "Being inmates, their presence in the temple at the time of incident was natural. All of them were having their food in the chowk at that time. That there was sufficient light

for enabling them to identify the dacoits is also established. Besides bulbs and tube lights, according to these witnesses, the light was also available from two gas petromaxes. Pertinently, learned counsel for the appellants did not contest the finding recorded by the trial court as well as the High Court in this regard. The prosecution also examined large number of witnesses to adduce link evidence to the effect that right from the arrest of the accused persons till being lodged in jail, the faces of the suspects were kept veiled and nowhere was the opportunity to see them. The learned counsel for the appellants, however, contended that the evidence against the appellants and A-3, A- 6 and A-7 was identical and based on that evidence A-3 and A- 6 were acquitted and A-7 was discharged and on the same evidence, appellants could not have been legally convicted.

Insofar as A-3 is concerned, the trial court gave him benefit of doubt as the prosecution failed to furnish any explanation as to why he could not be confined in jail or presented before a Magistrate on the day of arrest itself, i.e. April 30, 1980. The trial court found that, although A-3 was arrested on April 30, 1980 at about 6.15 a.m. but he was produced before the Court on the next day despite the fact that Magistrate was available hardly 8 killometers away. As regards A-6, the trial court was not convinced about the date, time and place of his arrest. The trial court held that from the evidence on record, possibility of his arrest at earlier point of time and at some other place cannot be excluded. We are afraid the grounds on which A-3 and A-6 were given benefit of doubt do not, in any manner, affect the credibility of the evidence of PW-2, PW-3 and PW-9 in the Court or the test identification parade insofar as A-2, A-4 and A-5 are concerned. These witnesses have identified the appellants not only in test identification parade but also in the Court. The identification of the appellants, thus, is established by substantive evidence duly corroborated by test identification parade."

12. We may also consider the contention of the learned counsel for the appellants that as the test identification parade was held belatedly and delay has not been explained sufficiently, the identification of the appellants is rendered doubtful. It is true that A-2 was arrested on April 30, 1980; A-5 on May 6, 1980; and A-4 on May 29, 1980 while the test identification parade was held on June 4, 1980 but the explanation that has been put forth by the prosecution for this delay is that the suspects (9 in number) including the appellants were arrested on different dates and the last of such arrest being of A-4 on May 29, 1980, the test identification parade was held only thereafter. In our view, in the facts and circumstances of the case explanation is acceptable and it cannot be said that test identification parade held on June 4, 1980 suffers from any undue and unexplained delay.

13. Learned counsel for the appellants took us through the evidence of all the important witnesses. Ordinarily, this Court does not enter into an elaborate examination of the evidence in a case where the High Court has concurred with the findings of fact recorded by the trial court. There is nothing exceptional in the present case that may justify departure from this rule. However, we considered the evidence referred to by learned counsel for the appellants

and we do not think that the conclusion recorded by the trial court and confirmed by the High Court suffers from any factual or legal infirmity, or was one which could not reasonably be arrived at by those Courts.

14. It was submitted by learned counsel for the appellants that the incident is of 1980 and the appellants have already undergone half the sentence and their sentence be reduced to already undergone. We are not impressed by this submission. Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years rigorous imprisonment awarded by the trial court and confirmed in appeal by the High Court for the offence under Section 395 IPC calls for no interference.

15. Both appeals fail and are dismissed.