

(1989) 01 AHC CK 0069

Allahabad High Court

Case No: Criminal Appeal No. 137 of 1985

Karedeen and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 24, 1989**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107
- Penal Code, 1860 (IPC) - Section 323, 395, 504, 506
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 198

Citation: (1989) 1 AWC 488**Hon'ble Judges:** S.I. Jafri, J**Bench:** Single Bench**Advocate:** J.S. Sengar, V.P. Srivastava and S.K. Maurya, for the Appellant;**Final Decision:** Allowed

Judgement

S.I. Jafri, J.

The instant appeal on behalf of Kare Deen, Ram Asrey, Bishram and Lal Bahadur, has been filed against the judgment and order dated 19-1-1985 passed by Sri. S.B. Varma, 1st Additional District and Sessions Judge, Jaunpur, recording conviction against the aforesaid Appellants u/s 395 IPC and sentences of four years" RI each. Along with the Appellants aforesaid, co-accused Jayant Prasad, whose name also figured in the First Information Report, also stood 1 trial, but he was let off by the trial Court.

2. To dwell upon the prosecution case, it is alleged that in the night intervening 12th/13th of June 1980 at about 1 A.M., while the complainant Sher Bahadur Singh was slept on the roof of the Baithka of his house, the Appellants aforesaid in the company of Jayant Prasad (since acquitted) and two or three unknown persons, raided the house of the complainant and out of them four persons, climbed over the roof of the complainant's house and they overpowered the complainant. The four accused persons first of all, relieved the complainant of his licensed gun and 22 cartridges as well as the bunch of

keys. Thereafter, two of the accused persons came down the stairs, opened the Drawing room and took away a two band Nelco Radio and a bag containing Rs. 2,500/-. During the course of operation by the accused persons, Sher Bahadur Singh, complainant, made an alarm that attracted a number of persons including Ram Murti, Raj Kumar, Lallan Singh and Doodhnath on the scene of occurrence. The accused persons took to their heels along with the booty under a cover of firing.

3. After the occurrence, complainant Sher Bahadur Singh went to the Police Station Meerganj and handed over his written report to the Head Constable who prepared the chik report at 2.10 A.M. on 13-6-1980. He also registered a case against the Appellants including Jayant Prasad and two or three unknown persons. After registration of the case, the investigation into the case followed and the Investigating Officer, namely, V.M. Pandey went to the place of occurrence, where he inspected the site of occurrence and prepared site plan etc. The investigation into the case, later on, changed hands and Ram Janam Singh ultimately submitted charge-sheet against the Appellants and Jayant Prasad. However, the police could not lay hands upon the unknown persons, who had accompanied the Appellants during the course of occurrence.

4. The accused persons pleaded not guilty to the charge and attributed their false implication in the case to bad-blood with Sher Bahadur Singh complainant and his sons. However the accused persons examined one Panna Lal Maurya, in their defence.

5. The prosecution examined six witnesses in support of its case and out of them Sher Bahadur Singh, PW 1 Lallan Singh, PW 2, Doodh Nath PW 3 and Bhola Nath PW 4 were examined as ocular witnesses of the occurrence.

6. The accused persons have brought on record a number of documents in order to hammer home the point that there stood a deep seated animosity between Sher Bahadur Singh and his sons on one hand and the accused-Appellants on the other. The following pedigree would facilitate the understanding of the relationship existing between Kare Deen and Ram Asrey Appellants and one Santu.

Devi Saran

Budhu Munshi

Karedin (Appellant) Ram Asrey (Appellant)

7. The above pedigree bears out that Santu is the uncle of Kare Din and Ram Asrey Appellants. Ext. Kha-1 shows that there was a litigation going on between Santu and Jagannath u/s 198 of ZA and LR Act, wherein Sher Bahadur Singh, complainant had appeared as a witness for Jagannath. Besides, this much has been admitted by Sher Bahadur Singh complainant in his evidence that Bishram, Appellant had made an

application before Niyaye Panchayat, Chauhar against his sons, including Bhola Nath, PW 4, one of his sons, in the instant case, u/s 504/506 IPC about three days before the present occurrence of the instant case.

8. A perusal of the defence evidence bears it out that Panna Lal, DW 1 is the grand-father of Lal Bahadur alias Lalu Appellant by relationship.

9. Ext. Kha-6 discloses that Panna Lal had filed a report u/s 323 IPC against the sons of Sher Bahadur Singh including Bhola Nath PW 4, Seva Singh and Mangal Singh on 25th March 1980, i.e. three months prior to the present occurrence in the instant case.

Proceedings u/s 107 Code of Criminal Procedure were also started by the Police against Budhu, Kare Din and Santu, uncle of Kare Din on the one hand and Sher Bahadur Singh complainant and another on the other hand, which facts is amply apparent from a perusal of Exts. Kha-3 and Kha-4.

10. Before descending on to analyse the evidence in this case, it is worthy to consider that the conviction passed on the Appellants in the instant case hinges on the testimony of the aforesaid, four witnesses, who have the taints of being highly partisan and inimical particularly in view of protracted litigation from which springs a deep-seated enmity and it will not form as a safe basis for convicting the Appellants by placing reliance on their testimony as they suffer from the disability of being unworthy of acceptance without independent corroboration, which is conspicuously lacking in this case.

11. Now coming to the next point worthy of being taken a particular notice, Lallan Singh, PW 2 and Doodhnath PW 3, both were working as principal and the peon respectively in the Institution, namely, Panchayat Vidya Mandir at Bhakar, which was being run and managed at the time of occurrence by Jokhan Singh, as the Manager of the said Institution. Jokhan Singh is admittedly the father of Sher Bahadur Singh, complainant. An endeavour has been made to impeach their evidence and rightly their evidence has been painted impeachable by the defence Counsel. Both Lallan Singh, PW 2 evidence and rightly their evidence has been painted impeachable by the defence Counsel. Both Lallan Singh, PW 2, and Doodhnath, PW 3 being under the direct influence of Jokhan Singh, the Manager of the aforesaid Institution, cannot be accepted as a non-partisan, disinterested and reliable witnesses, as being impervious to the influence of Jokhan Singh, the father of Sher Bahadur Singh, complainant. Incidentally, both Lallan and Doodhnath are chance witnesses inasmuch as their houses are situated in different villages at a longer distance from the village of Sheikh Jagirpur, where the occurrence had taken place. Under the circumstances, the evidence of Lallan Singh and Doodhnath cannot be given credence and hence it cannot be acted upon for bringing home the guilt to the Appellants.

12. The last witness of the occurrence is Bhola Nath PW 4 who is the son of Sher Bahadur Singh, complainant. The evidence of Bhola Nath, PW 4 is tarred with the same brush as that of the evidence of Lallan Singh and Doodhnath. Hence, implicit reliance cannot be placed on his evidence as well.

13. Sher Bahadur Singh, complainant has dwelt upon the prosecution case in detail and his evidence is supported by Lallan Singh, PW 2, Doodhnath, PW 3 and Bhola Nath, PW 4, but as discussed above their evidence suffer from the lack of independent corroboration from independent quarters for placing reliance on them.

14. Over and above as to what has been discussed above, the learned Counsel for the Appellants further contends that actually there was no light on the scene of occurrence as the source of light will not be available to the complainant Sher Bahadur Singh and other witnesses at the scene of occurrence in as much as a big Baithka thatched with Khaprail belonging to the complainant, intervenes between the roof of the complainant and the place, where the lights were being fixed and also according to the evidence of the complainant and others and the Investigating Officer, they were situated on the north of the aforesaid Hall-verandah of the complainant. The witnesses namely, Lallan Singh, Bhola Nath and Doodhnath have admitted in their evidence that they did not budge from their places as shown in the site plan during the course of dacoity. From the statement of the Investigating Officer, based on site plan, Bhola Nath was present at the Pumping Set to the North of Hall-Verandah at a distance of about 20 yards from the roof of the complainant. Likewise, Lallan Singh, PW 2 was stationed to the north of the said Hall-Verandah Baithak of Khaprail at a distance of 25 yards from the roof of the complainant, while Doodh Nath stood at a distance of 15 yards from the room of the complainant towards south. The statement of Investigating Officer further indicates that the electric bulbs, which were glowing on the northern side of Hall-Verandah at two places i.e. on the north-eastern corner of the residential house of the complainant as well as on the southern wall of Pumping-Set north of the Hall-Verandah Baithak of Khaprail of the complainant, while the third bulb was fixed near the Dalan of Fodder belonging to the complainant on the north-east of Hall-Verandah and also from the room of the complainant. It is worthy to mention that there was no light on the southern side of the room of the complainant, where Doodhnath was said to be stationed, as can be inferred from a conspectus of the evidence of Investigating Officer and other documents that support the version of the Investigating Officer and in such circumstances, it is difficult to hold that electric light was available to complainant Sher Bahadur Singh rendering him capable of recognising the accused persons. Likewise, the electric light being emitted by electric bulbs would not be available to Lallan Singh, PW 2 and Bhola Nath, PW 4, enabling them to recognize the assailants on account of the view being hampered by the intervention of Hall-Verandah Baithak in between them inasmuch as the culprits are not alleged to have escaped towards the north of the Hall-Verandah of the complainant but they are alleged to have taken a south ward retreat after the commission of the offence. On account of there being no light as is doubtful from the above discussions, it will not be a safe basis to hold that the light was available to Sher Bahadur Singh, Lallan Singh, Doodhnath and Bhola Nath, which enabled them to recognize the assailants. Under the circumstances, as is borne out from the discussions made above, the claim in the evidence of the witnesses that light was available to them to recognize the accused persons, is subject to grave doubts and hence, no credence can be attached to their

evidence so far as they depose that they had recognized the accused persons in the electric light being emitted from the electric bulbs.

15. Now coming to the next submission, the complainant had mentioned in his written report that he was over-powered by four accused persons and was also forcibly relieved of his licensed gun and the cartridges without assigning any specific role to the accused persons in the First Information Report though it was most natural to have specified the role of the accused who had relieved them in view of the fact that the assailants were known to him. This unnatural conduct further enfeebles the truthfulness of the version of the complainant in the FIR. Even in his statement before the trial Court, the complainant made no attempt to specify the role of different accused persons participating in the occurrence, which leaves one in a recurring doubt about the veracity of the prosecution case. This doubt about the veracity of the prosecution case is further fuelled by overwhelming evidence and documents filed by the defence in support of its case.

16. To sum up, there are facts and circumstances to impeach the testimony of the witnesses examined by the prosecution in support of its case in view of the evidence as discussed above that there would not be any light available to the witnesses on account of intervention of Hall-Verandah of the complainant in between the places and secondly, that the complainant did not specify the role of the accused persons during the course of occurrence when they were already known to him. I am conscious of the fact that minute details need not be mentioned in the First Information Report, but non-specification of the roles in the First Information Report, is a glaring omission, that cuts at the very root of the case casting grave doubts on the veracity of the prosecution case and further shaking the very foundation of the prosecution case.

17. Before taking leave of this case, I am prompted to observe that truth has many facets and proverbially, it is most difficult to arrive at. In the instant case, the evidence of the complainant and his witnesses cannot be viewed free from doubt and under the circumstances of the case as detailed above, the order of conviction and sentences passed on the Appellants, cannot be sustained and the same is liable to be set aside.

18. In the result, the appeal is allowed. The conviction and sentences recorded against the Appellants by the trial Court are set aside. The Appellants are on bail. They need not surrender and their bail bonds are discharged.