

(1982) 03 AHC CK 0078**Allahabad High Court****Case No:** Criminal Appeal No. 2243 of 1977

Rajendra Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 25, 1982**Acts Referred:**

- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 147, 149, 307, 394, 427

Citation: (1982) 6 ACR 326**Hon'ble Judges:** R.B. Lal, J**Bench:** Single Bench**Advocate:** K. Kapoor, for the Appellant;**Final Decision:** Dismissed**Judgement**

R.B. Lal, J.

Rajendra Sharma, who was convicted of the offence u/s 394, Indian Penal Code and sentenced to undergo rigorous imprisonment for four years by Sri S.K. Agarwal, Additional Sessions Judge, Bijnor, has filed this appeal.

2. On 15-5-1975, at about 3 A.M., Buddhu Singh complainant (PW 1) set out on his tractor from his village Bulandi within police station Siyohara, to go to Dhampur to see an ailing relation. Misri Singh (PW 3) was driving the tractor. Narain Singh servant of the complainant was also accompanying the complainant on the tractor. About a kilometre away from village Bulandi, the tractor came on canal patri beyond the bridge leading to village Sabdalpur. The front and back lights of the tractor were burning. At that time, four or five persons came in front of the tractor and tried to stop it, but the driver did not stop and went ahead. Those persons started firing towards the tractor and one of the tyres of the tractor got burst and, therefore, the tractor came to a halt. One pellet hit the forehead of the complainant. When the tractor stopped, its occupants took cover behind it. The complainant who was

carrying his brother's licensed gun (Ex. II), started firing towards the miscreants. One of the miscreants sustained gunshot injuries and fell down and a revolver (Ex. I) in his hand also fell down. Another miscreant tried to take away that revolver but could not succeed. A shot fired by the complainant caused injuries to that miscreant as well. All the miscreants ran away leaving their dead companion. The faces of the miscreants were seen by the occupants of the tractor in the light of the tractor.

3. The complainant went back to his village and got a report of the occurrence scribed by his brother Chhotey Singh, and, thereafter, he proceeded to police station Siyohara which was about six miles away from the place of occurrence, and lodged a report there at 6.15 A.M. A case was registered.

4. The injury of the complainant was examined by Dr. J.N. Bagchi (PW 5) on 15-5-1975 at 11 A.M. in Primary Health Centre, Siyohara. The complainant got his injury X"rayed at Dhampur the same day. Thereafter, Dr. J.N. Bagchi gave a supplementary report saying that the injury had been caused by a gun shot.

5. Sri Bankey Lal Yadav (PW 4) Station Officer police station Siyohara, started investigation of the case. He interrogated Buddhu Singh complainant injured and thereafter went to the scene of the occurrence. There, he found Misri Singh and Narain Singh and a host of villagers present. He interrogated Misri Singh and Narain Singh. He also found the dead body of the miscreants lying on the canal patri. The tractor with its burst tyre was also standing there. A revolver and 12 live cartridges and two used cartridges were also lying near the dead body. There the investigating Officer came to know that the dead miscreant was Lokendra. He got the inquest report and other papers relating to the dead body prepared and sent the dead body to Bijnor for post mortem examination. He took the revolver and the cartridges and the cover of the revolver in his possession. He found blood on the scene of the occurrence and took sample thereof in his possession. He also took the burst wheel of the tractor in his possession. The gun used by the complainant at the time of the occurrence along with four empty cartridges was handed over to the investigating Officer by Ghan Shyam Singh, brother of the complainant. The revolver found near the dead body of Lokender Singh belonged to the complainant's brother Ghan Shyam Singh. This revolver had been looted earlier. The investigating Officer prepared the site-plan.

6. The complainant and his companions went to Dhampur Hospital that very day i.e. on 15-5-1975 and there came to know that a person who had sustained gun shot injuries had been admitted in the hospital. These three persons went to see him and found the present Appellant Rajendra Sharma and at once recognised that he was one of the miscreants who had taken part in the occurrence.

7. The investigating officer went to the hospital at Dhampur on 17-5-1975 and interrogated Rajendra Sharma. He took the blood stained shirt of Rajendra Sharma in his possession because it bore holes of pellets on its back.

8. The post mortem examination on the dead body of Lokender was performed on 16-5-1975.

9. The police completed investigation and submitted a charge-sheet against Rajendra Sharma (Appellant) on 2-6-1975.

10. The accused pleaded not guilty and alleged false implication. He filed certified copy of the complaint which had been lodged by his father Sheo Charan in the Court of the Chief Judicial Magistrate on 15-5-1975 and also filed a written statement. According to the accused, the revolver of Ghan Shyam had been returned to him on the assurance that he would pay ransom for its return but that amount was not paid. In that connection Ghan Shyam and others had called Lokendra on 14-5-1975. They killed Lokendra at the well of Jitendra Tyagi and thereafter threw his dead body on the canal patri. He (Appellant) had gone in search of his brother Lokendra and was shot at and sustained injuries.

11. The accused did not adduce any oral evidence in defence.

12. The case was committed to the court of session on charges under Sections 147, 307/149 and 427/149 Indian Penal Code . The learned trial Judge added a charge u/s 394 Indian Penal Code against the accused.

13. On a consideration of the entire material on the record, the learned trial Judge was of the opinion that only an offence u/s 394 Indian Penal Code was made out against the accused and, therefore, he convicted and sentenced him as mentioned earlier.

14. The injury report of Rajendra Sharma Appellant is Ex. Ka. 17. He was examined at primary Health Centre Dhampur on 15-5-1975 at 10-50 A.M. and the Doctor had found the following injuries on his person:-

1. Multiple gunshot wounds 1/2 cm.X 1/2 cm. X muscle deep in diameter, on the middle and upper part (about 70 in number) back, in the area of 10 cm. X9 cm., more on right side- 1/2 cm. to 1 1/4 cm. apart from each other (no scorching and tatooing present around the wounds).

2. Abrasion -2 cm.X 1 cm. oblique, on the back of the left elbow joint.

Injury No. 1 was caused by some firearm and injury No. 2 by a blunt weapon.

The Doctor estimated the duration of injuries at about half a day.

15. The injury report of Buddhu Singh complainant is Ex. Ka. 15. He was examined by Dr. Jagannath Bagchi at Primary Health Centre on 15-5-1975 at 11 A.M. The Doctor found the following injury as on his person:-

1. Penetrating injury 1/6 cm.X 1/6 cm. X skin around in shape with lacerated and inverted margins. Swelling 2 cm. on diameter around the wound, slight bleeding on squeezing the wound, in the centre of forehead. The Doctor estimated the duration

as within one day.

After receiving skiagram, the Doctor gave a supplementary report and said that there was presence of radio opaque substance under the injury. Dr. J.N. Bagchi stated that the injury of the complainant might have been caused on 15-5-1975 at 3 A.M.

16. The post mortem examination report is Ex. Ka. 18. The post mortem was performed on 16-5-1975 at 7.30 A.M. The Doctor estimated the probable time since death at about one day. The Doctor found the following external ante-mortem injuries on the dead body of the deceased:-

1. Lacerated wound 3" x 2" (with three holes in its middle) margins inverted, on right side upper chest just below right clavicle-wound of entrance.
2. Lacerated wound 1/2" x 1/2" on back outer side, left side of the neck-margins everted-wound of exit.
3. Lacerated wound 2" x 2" on right side abdomen 2 1/2" above and outer to umbilicus, coils of intestines protruding.

17. The prosecution examined three witnesses on facts namely Budhu Singh complainant (PW 1) his servant Narain (PW 2), and the driver of the tractor Misri Singh (PW 3) to prove the occurrence in question. These three witnesses fully supported the prosecution story as set out earlier, and said that the miscreants had tried to hold up the tractor on the canal patri on 15-5-1975 at about 3 A.M. when they were proceeding to Dhampur. They also added that the firing resorted to by the miscreants resulted in the bursting of a tyre of the tractor as a result of which it came to halt. Thereafter they had taken cover behind the tractor, and from there the complainant fired from the licensed gun which he was carrying. The result was that one of the miscreants sustained injuries and fell down. Another miscreant also sustained gun-shot injuries and he and his companions managed to run away. These witnesses were cross-examined at some length but nothing damaging could be elicited. These witnesses had no enmity with the Appellant. There is no good reason to doubt or disbelieve the testimony of these witnesses.

18. It was the peak of summer time and, therefore, the complainant could think of proceeding to Dhampur even before day break. The Investigating Officer found blood on the canal patri. He also found the tractor standing there. One of its tyres was in a burst conditions. The medical examination of the complainant which took place at 11 a.m. revealed a pellet injury on the forehead. The time of the death of the miscreant Lokendra as given by the doctor tallies with the time of the occurrence given by the prosecution. That time does not tally with the death of Lokendra on the night of 14-5-1975. The time of injuries of the Appellant is also consistent with the prosecution story. The injuries of these persons are also consistent with the prosecution version. The report of the occurrence was lodged at

the police station very promptly at 6.15 A.M. All these facts and circumstances also afford very valuable corroboration to the testimony of the three witnesses.

19. The prosecution story is quite natural. On seeing miscreants, the first impulse of the driver would have been to continue to proceed ahead so that the tractor might go out of the reach of the miscreants. That was the reason why shots were not fired by the complainant while the tractor was moving. It is also likely that the complainant would not have been in a position to fire shots effectively while the tractor was moving. When the tractor stopped on account of the bursting of the tyre, its occupants had no option but to face the miscreants after taking cover. It was quite natural for the complainant to fire shots in order to resist the miscreants. Thus, the story of the prosecution sounds quite natural and convincing.

20. The defence story that Lokendra was done to death by the complainant and others and his dead body was thrown on the canal patri and when the present Appellant went to make inquiries about his brother he was also shot at, cannot be accepted, because there is no satisfactory evidence in support of it. The version contained in the copy of the complaint filed by the Appellant in the lower court, cannot be taken and proved in the absence of any evidence. The circumstances mentioned earlier go to negative this case and support the prosecution version.

21. On a careful consideration of the evidence and the circumstances of the case I am satisfied that the occurrence had taken place in the manner alleged by the prosecution.

22. The next point for consideration is whether Rajendra Sharma Appellant was amongst the miscreants. The complainant did not know the Appellant and his brother Lokendra from before the occurrence and this is the reason why the names of these persons were not mentioned in the first information report. It appears that when village people of the neighbourhood collected, it came to be known that the dead miscreant was Lokendra. The complainant and his companions chanced to see Rajendra Sharma Appellant in the Dhampur Hospital, was that they all went to Dhampur hospital to see the ailing relation of the complainant and there came to know that a person injured with gun-shots had been admitted to the hospital. By way of curiosity these persons went to see him and found that he was one of the miscreants who had taken part in the occurrence in question. This information was sent to the police and the Investigating Officer interrogated the Appellant on 17-5-1975 in the hospital. The Appellant was not put up for test identification by the complainant and his companions and this has been greatly emphasised before me and it has been urged that in the absence of such evidence, no reliance can be placed on the testimony of the three witnesses on the point that the Appellant was one of the miscreants who had taken part in the occurrence in question. The complainant and his two companions were the only persons who had seen the miscreants at the time of the occurrence, and they had seen and recognised the Appellant in the hospital. Hence, there could be no point in putting up this Appellant

for test identification by these persons. In these circumstances, no oblique motive can be attributed to the prosecution for not putting up the Appellant for test identification proceedings. The evidence given by a witness in court about the participation of an accused in the occurrence, is substantive evidence. Where the accused was not known to the witness from before the occurrence, the court, as a rule of prudence, looks for some good corroborative evidence in support of the evidence given in court. That corroborative evidence may come from various circumstantial factors; one of them being the evidence of test identification. It is not the law that the corroborative evidence must consist of the evidence of test identification only. The corroborative evidence may be of some other kind. In the instant case, there are other circumstances, which go to establish in a convincing manner that the Appellant was amongst the miscreants who had taken part in the occurrence, and the substantive evidence given by the 3 witnesses against him is worthy of reliance.

23. Admittedly, one miscreant was shot down and he was the own real brother of the Appellant. The complainant had mentioned in the first information report that one of the run away miscreants had sustained gun-shot injury on his back and this tallies with the injuries found on the person of the Appellant. In a way, the Appellant admitted his going to the spot and sustaining injury at the hands of the complainant. No doubt the version of the Appellant was different inasmuch as he said that he had gone to trace out his brother Lokendra and was then shot at by the complainant and others. This implies admission that the injury sustained by the Appellant was the one inflicted by the complainant. As said earlier, the complainant and others had no reason to falsely implicate the present Appellant. All these circumstances taken together are, in my opinion, sufficient to lend assurance to the statements of the three witnesses that the Appellant was one of the miscreants who had taken part in the commission of the offence. Relying on this evidence I hold that Rajendra Sharma Appellant was also one of the miscreants who had taken part in the occurrence of hold up and shooting on the early morning of 15-5-1975.

24. The next question for consideration is as to what offence is made out against the Appellant. The learned Counsel for the Appellant has urged that taking the prosecution case at its best, it could not be said that it was a case of robbery. The miscreants had not spoken any word or done anything which would indicate that their purpose in the hold up was to commit robbery. The learned Counsel has urged that the hold up could be for the purpose of committing some other offence. These submissions of the learned Counsel are ingenious but not well founded.

Section 114 of the Evidence Act reads thus:-

The court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

25. None illustrations have been given under the section. It has been held consistently that the circumstances given in the illustrations are not exhaustive. The principle laid down in this section is one of very wide application, as is indicated by the use of the words "regard being had to the common course of natural events, human conduct.....". In this case the established facts are that four persons, out of whom some were armed with firearms, tried to stop the tractor and when it did not stop they fired shots and caused burst of a tyre and thus forced the tractor to come to a halt. This was done at a lonely place, i.e. on the canal path; at about 3 A.M. The persons who did so were not known to the complainant and his companions from before and there was no enmity between the complainant's side and those persons. When one companion of the miscreants fell down on sustaining gun-shot injuries, one of the miscreants, namely the present Appellant, tried to carry away the revolver which had fallen down from the hand of the fallen miscreant. That revolver was looted property, inasmuch as it had been looted at some earlier time from the brother of the complainant. No report of this occurrence was lodged by the Appellant or any one of his companions, promptly. The Appellant did not give any plausible explanation for his presence along with other miscreants at the time and place of occurrence and as to why they all wanted to stop the tractor and why they resorted to firing of shots. In these circumstances it can reasonably be presumed that the purpose of the four persons including the Appellant, in stopping the tractor was to rob the occupants of the tractor and to deprive the complainant of the licensed gun. The learned Trial Judge was, therefore, right in raising this presumption and in holding that the Appellant was guilty of the offence u/s 394, Indian Penal Code. I am in agreement with this view.

26. No submission has been made on the point of sentence. A serious view is to be taken of the offence in question. The sentence of rigorous imprisonment for four years cannot be said to be excessive.

27. In the result, this appeal has no merit and is accordingly dismissed. The conviction and sentence of the Appellant Rajendra Sharma are maintained and upheld. The Appellant is on bail. He shall surrender to his bail bonds to serve out the sentence, according to law.