
(1995) 07 AHC CK 0113

Allahabad High Court

Case No: Criminal Appeal No"s. 1951 and 1952 of 1980

Ram Mohan Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 27, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 396

Citation: (1996) CriLJ 692

Hon'ble Judges: S.N. Saxena, J; S.C. Jain, J

Bench: Division Bench

Advocate: T. Tathore, S.S. Rathore and Indra Mani Pandey, for the Appellant; D.G.A., for the Respondent

Final Decision: Dismissed

Judgement

S.N. Saxena, J.

Both these appeals arise out of a common judgment and they are therefore being decided together. Criminal Appeal No. 1951 of 1951 - Ram Mohan Singh v. State shall be the leading appeal.

2. The appeals are directed against the judgment of conviction dated 29-8-1980 and sentence dated 30-8-1980 of Shri R.R. Jatav, the then learned Sessions Judge, Hamirpur hereby he had decided Sessions Trial Nos. 7 of 1977, 38 of 1977 and 62 of 1977 u/s 396 IPC. He found the appellants guilty u/s 396 IPC, and awarded the sentence of life imprisonment to Ram Mohan Singh and 10 years rigorous imprisonment to Gulab Singh. A lesser sentence was awarded to Gulab Singh in view of his old age. The State has not preferred appeal against the quantum of sentence awarded to Gulab Singh. The appeals are pending for the last about 15-years and at such a late stage, we do not find it proper to issue notice to Gulab Singh for enhancement of his sentence although we arc of the opinion that the sentence

awarded is lenient.

3. In all, the learned Sessions Judge tried seven accused persons Out of whom five were acquitted while the remaining two, as mentioned above were found guilty and sentenced.

4. The incident which gave rise to the aforesaid Sessions Trials had taken place at about 8.30 p.m. in the night intervening 21/22 and June, 1976, in the house of complainant Lallu Singh in village Pateura within Police Station, Sumerpur of district Hamirpur. Three persons were murdered during the commission of dacoity and valuable property including cash, clothes and ornaments worth several thousands of rupees were looted by the decoits. The F.I.R. of the incident Ext. Ka-1 was lodged by complainant Lallu Singh at the Police Station on 22-6-1976 at 6.30 p.m. against 17/18 unknown miscreants. The prosecution story was as follows :-

5. At the aforesaid time and place, about 17 or 18 dacoits entered the house of the complainant through the main door of his house and started beating him with the butt of a gun. The dacoits also ransacked his house by breaking open the locks. The inmates of the house raised alarm which attracted Babu Singh, Raghuraj, Danku Singh, Chhotey Singh, Bachcha Singh, Balvir Singh, Indrapal Singh, Bawar Singh, Krishna Kumar, Babu Ram, Raja Ram son of Debi Deen and Raja Ram son of Ramadhin, Karn Singh Binda Lohar and a number of other fellow villagers towards the house of the complainant. They were carrying lathis and torches alongwith them and after taking positions had flashed their torches towards the dacoits, who were collecting bootys outside the house. Ram Sanahi Srivastava also reached there and fired shot from his gun towards the dacoits. The villagers were throwing stones at the dacoits. Firearms consisting of rifle and guns were used by the dacoits also towards the villagers. Complainant Lallu Singh could lay his hand upon his licensed gun and fired shots from the same towards the dacoits. The dacoits, however, collected the booty consisting of the property of the complainant and his cousin Mohan Singh as well as the property of Narain Singh and Ram Khelawan Singh and made good their escape.

6. The story further goes that a lighted lantern was hanging on a peg in the court yard of the house of the complainant and a lighted lamp was there in his kitchen. The inmates of the house including the complainant had been able to see the faces of the dacoits in the light from the lantern, lamp and the torches. During the commission of the dacoity, the dacoits killed Smt. Kishori, the daughter-in-law of the complainant, Babu Singh and Raghuraj Singh. The complainant himself, Danku Singh, Surjan Singh, Krishna Kumar and Babu Ram had received gun shot injuries. One dacoit also was killed as a result of the firing etc. by the complainant and other villagers and he was Kallu Singh of village Pachkhura. The villagers chased the dacoits when they were decamping with booty and one of the dacoits shouted that he was Raja Bhaiya Singh of village Surauli. Lallu Singh, the complainant disclosed in the F.I.R. that since Kallu Singh was a man of the group of Ahibaran Singh, who was

inimical to Raja Bhaiya, the said dacoit had wrongly cited the name of Raja Bhaiya due to enmity. The villagers had been able to snatch one S.B.B.L. 12 bore gun from a dacoit. The complainant gave the details of the looted property to the Police which registered a case u/s 396 IPC. against 17 or 18 unknown persons.

7. The investigation followed as usual. The Police after arresting the suspects of the case put them for test identification in the jail and after receiving the result of the same submitted charge-sheet against seven accused persons.

8. After completion of the necessary formalities, the dead bodies of three persons were sent for postmortem examination by the Police alongwith the connected papers. Samples of blood were collected from the house of the complainant and a few empty cartridges also were found at the spot by the Police.

9. Danku Singh and Surjan Singh were sent by the Police of the District Hospital for medical examination of their injuries, which was done on 22-6-1976 at about noon. The postmortem examination on the three dead bodies was conducted by Dr. V. K. Tandon in the mortuary at Hamirpur on 23-6-1976. The details of the ante - mortem injuries found by the Doctor find place in the judgment of the learned lower court and the same are being reproduced below. He examined the dead body of Smt. Kishori that day at 8 A.M. He found rigor mortis passed off from all over the body except slightly present in feet only. Blood coming out of mouth and nostril. He found the following ante-mortem injuries on her body.

1. 81 gun shot wounds of entry with inverted margins in an area of 22 cm. x 22 cm. on the front of lower half of chest and upper half of abdomen, each wound measuring 0.3 cm. x 0.3 cm. chest abdominal cavity deep. No scorching and tattooing present. Direction from front back.

2. Abraded contusion 3 cm. x 3 cm. on the left fore-head, just above left eye brow.

3. Echymosis in left eye in 4 cm. x 4 cm. area

4. Abrasion 3 cm. x 2 cm. below right eye.

10. From the internal examination, he found the lower lobe perforated through the through at several places. Dark flued blood one pint found in right chest cavity. Six pellets found.

Lower lobe perforated at several places, half pint of dark blood found. The stomach contained 16 ozs of undigested food material. Intestines found perforated at places through and through, semi digested food was coming out of the holes.

11. Dr. Tandon recovered 34 pallets which were sealed in a packet and sent to station officer through a constable along with the clothes, Dhoti and petticoat, recovered from the dead body. In the opinion of Dr. Tandon the death was due to shock and haemorrhage as a result of firearm injuries. The post mortem report is Ext. Ka-6.

12. Dr. Tandon examined the dead body of Babu Singh on 23-6-1976 at 10 A.M. He found blisters present at places. Rigor mortis had passed off from all over the body. He found the following injuries on the dead body :-

1. 55 gun shot wounds of entry with inverted margins in an area of 24 cm. x 28 cm. on the front of chest, each measuring 0.3 cm x 0.3 cm. x chest cavity deep. No scorching and tattooing present. Direction was front to left.

2. 4 gun shot wounds of exit with inverted margins on the right back over upper and outer part of scapula region in an area of 5 cm. x 2 cm. some measuring 5 cm. x 2 cm. and the remaining measuring 0.4 cm. x 0.4 cm. x chest cavity deep.

3. From the internal examination, Dr. Tandon found right third rib fractured. Pleura perforated through" and through on both the sides at several places. Heart perforated at 4 places, through and through one pellet found inside the heart chamber.

He found semi digested food material and gases in the intestines. In the opinion of Dr. Tandon the cause of death was shock and haemorrhage as a result of fire arm injuries. The postmortem report is Ext-Ka-7.

13. Dr. Tandon examined the third dead body the same day at 12 noon. It was the dead body of Raghuraj Singh. The duration was about one and a half day. The rigor mortis had passed off from all over the body. Blisters present all over the body. He found the following ante mortem injuries.

1. Gun shot wound of entry with inverted margins, 1 cm. x 1/2 cm. x chest cavity deep in the right chest just below the medial end of the right clavicle. No scorching or tattooing present.

2. Gun shot wound of entry with inverted margins, 1 cm x 1/2 cm. x chest cavity deep on the right chest, just below the outer end of the clavicle. No scorching or tattooing present. Direction from front to back.

3. Gun shot wound of exit with everted margins 1 cm. x I cm. x abdominal cavity deep on the right back of the chest lower part.

4. Gun shot wound of exist with averted margins 1 cm. x 1 cm. abdominal cavity, deep on the left back of chest of lower part.

On the internal examination, he found left third rib fractured under injury No. 2; Pleura perforated under injury No. I and 2. lower and right lobe perforated through and through, dark flued blood found.

He found pasty food material in the stomach, intestines were full of gases and faecal matter. In the opinion of Dr. Tandon, the cause of death was shock and haemorrhage. The post mortem report is Ext-Ka-8.

14. Dr. Tandon had also performed postmortem examination on the dead body of the dacoit who was being described as Kallu Singh, on 23-6-1976 at 1.30 p.m.

15. Appellant Ram Mohan was arrested by the Investigating Officer Shri Siddiqui on 17-7-1976 in the Collectorate, Banda, made Baparda, brought to Harmirpur Baparda and sent to district jail, Hamirpur in the same condition.

16. Appellant Gulab Singh had himself surrendered in the concerned Court at Harmirpur in a case u/s 307 IPC. It is unnecessary to give the details of the arrest of the other accused persons, who were acquitted by the learned lower court, as the decision has become final.

17. Appellant Gulab was correctly identified in the jail by witnesses Krishna Kumar and Bachcha Singh, and appellant Ram Mohan was identified by Jai Bahadur, Krishna Kumar Mohan Singh and Chhotey Singh.

18. The defence of the appellants consisted of the denial of their guilt by them. They tried to show in their statements u/s 313 Cr.P.C. that they had been falsely implicated in the case.

19. The prosecution in order to prove the guilt of the appellants had examined the following witnesses :-

PW-1, Lallu Singh, was the complainant himself. He narrated the story as disclosed by him in the F.I.R. Ext. Ka-1 but could not recognise any of the suspects as a member of the gang of the dacoits who had committed the dacoity. He had not heard any of the dacoits saying that he was Raja Bhaiya of village Surauli.

PW-2, Krishna Kumar, already named above, also supported the prosecution story on all material points. He stated that the dacoits during the commission of the dacoity used to go in and come out of the house of the complainant and eight dacoits were in Police uniform. He identified the appellants as the members of the gang of the dacoits which had committed the dacoity and stated that after the commission of the dacoity he had seen them in the jail during the test identification proceedings and did not know them from before the commission of the dacoity. He denied the suggestion of the defence that appellant Gulab Singh was known to him from before this incident of dacoity.

PW-4, Chhotey Singh, also claimed to have witnessed the incident and had received injuries from pellets but was not got medically examined by the Investigating Officer. He identified appellant Ram Mohan and a few others in the jail as well as in the Court as the members of the gang of the dacoits which had committed the dacoity and stated that they were not known to him nor were shown to him by the Police.

PW-5 Bachcha Singh, PW-6 Mohan Singh, PW-8 Ajodhya Singh and PW-9 Jai Bahadur Singh also were examined by the prosecution as eye-witnesses of the occurrence.

They supported the prosecution story on all material points.

PW-5 Bachcha Singh, identified appellant Gulab Singh in the jail as well as in the Court as a member of the gang of the dacoits which had committed the dacoity and also stated that he had not seen him anywhere else.

PW-6 Mohan Singh, had correctly identified appellant Ram Mohan and a two others in the jail as well as in the Court as the dacoits who had committed the dacoity and also stated that he had not seen them elsewhere.

PW-8 Ajodhya Singh, stated that his brother's wife Smt. Kishori was killed by the dacoits during the commission of the dacoity. He identified accused Nankai and Raja Bhaiya as the dacoits, who had participated in the dacoity, but both of them were acquitted after trial.

PW-9, Jai Bahadur Singh stated that during the commission of the dacoity. he had thrown brick-bats towards the dacoits, one of whom opened fire towards him which hit his wife Smt. Kishori who had fallen dead as a result thereof. He correctly identified appellant Ram Mohan and a few others in the jail as well as in the Court and stated that he had not seen them elsewhere.

20. The other evidence adduced by the prosecution is of formal nature including the statements of the Medical Officer and the Investigating Officer of the case.

21. PW-3 Shiv Saran Singh, H. C. No. 53, who was posted at Police Station, Sumerpur, as Constable on 22-6-1976 had drafted the formal "chick" report of the incident and registered the case in the general diary vide Ext. Ka-2 and Ka-3 respectively. He was not cross-examined.

22. PW-20, Station Officer, Sumerpur, who was present when this case was registered at the Police Station, had started investigation by interrogating prosecution witnesses Lallu Singh and Ajodhya Singh. He, thereafter, went to the place of occurrence and inspected the same vide Ext-Ka-15, which is a site plan prepared by him after inspection. He completed the necessary formalities in respect of the dead bodies and sent the same for post-mortem examination along with necessary papers. Samples of blood stained and plain earth were also collected by him from a few places. He then had interrogated prosecution witnesses Babu Darzi and Krishna Kumar Pandey both of whom had received injuries and sent them for their medical examination. One blood stained shirt from the person of Babu Darzi and one blood stained trouser, one blood stained Baniyan and one blood stained shirt were taken in possession by him from the person of Krishan Kumar Pandey. A number of empty cartridges of different variety and make were found by him at the place of occurrence. He had collected them and prepared Ext. Ka-44 in respect of the same. He then had interrogated Jai Bahadur Singh, Ram Bahadur Singh, Smt. Suraj, Ram Narain Singh, Mohan Singh, Ram Khelawan Singh, Smt. Sukhdei, Chhotey Singh, Bachcha Singh, Balbir Singh, Indra Pal Singh, Bachchu Singh, Raja Ram Singh,

Raja Ram Singh son of Ram Adhin, Binda Lohar and a few others. The lantern, torches and one kerosene oil dibbi were inspected by him found in order and taken into possession. On 11-7-1976, he went to village Benda in district Banda. Smt. Ram Bai, Nankoo Singh and Smt. Devmati were interrogated by him and from their statements it transpired that the dacoit, who was killed during the commission of the dacoity, was Ram Pal, husband of Smt. Ram Bai. He on 17-7-1976 arrested Ram Mohan and Rajjan in Banda, made them Baparda and lodged them in the Police lock-up in Baparda condition. He stated that he had not permitted any body to see the faces of Ram Mohan and Rajjan till they had remained in his custody.

23. Appellant Gulab Singh and a few others by 7-9-1976 had surrendered before the concerned Magistrate from where they were sent to jail. He then submitted report on 11-9-1976 for holding the test identification proceedings of the suspects and after receiving the result of the same submitted charge sheet Ext-Ka 38 against the two appellants and a few others.

24. The prosecution had examined a number of witnesses in order to prove the arrest and Baparda custody of the suspects of the case from the time of their arrest up to their admission in the jail, but it was hardly necessary to mention the same, as in this appeal we are concerned with the two appellants only out of whom Gulab Singh had surrendered and no formal evidence of his admission in the jail, therefore, was necessary. Regarding appellant Ram Mohan it was not contended on his behalf that the formal evidence to prove his Baparda admission from the Police Station in the jail had not been adduced by the prosecution.

25. PW-25, R.K. Singh A.P.O. Hamirpur, was examined by the prosecution to prove the identification memo, as the S.D.M. Shri R.S. Doharay, who had conducted the test identification proceeding, had died.

26. Appellant Ram Mohan examined DW-1 Smt. Shiv Kali, DW-3 Nand Kishore and DW-4 Surajpal Singh. Appellant Gulab Singh examined DW-2, Subedar Singh who was a resident of village Pateura in which the dacoity is said to have taken place. The testimonies of the witnesses shall be discussed at the proper place.

27. During the arguments, the factum of the dacoity was not challenged on behalf of the appellant. The complainant and the other prosecution witnesses named above consistently stated above this aspect of the case and their testimonies found support from the medical evidence which revealed that Smt. Kishori, Babu Singh and Raghuraj Singh were killed by the dacoits during the commission of the dacoity and a number of persons had received injuries at the hands of the dacoits. One dacoit also had lost his life during the incident, as the villagers had faced the dacoits boldly. Fire was opened from the side of the villagers also towards the dacoits. We do not find sufficient reasons to disbelieve the aforesaid evidence and the prosecution, thus, had succeeded in establishing the factum of the dacoity.

28. For the appellants, it was contended that there was no sufficient light at the time of the commission of the dacoity and the witnesses, therefore, were not in a position to see the faces of the dacoits. It was further argued that they probably had identified the appellants as a result of outside help to them before identification and also because appellant Gulab Singh was known to them from before the incident. The contention about the absence of light did not carry force. The prosecution has been able to establish successfully that a lighted lantern was hanging in the court yard of the complainant and a lamp was there in the kitchen. The witnesses also stated consistently about the presence of torches with the villagers which were flashed towards the dacoits during the commission of the dacoity. Nothing material could be pointed out on behalf of the appellants on the basis of which the aforesaid evidence could be disbelieved. The Investigating Officer had inspected the lantern, lamp and the torches of the witnesses and found them in working order. The presence of the aforesaid sources of light was natural and probable also. The witnesses, who had got torches, naturally would have preferred to carry them while leaving for the place of occurrence after the commencement of the dacoity. Besides, these sources of light, the witnesses have consistently stated that the dacoits also, during the commission of the dacoity, had been flashing their torches which also must have added to the intensity of the light. It hardly needs emphasis that the dacoits also required light for collecting booty and in the absence of the same, it would not have been possible for them to ransack the house of the complainant. The evidence on the record, thus, successfully proved the presence of sufficient light for the witnesses in which they could have seen the faces of the dacoits and marked their features so as to be able to identify them in the jail after their arrest.

29. It was now to be seen if there was opportunity also for the witnesses to see the faces of the dacoits during the commission of the dacoity. After carefully considering this aspect of the case and going through the evidence on the record, we find that there was no dearth of opportunity for the witnesses to see the faces of the dacoits. It was evident from the narration of the facts of this case that the villagers had faced the dacoits and had been successful in killing one of them during the commission of the dacoity. It would, therefore, be reasonable to believe the statements of the witnesses that they had been able to see the faces of the dacoits and mark their features on the basis of which they had identified them in the jail, PW-2 Krishna Kumar stated that he had received injuries during the commission of the dacoity. His testimony goes to show that he had not concealed himself behind any object and was face to face with the dacoits otherwise he would not have received injuries during the incident. He, thus, had the opportunity to see the faces of the dacoits and mark their features. The same is the case with PW-4, Chholey Singh, PW-5 Bachcha Singh and PW-6 Mohan Singh. They no doubt had not received injuries, but claimed to have seen the faces of the dacoits during the commission of the dacoity and we do not find good reasons to disbelieve this part of their statements.

30. It may now be examined if there was reliable evidence of identification against the two appellants. Gulab Singh was identified by PW-2, Kirshna Kumar and PW-6 Bachcha Singh, both of whom were good witnesses of identification. Therefore, if believed, the verdict of guilt could successfully be returned against him as has been done also by the learned lower court.

31. Ram Mohan appellant was correctly identified by PW-2 Krishana Kumar, PW-4 Chhotey Singh, PW-6 Mohan Singh and PW-9 Jai Bahadur, all of whom were good witnesses of identification. The accused persons no doubt tried to show that they were shown to the prosecution witnesses before their identification, but there is no evidence worth the name of the record from which any such inference could be drawn in their favour.

32. For appellant Ram Mohan it was contended that the prosecution had not been able to prove that he was kept Baparda from 12 O'clock in the night up to 3 a.m. on 18-7-1976 in the lock up at Kotwali, Banda, but the contention appears to be devoid of merits. Head Moharrir, PW-18, had deposed about Baparda custody of appellant Ram Mohan as well as accused Rajjan at Katwali, Banda till they had remained there. It was also in evidence that a curtain had been hung at the door of the lock up. We do not find sufficient reasons to disbelieve the testimony of this witness which established that appellant Ram Mohan was kept Baparda at the Kotwali.

33. For appellant Gulab Singh nothing material could be shown on his behalf on the basis of which it could be inferred that he was shown to the prosecution witnesses before his identification in the jail by the prosecution witnesses. He was sent to jail direct from the court where he had surrendered and it did not appear probable that he was shown to the witnesses in the jail at Hamirpur. The appellant was probably aware of this position and, therefore, tried to show that he was known to the prosecution witnesses from before this incident due to which the evidence of identification against him was not worthy of credit. His contention, however, did not find favour with the learned lower court and we also are of the opinion that the learned lower court had returned a correct verdict about this aspect of the case. The remote possibility that the witnesses could have seen the accused at Railway Station, Hamirpur, from where they as well as Gulab Singh used to board trains for their destinations did not appear to be there. So many persons board trains from a common station, but it does not mean, that they become known to each other. The witnesses had denied the said suggestion of Gulab Singh and we do not find any reason to disbelieve them on this point.

34. It was also contended for Gulab Singh that he was known to the prosecution witnesses, who belonged to village Pateura as one Subedar Singh son of Ram Singh of village Pateura had in a case stood surety for Gulab Singh. Subedar Singh as mentioned above had been examined as DW-2 by Gulab Singh. In his statement DW-2 Subedar Singh, stated nothing about the aforesaid surety bond. He, however, stated that he had got relationship in village Surauli to which appellant Gulab Singh

and his real brother Raja Bhaiyya belonged and his mother named Jaggi was aunt (Buwa) of Gulab Singh and Raja Bhaiyya, that both of them used to visit his house during the last about 14 or 15 years; that the houses of the prosecution witnesses were at a very short distance from his house and that all of them very well knew Gulab Singh and Raja Bhaiyya from before this incident. In his cross-examination, he had admitted that his son Ram Karan was arrested in Sagar city in Madhya Pradesh alongwith one Ram Khelawan by the Police but expressed ignorance about the offence for which the arrest had been made. He expressed ignorance about the names of the sureties who had filed surety bonds on the basis of which Ram Karan was bailed out. He also expressed ignorance to the suggestion that Ram Karan was an accused in the dacoity case in respect of the dacoity that had taken place in the house of Sudarshan Singh Thakur in village Gahra within Police Station Kabrai and had not denied another suggestion that his son had participated in a dacoity in the house of a Vaish in village Karhara within Police Station Mahoba. Further, he stated that he did not know that Ram Karan had absconded or that the Police was searching for him. He denied the suggestion that as a matter of fact, this dacoity was got committed by Ram Karan by the gang of Gulab Singh and Raja Bhaiyya who were asked by him to commit the dacoity. Learned A.G. A., therefore, argued that DW-2 Subedar Singh, had reasons to depose falsely in favour of Gulab Singh and the argument appeared to carry force. No reliance, therefore, could be placed upon the statement of DW-2 Subedar Singh that the prosecution witnesses knew Gulab Singh and Raja Bhaiyya from before this incident. Being a relation of appellant Gulab Singh as stated by him, he was interested in the acquittal of Gulab Singh and no reliance, therefore, could be placed upon his statement. The surety bond Ext. Kha-9 was also of no help for Gulab Singh. There was no such presumption that Gulab Singh would have become known to the prosecution witnesses simply because DW-2 Subedar Singh stood surety for him in some other case. In our opinion, therefore, the learned lower court had rightly placed reliance upon the statements of the prosecution witnesses for returning a verdict of guilt against appellant Gulab Singh.

35. Appellant Ram Mohan tried to show that he had been falsely implicated by the Police particularly Police Inspector named Suraj Pal, but the contention did not appear to carry force. The other contention that he was known to the prosecution witnesses from before this incident also was rightly disbelieved by the learned lower court which has given convincing reasons in support of the inference. The testimony of DW-5 Chandra Bhan Singh was rightly held as insufficient to prove that Ram Mohan was known to the prosecution witnesses. May be that PW-6 Mohan Singh had gone to the house of Shiv Nath Singh in village Pateura, but it did not mean that he had the occasion to see Ram Mohan appellant there. The other plea to prove the alleged false implication of appellant Ram Mohan did not appear to be convincing and worth acceptance. It would not be proper to express any opinion about the other criminal cases pending in Banda District against Ram Mohan. It is a common experience that in dacoity cases, the accused persons, finding no other defence

open 10 them, state that the police had got them falsely implicated.

36. In view of what has been discussed above, we are of the opinion that the appellants were rightly convicted, and sentenced by the learned lower court and the appeal being devoid of merits, was liable to be dismissed.

37. The appeals are dismissed and the appellants are directed to surrender themselves for undergoing the sentences awarded to them. They are on bail. Their bail bonds are cancelled and sureties discharged.