
(2003) CriLJ 2060

Allahabad High Court

Case No: Criminal Appeal No. 2373 of 1980

Bachau and Another (in
Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 6, 2002

Acts Referred:

- Evidence Act, 1872 - Section 9

Citation: (2003) CriLJ 2060

Hon'ble Judges: S.K. Agarwal, J; K.K. Mishra, J

Bench: Division Bench

Advocate: Keshav Sahal, V. Singh, Brijesh Sahai and S.K. Mishra, for the Appellant; D.G.A., for the Respondent

Final Decision: Allowed

Judgement

1. This appeal was preferred by appellants Bachau and Kangal against their conviction u/s 396, I.P.C. and consequent sentence of life imprisonment.

2. The brief facts of the case are that on the night intervening 27/28 June, 1979 a dacoity was committed in the house of Munni Lal by a large-number of miscreants. The presence of these two appellants was also alleged in the incident. One of the appellants Bachau was armed with a gun and other appellant Kangal was stacking the looted articles in front of the main door. They entered the house of the informant by jumping the tiled roof and opened his main door thereafter facilitating the entry of their companions. A lantern was allegedly burning inside the house. Munni Lal, the informant was sleeping outside his house. He was not touched by any of the miscreants who were present outside his gate. Munni Lal ran away from the spot and raised alarm. It attracted to the scene of occurrence Rajai, Shyam Dev, Namwar, Jagai, Surju, Jagdhari, Durgawati, Arjun and Dalsingar. Murahu set afire pual which was stacked near the house at a distance of 25 paces. It allegedly created sufficient light for the identification of the miscreants. Three

persons amongst the witnesses Ram Briksha, Nandu and Munna possessed torches. They were flashing their torches also upon dacoits. Identification dacoits was made by the witnesses in the light of lantern, torches and the light of burning pual. The dacoits were wholly unknown to the witnesses. The villagers who collected at the spot pelted stones and brickbated the dacoits in retaliation. The msicreants resorted to firing. As a consequence Rajai, Shyam Dev, Surju, Namwar, Arjun, Sudhar, Jagdhari and Smt. Durgwati sustained injuries. Out of them Shyam Dev and Rajai breathed their last within a short time. The dacoits decamped with the booty. One of the dacoits in the process of fleeing fell down to the ground. He was taken into custody, tied with a rope and the villagers beat him mercilessly. As a consequence he breathed his last in the village itself.

Report of the occurrence was lodged by Munni Lal, P.W. 3 at Police Station Balua on the night of 28-6-1979 at 3.0 A.M. It is ext. Ka.2. After registration of the case by Head Moharir P.W. 10 Ram Nagina Yadav, investigation was entrusted to Ram Lachan Yadav, P.W. 14. He arrived at the scene of the occurrence at 3.10 A.M. and took into his custody the burnt ash of the pual and torches of the witnesses. He prepared their recovery memos. He also completed the inquest memos on the body of three dead persons, two villagers and one dacoit. Their bodies were sent for the post-mortem examination. He also sent the injured persons for their medical examination. These injured persons were medically examined by P.W. 11, Dr. R. A. Pradhan at 8.10 A.M. on 28-6-79 at the village dispensary. The postmortem evidence was tendered. In this case the Medical Officer was not examined.

3. During the pendency of this appeal, appeal of Bachau was abated by us on 3-7-2002 on the confirmation of his demise.

4. We, in the circumstances propose to hear the appeal of Kangal alone today.

5. So far as this appellant is concerned he was arrested by the Investigating Officer P.W. 14 Ram Lacham Yadav on 27-7-79 at 4.00 P.M. on the road in front of the Katchery. He was brought to the Police Station concerned and lodged there on 28-7-79 at 6.10 A.M. This appellant was taken out of the Police Station according to P.W. 6 at 7.05 A.M. on 28-7-79. However, P.W. 7 Constable Nand Ji Mishra stated that he took him out from the Police Station for lodging in Jail and for obtaining his remand order in this case at 9.05 A.M. on 28-7-79. The time of lodging in Jail was not disclosed by P.W. 7 Nand Ji Mishra.

6. The prosecution examined in this case five eye-witnesses namely, Shyam Lal Yadav P.W. 1, Namwar P.W. 2, Munni Lal P.W. 3, Ram Sudhar P.W. 4 and Dal Singar P.W. 5. The details of other formal witnesses who arrested the appellant and lodged him in the Police lock up and thereafter took him out for producing before the remand Magistrate and lodging him in Jail has already been discussed above. The other witnesses, so far as this appellant is concerned, are P.W. 13 G. R. Jaiswal and P.W. 14 Ram Lachan Yadav, the Investigating Officer. Two other witnesses P.W. 9 Lal Bahadur Pathak and P.W. 12 Amar Nath Tiwari are not relevant for his case therefore we are not making any mention

of their evidence in our judgment. P.W. 11 is the Medical Officer who examined the injured witnesses. His evidence is also not relevant for the decision of this appeal since sufferance of injuries by the witnesses is not under challenge before us.

7. It is contended by learned Counsel for the appellants that this appellant after his arrest admittedly was taken to the village of dacoity. The explanation offered by the Investigating Officer for it does not stand our scrutiny for even a minute. It is wholly unreliable and unworthy of any credence.

8. It is further contended by learned Counsel for the appellants that most of the witnesses during the trial were sent to Jail for identifying those accused persons who surrendered in court. They completely failed to identify any surrendered accused person. In the above circumstances the identification of this appellant by these witnesses is rendered highly doubtful and it was not possible without any outside aid.

We find force in the contention raised by learned Counsel for the appellants. Scrutinising the evidence of P.W. 14 who is also the arresting officer of this appellant it is apparent that this appellant was taken to the village of the dacoity i.e. Balua immediately after his arrest. He offered an explanation that a dacoity was to be committed in that village and members of his gang were likely to collect there therefore he took him there for this purpose. This fact was not transcribed in the case diary nor in the G.D. on his return. Therefore, in our opinion, the explanation does not merit any consideration by us. Once this fact is established that the appellant was taken by the Sub Inspector after his arrest to the village of dacoity the probability of his being shown to the witnesses is strongly favoured. Apart from it the belated lodging of the appellant at the Police Station is yet another circumstance that strengthens our suspicion. This appellant is earlier stated was arrested at 4.00 P.M. on 27-7-79. He was lodged in the lockup of Police Station Balua by the same Sub-Inspector on 28-7-79 at 6.05 P.M. Admittedly as per deposition of P.W. 13 three hours are normally taken for coming to Police Station Balua from Varanasi. The enormous delay in lodging this appellant in the police lock-up remains wholly unexplained in the circumstances of the case. There is yet another circumstance that adversely stresses on the identification of this appellant by the witnesses. Most of the witnesses who identified this appellant went to Jail to identify other accused on 2-3 occasions in the past. They failed completely to identify a solitary suspect lodged in the Jail. All these suspects were those who surrendered in Court. These two accused Bachau (now dead) and the appellant were arrested and brought to the Police Station. Their complete failure to identify any suspect in their different sojourns to Jail create serious doubt in our mind about the authenticity of the identification proceedings conducted in Jail against this appellant. It clearly exhibits an outside aid to these witnesses undoubtedly. Before being lodged in the lock-up of the concerned police station they were taken to the village of dacoity further fortifies our above conclusion. Identification of an accused suspect should and must not be procured by means decried by Courts. Showing of the suspect at any stage from the time, of their arrest till their lodging in police lock-up, their withdrawal from here and production for remand order in Court and thereafter their journey from here to

Jail provide sufficient opportunity to investigating agency to do it is most unfair mode of investigation. As identification procured in this manner is most unconvincing and illegal in character. If the accused successfully establishes this possibility from his own evidence or from the evidence adduced by prosecution his success is immediately ensured. Accused succeeds once he created a reasonable probability of the use of such an outside aid or dubious means. Investigation is meant to work out offences and not to rope in innocent persons by such dubious methods. It smudges the investigation as dishonest and unfair. The appellant had to remain in Jail for a considerably long period. Who would compensate him for this illegal incarceration, agony, and loss of face if the society stares us at our face. Though right now we do not propose to undertake any remedial measure but it has to be considered one day. 9. In the circumstances we find the case of the appellant fit for acquittal. His appeal is therefore, allowed. The conviction of the appellant Kangal for the offence u/s 396, I.P.C. is hereby set aside. He is acquitted of the above said charge.

10. Appellant is in Jail. He shall be released forthwith unless otherwise required in any other offence.