(1992) 01 AHC CK 0119

Allahabad High Court

Case No: Criminal Appeal No. 1922 of 1979

Aman		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Jan. 21, 1992

Acts Referred:

- Penal Code, 1860 (IPC) - Section 394, 397

Citation: (1992) 34 ACR 81

Hon'ble Judges: Surya Prasad, J

Bench: Single Bench

Advocate: V.S. Singh, for the Appellant;

Judgement

Surya Prasad, J.

This is a criminal appeal against the judgment and order passed by the then Addl. Sessions Judge, Lalitpur dated 26-4-79 in Session Trial No. 91 of 1977 convicting the Appellant u/s 394 read with Section 397 IPC and setencing him to seven years rigorous imprisonment. There does not appear any necessary of reproducing the facts of the case which have already been narrated in the judgment of the trial court itself.

2. Heard the learned Counsel for the parties at length and perused the entire evidence on record.

3. The learned Counsel for the Appellant has expressed that the Appellant accused Aman was arrested on 8-1-77 in connection with some other offence alleged to have been committed by him and that on the basis of his confession in that case he was sent to the jail and on the completition of the usual investigation he was ultimately charge sheeted in the case to which this appeal relates The learned Counsel for the Appellant''s argument initially centers round the fact that he was not produced before the Magistrate concerned 24 hours from the time of the arrest However he did not press this argument subsequently as there is an explanation for the delay

occurred in producing the Appellant accused before the Magistrate within 24 hours from his arrest.

4. The learned Counsel for the Appellant accused has further argued that only one identification witness namely Halke (PW 1) has identified the Appellant accused correctly. No other witness has identified him. Therefore the conviction on the sole testimony of a single identification witness cannot be sustained. His contention to this effect carries weight.

5. The learned Counsel for the Appellant has also argued that the test parade was conducted over three months from the date of the incident and, therefore, the evidence of identification witness cannot be implicitly relied upon. For this purpose he has placed reliance upon Hindu Singh v. State of Uttar Pradesh, (1982) 3 SCC 368 wherein it has been observed at under:

After hearing counsel on either side we are satisfied that the conviction of the Appellant for the offence of dacoity is difficult to sustain. The conviction rests purely upon his identification by five witnesses, Smt. Koori, Pritam Singh, Kewal, Chaitoo and Sinru, but it cannot be for gotten that the identification parade itself was held after a lapse of 42 days from the date of the arrest of the Appellant. This delay in holding the identification parade throws a doubt on the genuineness thereof apart from the fact that it is diffioult that after lapse of such a long time the witnesses would be remembering the facial expressions of the Appellant. If this evidence cannot be relied upon there is no other evidence which can sustain the conviction of the Appellant. We therefore allow the appeal and acquit the Appellant.

6. In the result the appeal is allowed. The impugned judgment and order are set aside. The Appellant accused Aman is acquitted of the charges levelled against him He is on bail His bail bonds are cancelled and sureties stand discharged. He need not surrender.