

CASE NO.:
Appeal (crl.) 397 of 1998

PETITIONER:
RANG BAHADUR SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 07/03/2000

BENCH:
K.T. THOMAS & R.C. LAHOTI

JUDGMENT:

THOMAS, J.
L...I...T.....T.....T.....T.....T.....T.....T...J

For Bhulani Devi the night on the 1st of August, 1978 turned out to be the most dreadful in her life, for, it was on that night her husband, her father-in-law, his brother and two other neighbours were gunned down within her sight inside her nuptial home by armed dacoits. Police, after investigation challaned the appellants as three out of a gang of dacoits, as the others could not be identified thus far. Though the three appellants secured acquittal from the trial court they fell into the dragnet of conviction when a Division Bench of the High Court found them guilty of the offence, on the appeal preferred by the State. All the appellants were thereupon convicted under Section 396 of the Indian Penal Code and each was sentenced to undergo imprisonment for life.

Thus the appellants filed this appeal as of right under Section 379 of the Code of Criminal Procedure and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970. We heard detailed arguments advanced by Shri U.R. Lalit, senior counsel for the appellants and Shri Vishwajit Singh, counsel for the State of U.P.

Facts lie in a narrow compass. The incident happened in Rudauli Village (Mirzapur District). Bhulani Devi's husband Rama Shankar Yadav was the Pradhan of that village. His residential building must have been a twin house wherein the entire family of his father would have been living. On the fateful night he and his wife Bhulani Devi along with their children were sleeping on the roof of one segment of the building. His father Chamman Yadav was sleeping on the verandah of the next segment along with his brother Sombhar Yadav. It appears that the family was in reasonably affluent circumstances and they had a number of valuables which were kept in the house. It was around midnight that the dacoits arrived consisting of a gang of 14 or 15. They tried to break open the door of the house. On hearing the sound of gate-crashing Bhulani Devi woke up and saw the

dacoits in the light of torchlights flashed by them. They were armed with guns, chopper and lathis. One of the inmates of the house - Ram Lak an Yadav - presumably to alert the villagers, set ablaze a haystack in the courtyard. The flames provided enough alert to the neighbours who started trickling in. The dacoits first attacked Ram Lakhan Yadav and vanquished him. Some of the neighbours who arrived there gathered courage and attacked the marauders with bricks and pebbles.

Dacoits turned against Chaman Yadav who entreated to them to spare their lives and allowed them to take away whatever wealth they required. On realising that Chaman Yadav had discovered the identity of the attackers some of them fired at him and also at his brother Sombhar Yadav, and consequently both of them fell down. Rama Shankar Yadav became forceful and told the dacoits that he would take revenge for the killing of his father. Instinctively he picked up bricks and pelted such handy weapons at the killers. Then some of the dacoits turned against him, broke up his part of the house, climbed up to the roof and shot him dead. Thereafter the dacoits tried to run away with the booty.

While running away some of the local people chased them. So the dacoits turned and fired at them also. Lalchand and Kalika Yadav sustained fatal bullet injuries and later they succumbed to those injuries. The marauders succeeded in escaping with the booty.

The first information was actually conveyed to a Police Outpost where PW-10 Head Constable was present. He told the informant to report the matter to the police station. So a written complaint was presented at the police station which was made the basis for the FIR. Names of three of the dacoits were mentioned in the said written complaint.

None of the appellants, nor any of the remaining dacoits could be arrested by the police. However on 16.8.1978, first and third appellants surrendered before the magistrate court while the second appellant surrendered on 24.8.1978. Some other persons were taken into custody on suspicion and were put to Test Identification Parade. But the witnesses did not identify them and hence they were dropped out.

Prosecution examined 12 witnesses. Out of them PW-3 Keshav, PW-4 Bhulani Devi, PW-5 Lalloo, and PW-6 Chandrika have stated that they identified the appellants as three of the dacoits. The accused examined two witnesses, DW-1 Jaishree and DW-2 Roop Narayan Singh. Jaishree is one of the neighbours. His version was that when he reached the house of occurrence in the night he found some of the inmates lying dead and some other lying injured, but even on enquiries made by him none could tell him as to the identity of any of the dacoits.

The Session Judge was not persuaded to believe that the three appellants were involved in the dacoity. He advanced 8 reasons for holding the said view. Those reasons are:

(1) Exhibit KA-22 (which is the written complaint signed by Bhulani Devi and which is the first information statement) would have been created much after the occurrence and it would have been prepared under the active care and supervision of the local police.

(2) FIR was ante-dated and hence is devoid of any legal utility.

(3) There was no sufficient light to identify the dacoits.

(4) The investigating officer did not make any effort to arrest the accused. Instead some other persons were arrested and they were let off later.

(5) Name of the second appellant (Mangala Giri) was not in the FIR, and on the contrary the name of another person (Baba Singh) was found in place thereof. According to the police, even the said Baba Singh was not involved in the offence.

(6) It is difficult to believe that the appellants who were well known to the inmates of the house would have gone there without covering/concealing their faces.

(7) There is no acceptable explanation for the non-examination of Ram Lakhan.

(8) As PW-3 admitted that there was a previous enmity between Rama Shankar Yadav and the first appellant there is also the possibility of the accused being falsely implicated.

The Division Bench of the High Court agreed with the Sessions Judge that the investigating officer (PW-11 K.N. Singh) acted in a very unfair manner. Learned judges further felt that PW-11 was trying to help the appellants. The role played by PW-11 in the investigation has been subjected to very rude comments passed against him by the Division Bench of the High Court. Nonetheless learned Judges felt that the evidence of the four eye witnesses could be relied on and hence the order of acquittal was reversed and appellants were convicted by the High Court of the offence mentioned above.

True, if the evidence of those four eye witnesses can be accepted regarding identification of the appellants as the culprits there is no difficulty to confirm the conviction. So the crucial question in this appeal is whether the evidence of those witnesses can safely be acted on, merely because in the trial court those witnesses identified the appellants as three of the culprits. We are definite that the identification made by the four witnesses in court must be subjected to severe scrutiny for the reason that the appellants were admittedly at loggerheads with the husband of PW-4 Bhulani Devi.

If the inmates of the robbed house could not identify any of the dacoits but later they suspected that the appellants were behind the dacoity, there can certainly be the possibility of implicating the appellants out of suspicion. Is it enough to sideline their testimony merely because of such a possibility?

There are certain broad incongruities staring at the prosecution version against the appellants. They can be

narrated below:

First is that the written complaint made by PW-4 Bhulani Devi which became the basis for the FIR, reached the magistrate only on 3.8.1978. If the incident happened on the night of 1st August and the police was told on the next morning that appellants were the dacoits, we have no reason to think that the FIR would not have been registered against the appellants on the same morning. PW-11 investigating officer admitted that no case was registered against the appellants till the night of 2nd August, 1978. If so, the arguments that the case against the appellants was registered only on the 3rd of August 1978, cannot be ruled out. What was the reason for such a peculiar dodging in making an FIR?

The second aspect is that names of the appellants did not appear on 2nd August. The argument was attempted to be made in defence of such non-inclusion of the appellants on the premise that no signature in any of the papers prepared by the investigating officer required mention the names of the accused. We find it difficult to believe that even the general diary need not contain the names of the culprits whose identity was known by then. It is equally difficult to comprehend that the inquest prepared on the morning of 2nd August 1978, should be totally silent about the names of at least the known culprits. Is it not more reasonable to presume that no names were mentioned in all the investigative records made on 2nd August 1978, because the investigating officers had not come to know of the names of any of the dacoits till then?

In the above context we may point out that the police did not think it necessary to raid the houses of the appellants either on the 2nd or on the 3rd of August, 1978. It was only on the 4th that the police chose to make a search of the houses of the accused. This could be on account of the fact that police had no idea of the involvement of the said accused till 3rd of August, 1978.

The next impediment against the veracity of the prosecution version is, why the investigating officer did not feel the necessity to recover at least one of the articles robbed away. We must remember that the investigating officer could not recover even the guns with which the appellants would have killed five persons in the occurrence. Such a serious flaw cannot be explained away simply because the police failed to know where such guns were disposed of.

In the above context it must be remembered that the appellants surrendered to the court on their own initiative. It is difficult to appreciate that the investigating officer could not interrogate any of the appellants even after they surrendered in the court.

We may now point out the prosecution version that Chaman Yadav and Sombhar Yadav were gunned down by the police because they realised the identity of the appellants. PW-4 Bhulani Devi said that she heard one of the appellants uttering the words: "Chaman Yadav had already identified us". We have to pause here for a minute and ask a question - if the dacoits did not want the inmates of the burgled house to know their identity, is it not reasonable to assume that they would have reached the house after covering their

faces? Instead, all of them turned against the old man Chaman Yadav, only because Chaman Yadav understood the identity of the dacoits.

From the above broad aspects it is quite possible that none of the witnesses could mention the names of the persons on 2.8.78. If that be so the evidence of DW-1 (the neighbour) that nobody could say who the dacoits were even though he reached the place immediately after the occurrence, cannot be brushed aside. If that was the real position, it is possible that the names of the accused were mentioned by PW-4 and others out of suspicion.

It is again in the aforesaid context that we have to evaluate the impact of the non-examination of Ram Lakhan Yadav. When four witnesses were examined to speak to the occurrence normally non-examination of one more witness is not a serious flaw. But in this case non-examination of Ram Lakhan Yadav cannot be sidelined with such a reasoning. This is because it was Ram Lakhan Yadav who set fire to the haystack, in the light of which flames the culprits were identified; and it was Ram Lakhan Yadav who was first attacked by the dacoits, and it was Ram Lakhan Yadav who had seen the dacoits earlier than any other person connected with victims' house. What he would have said about the identity of the dacoits cannot now be left in surmise. If he also had said that all the dacoits were unknown persons it would have had a very deleterious impact on the veracity of the four witnesses who pointed to the three appellants as the dacoits.

At any rate, the reasons advanced by the trial court are by no means weak or untenable for not relying on the evidence regarding identity of the dacoits. In an appeal against acquittal interference cannot be made if the reasons of the trial court are good and sturdy.

The amount of doubt which the court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime.

We therefore, allow this appeal and set aside the judgment of the High Court. We restore the order of acquittal passed by the trial court and direct the jail authorities to set the appellants free, unless they are involved in any other case.