Shiam Lal vs Rex on 26 September, 1951

Equivalent citations: AIR1953ALL131, AIR 1953 ALLAHABAD 131

JUDGMENT

Malik, C.J.

1. The appellants have been convicted under Section 395, I.P.C., and sentenced to seven years' rigorous imprisonment. A dacoity was committed on the night between the 11th and 12th February 1949, at the house of Zahari. A report of the incident was lodged at the Police Station, Zafrinagar at 9'clock in the morning of 12th February 1949. The report was made by Zahari through Prasadi Chaukidar of the village. In the report it was mentioned that there were fifteen or sixteen dacoits who were armed with guns, spears, lances and lathis etc. A list of the property that was looted, the valuation of which came to about Rs. 2,000/-, was given to the police. Investigation was started and some days after the occurrence the appellants were arrested and were committed to stand their trial in the court of session under Section 395, I.P.C.

2. After the conviction by the learned Sessions Judge the appellants have come up to this Court in appeal and it is urged on their behalf that on the evidence their guilt was not made out. The first two appellants Aidal and Babu are represented by Sri Bhagwan Swarup Darbari. No looted property was recovered from the houses of these two appellants. The evidence against them consists entirely of identification by witnesses. Aidal was identified by five witnesses and Babu by three. On 11th March 1949, these two accused along with Azimullah, appellant No. 4, were put up for identification in the District Jail at Budaun. At the time that the identification was held Aidal said that Bhim Singh was his sister's husband and knew him from before and the Station Officer had shown him to the other witnesses. Azim Ullah accused said that he was by profession a barber and he had several times visited the houses of the witnesses in marriages and on other occasions. Azim Ullah is a resident of village Raj Thal, Babu of village Dinaura while Aidal is a resident of village Bazpur. The dacoity was committed in village Eudhaiti. So none of these three accused were residents of the village where the dacoity had been committed. The village of Budhaiti is in the circle of Police Station Zafrinagar while Raj That is in the circle of Police Station Islamnagar. Dniaura is in the circle of Police Station Gunnaur and Bazpur is in the circle of the same Police Station.

3. Seven witnesses were asked to identify these accused and the accused were mixed up with thirty others. The result of the identification was as follows :

> The accused Aidal was identified by Zahiri, Srimati Rewati, Lakhpat, Chetram and Bhim Sen. Babu accused was identified by Srimati Rewati, Lakhpat and Bhim Sen.

> Azim Ullah accused was identified by Zahiri, Chetram, Jamal Chaukidar and Parshadi.
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> At the time of identification of the accused Zahiri made one mistake. Srimati Rewati made one mistake, Chetram made two mistakes, Bhim Sen made one mistake and the other witnesses made no mistakes.

4. The learned Judge worked out the percentage and he gave to the witnesses who had made no mistakes, for example, Lakhpat 100 per cent marks and he similarly worked out percentages for other witnesses. Learned counsel has relied on a decision of this Court in --'Emperor v. Debi Charan', AIR 1942 All 339, that unless the percentage thus worked out comes to more than 80 per cent it cannot be said that a witness is a reliable witness. This practice of reducing the evidentiary value of witnesses to an arithmetical formula based on the result of the identification parade, I must say with great respect, does not appeal to me. At the identification parade in jail the accused are mixed up with several others and a witness is required to pick out the man whom he claims to have seen committing the crime. The result of the identification parade is not substantive evidence in the case but can be used to corroborate orj contradict the statement made by the witness in court. It, however, provides a useful test as it can be found out whether from the impressions that the witness had made of an accused person at the place of occurrence he can pick out those, who, it is alleged, had committed the crime.

The evidence against the accused must be the evidence given by a witness in the witness-box. The identification parade in jail is useful as corroborative evidence as the mere fact that a person is in the dock as an accused person is likely to influence the mind of a witness and make him think that the person in the dock was the person he had seen committing the crime and thus reduce the evidentiary value of the evidence given in court. If a witness knows an accused person from before and claims to have seen him committing the crime, the question merely is of accepting or rejecting the; testimony. But where a witness did not know an accused person from before and has identified the accused as the person he had seen committing the crime, the question arises how far such evidence can be relied upon. There is a possibility of even an honest witness making a mistake. The mistake may be due to defective observation or some misleading likeness or the witness may have seen the accused elsewhere but the impressions in his mind may have got mixed up.

Where, therefore, the only evidence against the accused is identification evidence such evidence has to be taken with a certain amount of caution. If a witness has made a number of mistakes that establishes that his power of observation is either defective or the likelihood of his making a mistake is greater, but the margin of error becomes less & less as the number of witnesses identifying an accused person increases. It has, therefore, been held that it is not safe to rely on the identification evidence of a solitary witness and the larger the number of such witnesses the chances of a wrong person being identified gets minimised. Also that mistakes made by a witness in identification detracts from the value of his testimony.

5-10. His Lordship considered the evidence against accused and agreed with the trial court in this appreciation, and then concluded.

11. It has lastly been urged on behalf of the appellants that the sentence of seven years should be reduced to five years. Unfortunately dacoity is a crime that is on the increase in the State and the time has come when if a case is established against a dacoit he should get a deterrent sentence. The sentence of seven years is not too excessive.

12. I see no force in this appeal and dismiss it.