Chandra Pal And Ors. vs State on 12 October, 1953

Equivalent citations: 1954CRILJ1439

JUDGMENT

Randhir Singh, J.

1. Chandrapal, Banwari, Chiranji, Malkhan, Debi and Jangi appellants who have been convicted under Section 395 of the Penal Code and have been sentenced to six years' rigorous imprisonment and a fine of Rs. 100/- and Ram 'Swarup and Bhola who have been convicted under Section 412 of the Penal Code and sentenced to 'two years' rigorous imprisonment and a fine of Rs. 50/- by the Additional Sessions Judge of Hardoi, have come up in appeal against their conviction and sentences.

2. It appears that a dacoity was committed at the house of one Gokul in village Nawabganj, . also known as Bhulbhulaganj, in the district of Htirdoi in the small hours of 11-7-1951. Some 20 or 25 persons raided the house of Gokul and inflicted injuries on some persons and looted property. An alarm was raised whereupon the neighbours arrived and the dacoits decamped. First information report was lodged by Gokul on 11-7-1951 at 7-30 A.M. at police outpost Pachdeora, which was at a distance of about 2 miles from the place of occurrence.

Gokul mentioned the names of 15 persons who were identified at the time of the dacoity amongst the assailants and also mentioned the names of some witnesses who had turned up on hearing the alarm and had seen the faces of the dacoits. Investigation was taken up by the police. The investigating officer reached the place of occurrence at about 11 A.M. A list of stolen property was given at the time when the first information report was lodged and it was also mentioned in the first information report that the inmates of the house would disclose other items of property which had been looted by the dacoits. A further list of stolen property was given to the investigating officer when he reached the village.

The investigating officer prepared a site plan, and after investigation, sent up 18 persons for trial. Out of those whose names were mentioned among the dacoits in the first information report, only two Chandrapal and Banwari were challaned. Of the 8 appellants, Ram Swarup and Chiranji, were arrested on 27-7-1951. Debi surrendered in court on 23-7-1951, Chandrapal surrendered on 27th July, Bhola surrendered on 25-8-1951 and Jangi and Malkhan surrendered on 27-8-1951. It is not apparent from the record as to when Banwari was arrested. As a result of the investigation, in all 18 persons were challaned by the police. Of these ten have been acquitted and the remaining eight, who are the appellants in this case, were convicted by the Additional Sessions Judge and sentenced to the terms of imprisonment mentioned above.

3. The defence of the appellants was that they have been implicated out of enmity and that they did not take part in the alleged dacoity.

4. That there had been a dacoity of a serious nature at the house of Gokul in the early hours of 11-7-1951, is not seriously in dispute. The dacoits were armed with fire-arms as is apparent from the injuries received by some of the inmates. A chappar was also set on fire and two goats were burnt alive. During the course of the investigation houses of a number of persons were searched. Ram Swarup Singh appellant brought out a locked box when his house was searched and took the key of the lock from his mother. He took out a dhoti Ex. IX, the description of which tallied with the description of item No. 15 in the second list of stolen property made over to the investigating officer when he came to the village. The shop of one Ram Murat Saraf was also searched and karas Ex. IV were recovered from his shop. A bahi kept by the sarraf which had an entry that these karas had been sold by Bhola appellant to Ram Murat on 16-7-1951 in return for Rs. 100/9/- was taken possession of.

The karas and the dhoti, along with some other articles which were recovered from other places, were put up for Identification after they had been mixed up with other articles and were identified by the inmates of the house. On the basis of the recoveries mentioned above, Ram Swarup and Bhola were found guilty under Section 412 of the Penal Code and were convicted. No stolen property was recovered from the possession of the other appellants, but the evidence produced against them comprised of witnesses who had identified them at the time of the dacoity. Chandrapal and Banwari had been named in the first information report and the evidence against these two appellants comprised of the testimony of witnesses who knew them and had identified them at the time when the dacoity was committed. The evidence against the other four appellants, Chiranji, Malkhan, Debi and Jang consists of the statements of witnesses who were able to identify them at the identification parade and subsequently before the Court below.

5. It will be convenient to deal first with the cases of these two appellants, Chandrapal and Banwari, whose names were mentioned in the first information report. Gokul, Bisram, Smt. Bataso and Sadhu are four witnesses who state on oath that they saw Chandrapal appellant amongst the dacoits at the house of Gokul at the time of the occurrence.

6. Smt. Bataso states that she saw Chandra-pal taking out the karas from her ankles and that she knew Chandrapal. Gokul, Bisram and Sadhu also stated that they were able to identify Chandrapal at time of the occurrence. It has been argued on behalf of the defence that the part played by Chandrapal at the time of the occurrence was not mentioned in the first information report and as it was an important detail which should have found a place in the first Information report this omission leads to the inference that the story now set up on behalf of the prosecution that it was Chandrapal who took out the karas has been set up as a result of subsequent thought. The first information report lodged by Gokul has been read out by the learned Counsel for the appellants. In this document Gokul has given brief details of the daeoity and it is specifically mentioned that ornaments were also taken off the body of the Women of the house and that they would themselves give details of those ornaments.

No specific part played by any particular dacoit has been given in the first information report. It is also mentioned in the first information report that the details of other property will be given later which shows that Gokul was not in possession of the full list of stolen property and his predicament

at that particular time could well be imagined. A man whose house had been looted and whose relations had been injured would not be so careful as to mention minute details about the occurrence. If Gokul had in fact mentioned the part played by any particular dacoit, the omission about details about others may have had some significance, but if there were no details about the specific part played by any of the dacoits, it would be difficult to underrate the value of the first information report on this ground.

Gokul has described the manner in which the dacoits raided his house when he was sleeping in front of his house on a cart and his attention was attracted when the dacoits started beating the inmates. He states that he concealed himself and raised alarm. Some neighbours came up subsequently and when the dacoits found that a large number of persons were being attracted they decamped after taking away considerable property which they had looted. He definitely states that he identified Chandrapal and Banwari. The other witnesses who identified Chandra-pal are Bisram and Sadhu. Bisram is a neighbour and nothing has been brought out in cross-examination to show that Bisram had any ill-will against Chandrapal.

Sadhu is an inmate of the house. He also states that he identified Chandrapal. Chandra-pal does not reside in the village but resides in a purwa, at & distance of about a mile from the place of occurrence. It has been argued that Chandrapal and Gokul were not on good terms and that there was therefore reason for Gokul to have implicated Chandrapal falsely. It is not suggested that there was any litigation between Chandrapal and Gokul and all that has been brought out is that there were two factions, one led by Chetan and the other led by Bhima, and that Bhima was in jail in connection with some case between the two parties and Gokul went to interview him in jail and this annoyed Chandrapal. There is hardly a village where some people have not their leanings for a particular set of persons and to reject the testimony of a witness mainly on this ground would not be proper.

7. Banwari is the other person who was named by Gokul in the first information report and has been identified by Lekha, Smt. Sheorani and Ganpat. (His Lordship considered the evidence against this appellant and concluded :) There is, therefore, an element of doubt in the complicity of Banwari in the affair and he should be given the benefit of that doubt.

8. Malkhan appellant was arrested on 27-8-1951 and was put up for identification at a parade held on 19-10-1951. He was identified by five persons, Gokul, Sheorani, Ganpat, Sadhu and Ram Bhajan. Of these five persons only Gokul made two mistakes while identifying two suspects but the other four persons made no mistakes and correctly identified Malkhan. It has been urged on behalf of this appellant that the value of the evidence of identification of these witnesses should be judged with reference to the mistakes which they committed in identifying the suspects in the two other parades also. As all the accused in this case were not arrested all at once, identification had to be held on three different dates. The first one was held on 13-8-1951, the second on 5-9-1951 and the last on the 19-10-1951. Malkhan having been arrested on the 27th August, was put up for identification on 19-10-1951. He had himself surrendered in Court and there was therefore hardly any occasion for the witnesses to see him after the dacoity or before the identification. It is not necessary to take into consideration the mistakes committed by the witnesses at other identification parades unless any of

the witnesses has made a palpably large number of mistakes at all other identification parades. (His Lordship discussed the evidence of identification against Malkhan as also against Debi and found them guilty under Section 395, Penal Code. His Lordship then proceeded :)

9.-10. Chiranji appellant was identified only by two persons, Gokul and Sheorani. No doubt the Identification made by Sheorani was satisfactory, but it is difficult to accept the evidence of Gokul with regard to identification. It is not safe to rely on the testimony of one good witness for convicting a person of the offence of dacoity especially when there is no other circumstantial evidence to connect him with the crime. He should, therefore be given the benefit of the doubt. (His Lordship considered the case of Jangi and after finding him guilty proceeded :)

11.-13. Coming to the cases of Ram Swarup and Bhola, Ram Swarup pointed out to the Sub-Inspector the box and after taking the key from his mother took out the dhoti Ex. IX. (His Lordship held that the evidence as to identification of the dhoti was satisfactory and proceeded :)

14. Bhola appellant did not dispute that he had sold the karas to Ram Murat Sarraf. The karas were identified by the inmates of the house and were also mentioned in the list of stolen property given to the investigating officer at the time when he reached the village. It has been argued that the weight of the karas recovered was found to be 55 tolas while the weight of the karas stolen is mentioned as 80 tolas in the list of stolen property. These karas are found as item No. 8 in the list Ex. 3, and it is mentioned that the karas were phuldari and were 80 bhar. It has been argued on behalf of the prosecution that Bhar is not the same as a tola and that the karas had been in use for four years. The weight of the karas must have been given by estimate and there must have been a loss of weight due to constant use for four years. The karas were correctly identified by several persons and there is no reason to reject their testimony only on the ground that the weight ultimately found was less than the weight given by estimate at the time when the list of stolen property was made over to the police. The defence has led no evidence to prove whence these karas were procured by the appellant. No doubt, it is not necessary for an accused to prove that the karas Were not stolen property taut when evidence is led on behalf of the prosecution to prove a certain fact it is open to the accused to rebut it.

15. It has been argued that even if the two items of property which are said to have been taken away by the dacoits have been recovered from the possession of Ram Swarup Singh and Bhola they should not have been convicted under Section 412 of the Penal Code but under 3. 411 of the Penal Code. There is a conflict of judicial opinion on this point and the learned Counsel for the appellants has cited a number of rulings, the last being of our own High Court, Sumer v. Rex . In this reported case authorities of other High Courts have also been surveyed. In re Dhyani Gope AIR 1947 Pat 205 (B), it was held that if the essential facts relating to the ownership, theft and possession of the articles have been established, the Court may infer that the accused knew how they had been removed from the possession of the owner, and a presumption may be drawn that the accused knew of the manner in which the articles in question had been taken away from the possession of the owner, that is to say, in a case of ordinary theft that they had been stolen, and In the case of dacoity, that they had been stolen in the course of the dacoity.

Raghubar Dayal J. however, expressed his dissent from the view taken in AIR 1947 Pat 205 (B) and has pointed out that while it would be reasonable to draw an inference that the property recovered was stolen property, a presumption to the effect that the possession had been obtained by the commission of dacoity could not be raised unless there was some evidence to prove that the person from whom the property was recovered knew that the possession of the articles had been obtained by the commission of dacoity, I have carefully gone through the rulings cited by the learned Counsel for the appellants. While an observation has been made in these cases that there ought to be some evidence to prove that the person found in possession of stolen property knew of the manner in which the articles had been originally acquired there is no suggestion as to what that possible evidence could be. It is well nigh impossible for the prosecution to prove the knowledge of a person found in possession of stolen goods. A pre-sumption has therefore to be raised and if the scope of the presumption mentioned in Section 114 illustration (a) of the Evidence Act is limited to a knowledge that the property was simply stolen property, it would be difficult to make out an offence under 8. 412 of the Penal Code in any case.

If a person is found in possession of stolen property so as to attract the application of Section 114 of the Evidence Act he should be deemed to be in the know of the manner in which the property was originally acquired by the thief or the dacoit and the very fact that the property is presumed to be stolen would also lead to the inference of the manner in which the theft was committed, whether it was by way of dacoity or by way of simple theft. It is no doubt possible that a person may pass on property acquired by dacoity to another person without telling him the exact manner in which he obtained the property, just as a thief could pass on property to another person without telling him that it was stolen property and in all such cases it would be open to the accused to rebut the presumption by accounting for his innocent possession or by establishing circumstances raising a reasonable doubt. But once stolen property is recovered from the possession of a person under circumstances mentioned in illustration (a) of Section 114 of the Evidence Act, the presumption of the knowledge, be it said with profound respect to all those who hold a contrary view, cannot ordinarily be limited in its scope or dissociated from the nature of the possession or the manner in which the property was originally acquired.

In some cases it has been held that if a person is not even charged with an offence under Section 395 of the Penal Code, it would not be possible to establish a case under Section 412 of the Penal Code in the absence of some evidence to prove that he knew the nature of the possession of the property. It would be difficult to lay down a rule of general application to all cases and each case will have to be judged and decided on the facts of that particular case. If a person is charged under Section 395 and also under Section 412 of the Penal Code, there are usually circumstances for presuming the knowledge of the accused. It may not, however, be appropriate to convict a man under Section 412 of the Penal Code when he is not charged under Section 395 of the Penal Code in the absence of circumstances indicating or suggesting that he had knowledge that the property for the possession of which he has been charged had been obtained by dacoity.

16. Then again the time after which the property was recovered may also be a relevant circumstance in fixing or presuming knowledge about the nature of the possession. In the present case the property was recovered about ten days after the dacoity had been committed and in the case of Ram

Swarup Singh the dhoti was taken out from a locked box and given to the Sub-Inspector. The karas were recovered from the shop of Ram Murat presumably on some information given by Bhola himself or by some other person. As Ram Swarup Singh has not been charged under Section 395 of the Penal Code, it would be safer to hold that he is guilty under Section 411 and not under Section 412 of the Penal Code. In the case of Bhola, however, he had been charged under Section 395 of the Penal Code and the property was recovered soon after the dacoity had been committed. There is, therefore, no reason to reject the presumption that he knew that the property had been acquired by dacoity.

17. As a result the conviction and sentence of Banwari and Chiranji under Section 395 of the Penal Code are set aside and they are acquitted. The conviction and sentence of Chandrapal, Malkhan, Debi and Jangi under Section 395 of the Penal Code are maintained. The conviction of Bam Swarup Singh under Section 412 of the Penal Code is altered to one under Section 411 of the Penal Code and the sentence is reduced to one year's rigorous imprisonment and the sentence of fine is set aside. The conviction and sentence of Bhola under Section 412, I, P. C. are maintained. Banwari and Chiranji are on bail. They need not surrender to their bail and their bail bonds are cancelled. The fines, if paid, by Ram Swarup, Banwari and Chiranji shall be refunded. The appellants, Chandrapal, Malkhan, Jangi, Ram Swarup Singh and Bhola are on bail. They shall surrender to their bail to serve out the remaining part of their sentence.