Delhi Administration vs Bal Krishan And Ors. on 15 October, 1971

Equivalent citations: AIR1972SC3, 1972CRILJ1, (1972)4SCC659, 1972(4)UJ103(SC)

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Bench: A.N. Ray, D.G. Palekar

JUDGMENT

D.G. Palekar, J.

1. These criminal appeals are by special leave filed by the Delhi Administration against Bal Krishan, Hukam Singh and Ram Singh respectively from an order of acquittal passed by the Delhi High Court. Five persons were put up for trial before the Additional Sessions, Judge, Delhi on charges under Section 395 r/w Section 397, 396 and 170 I.P.C. Of these, two were acquitted. The other three namely Hukam Singh, Ram Singh and Bal Krishan who were accused Nos. 1 to 3, were convicted of the offences' with which they were charged and were sentenced to several terms of imprisonment and also to pay a fine. They went in appeal to the High Court against the conviction and sentence and have been acquitted. The Delhi Administration has, therefore, come to this Court in appeal by special leave.

2. It is not in dispute that at about 2.30 A.M. on 1-10-1965 there was a dacoity in the house of one Mohd. Yusuf (P.W. 4) in the locality known as Khureji in Gandhi Nagar area, Delhi. There were four rooms in that house. One of the rooms was occupied by Mohd. Yusuf and his mother Batolan (P.W. 5). In the other room Hakim Uddin lived with his wife Shah Jahan (P.W. 3) and his children Hakim Uddin's father Bundu {P.W. 6) was also living with him. In the other two rooms Mohd Yusuf's brother Toshi with his wife and children lived as also one Rahim Ullah. In front of the house, there was a courtyard with a chapter on it. Mohd. Yusul and Bundu were sleeping in the courtyard while the rest of them were sleeping in the rooms. At about 2.30 A.M. a man was seen scaling down the wall in the court yard He unbolted the door and three or four persons rushed into the courtyard. They had torches. Two of them stood near Mohd. Yusuf and Bundu and told Mohd. Yusuf that they were police men who had come to search his home as they had information that illicit distillation of liquor was carried on in the house. The persons who entered the house of Mohd. Yusuf were armed with lathis. Three of them went to the room in which Batolan was sleeping and removed three trunks from that room. When they went into the room of Hakim Uddin and Hakim Uddin got up, they told him that he indulged in distilling illicit liquor. Hakim Uddin denied the charge whereupon he was abused, dragged out and beaten with a sticks. He was also given a blow with a "phaura", on

receiving which Hakim Uddin fell on the ground unconscious. When Bundu stepped forward to save his son, he was also beaten by the dacoits Mohd, Yusuf ran out of the house and brought a lathi from the house of his neighbour. But he was also surrounded and beaten. Thereafter the dacoits ran-sacked the house, looted property and left.

3. Sub-Inspector Harbans Lal (P.W. 43) happened to pass by the side of the house at about 4.30. A.M to 5.00 A.M. in the course of his night round. He heard the alarm and went to the house of Mohd. Yusuf. He saw injuries sustained by the victims and Hakim Uddin lying unconcious. The Sub-Inspector recorded the statement of Buolan and sent the same to the Police station Gandhi Nagar, for the registration of the offence. Hakim Uddain was removed to the hospital. He succumbed to his injuries in the hospital.

4. A search was made for the dacoits but was not successful for about a month. On some secret information received, Inspector Bhim Singh (P.W. 8) went to the Delhi Main Railway Station with a raiding party on the night between 30th and 31st October, 19(35 and caught Hukam Singh, Ram Singh and Bal Krishan. As they were to be put up for identification, they were instructed to keep their identity concealed. They were remanded to judicial custody on 1-11-1965 to facilitate the test identification parade. Mr. Grover, the Magistrate fixed 6-11-1965 for the test identification parade When everything was ready for the test, Hukam Singh, Ram Singh and Bal Krishan refused to participate in the identification parade on the ground that there was no use participating in the parade as they had already been shown to the several witnesses. Thus there was no test identification parade. On 11-11-1965, all of them were remanded to police custody for further investigation. It is the case of the prosecution that all these three accused made certain disclosure statements in consequence of which some articles stolen in the dacoity were recovered. Hukam Singh further made a confessional statement an on this material, these three accused, along with two others, were put up for trial. The evidence added by the prosecution consisted of (i) the identification of the accused in court by the inmates of the house; (ii} the recovery of stolen property in consequence of the disclosure statements made by the accused and (iii) the confessional statement made by Hukam Singh. The confessional statement was rejected by both the courts and no reliance is placed on it before us. While the Trial Judge accepted the evidence of identification and recovery of stolen property, the High Court, in appeal, did not feel that the evidence was satisfactory. Hence the acquittal in appeal.

5. It was contended by Mr. Khanna on behalf of the Slate that the appreciation of the evidence by the learned Judge, who heard the appeal in the High Court, was wholly coloured by his erroneous assumption in law firstly, that the evidence of recovery of property in consequence of a confessional statement made by the accused was inadmissible in evidence and secondly that the recovery also was illegal as it had been made in violation of the mandatory provisions of Section 103 of the Criminal Procedure Code relating to searches. It is true that certain portions of the judgment lend themselves to the above criticism. But on a careful consideration of the evidence, we are not inclined to agree with the contention of Mr. Khanna that the alleged erroneous assumption with regard to the true legal position had affected the consideration on merits of the evidence of the relevant witnesses.

6. First, we shall deal with the identification of the accused by the witnesses. As already stated, the dacoity took place on the night of 30th Sept., 1965 and the appellants were arrested a month late". There was no test identification. The prosecution blames the accused for not participating in the test identification parade, but the fact remains that there was no test identification parade which would have gone a long way to corroborate the evidence of the witnesses when they purported to identify the accused at the trial which alone is the substantive evidence in the case. The trial commenced in December, 1966 i.e. nearly 14 months after the alleged dacoity. The accused were unknown, persons, and according to the prosecution witnesses, namely Mohd. Yusuf (P.W. 4, Shah Jahan (P.W. 3), Batolan (P.W. 5) and Bundu (P.W. 6) who purported to identify the accused in court, they had been the accused for the first time on that night in the course of the dacoity. The prosecution case was that there were two lanterns burning in the two rooms which were looted ; that the accused had torches which they flashed all round during the course of looting and assault ; that the looting operation had gone on for half an hour to 45 minutes and thus the witnesses had ample opportunity to see and remember the faces of the accused. Therefore, it was contended there could be no possible mistake when they purported to identify the accused in court. Indeed it cannot be laid down as a proposition of law that after the lapse of a long period, witnesses would, in no case, be able to identify the dacoits they had seen in the course of a dacoity committed during the night. However, the courts will have to be extremely cautious when such evidence is before them. According to the learned Judge, it was a dark night and there was no sufficient light. The estimate of the witnesses that looting was going on for more than half an hour was exaggerated because the actual operation could not have taken more than a few minutes. The very fact that the inmates of the other two rooms in the same house had not come out to resist or prevent the dacoity would indicate that the operation was swift. Moreover, it was elicited in the cross examination of Shah Jahan (P.W. 3) and Mohd. Yusuf (P.W. 4) that the accused had been brought to their house during the course of the investigaiion. Indeed, according to these witnesses, this was about two to two and half months after the dacoity. But the learned Judge was not sufficiently impressed by this latter statement. It was not explained by the Investigating Officer why and when it was found necessary by him to bring the accused to the house where the dacoity had been committed. The learned Judge entertained, therefore, a strong suspicion that the accused may have been brought to the house before the test identification parade was arranged, thus affording justification to the complaint made by the accused before the Magistrate that they had already been shown to the witnesses and, therefore, there was no point in their participating in the test identification parade. In these circumstances, if the learned Judge felt unable to accept the evidence of identification in court as satisfactory, this Court would not be justified in taking a different view. Therefore, the evidence with regard to identification must be left out of consideration.

7. The only evidence which remains is the evidence of the disclosure statement, made by the accused to the Police Officers in the presence of Punch witnesses and the alleged recovery of stolen property in consequence of the disclosure atatements. Section 27 of the Evidence Act permits proof of so much of the information which is given by persons accused of an offence when in the custody of a Police Officer as relates distinctly to the fact thereby discovered, irrespective of whether such information amounts to a confession or not. Under Sections 25 and 26 of the Evidence Act, no confession made to a Police Officer whether in custody or not can be proved as against the accused. But Section 27 is by way of confession, which distinctly relates to the fact discovered is admissible as

evidence against the accused in the circumstances stated in Section 27. Accused Hukam Singh is alleged to have made a disclosure statement while in police custody on 16-11-1965 as per Ext. PGG. In consequence of that information the police party and the panchas are supposed to have gone to village Dadri where Hukam Singh pointed a place in the hut of one Babulal which, when dug up, revealed a bundle containing a piece of gold, necklace, a pair of pajeb, a silver armlet and one gold ring; all of which have been identified as stolen property. These articles had been tied in a coloured handkerchief. So far as the recovery of these articles is concerned, the prosecution examined, besides members of the police force, two panchas Nathu Singh (P.W. 38] and Mohan Lal (P.W. 19). The evidence of both these panchas has been rejected by the learned Judge as unreliable. The evidence of Nathu Singh has been considered at some length by the learned Judge and we agree with him that he cannot be considered a reliable witness. The other panch Mohan Lal (P.W. 19) did not state that Hukam Singh pointed out the hut or the place in the hut or that he dug out the bundle from the place where it was buried. The case is that the place from where the bundle was taken out was inside the hut close to the wall But constable Rameshwar Dayal (P.W. 34) who was a member of the party stated in his evidence that the handkerchief with the Article tied in it was recovered from a place two to three ft. behind the hut. In this state of the evidence the alleged recovery in consequence of information given by Hukam Singh becomes extremely suspicious and it cannot, therelore, be said that the learned Judge was not justified in rejecting this evidence about the recovery.

8. As regards accused Ram Singh, he is supposed to have made a disclosure statement EXT.PR on 22-11-1965 and in consequence of that statement one 'Khes' Ext. P. 4, identified as stolen property was recovered from the house of Ram Singh in village Girwari. There were three panch witnesses for this recovery namely. Krishan Singh (P.W. 14) Sunder Lal (P.W. 35) and one Dal Chand. The two panchas examined for the prosecution turned hostile and the third panch Dal Chand was not examined. In these circumstances, inspite of the police witnesses giving evidence with regard to this recovery, the learned Judge was not inclined to act upon that evidence and we cannot say that the learned Judge was wrong in doing so.

9. The last accused with whom we are concerned is Bal Krishan. He is supposed to have made a disclosure statement as per Ext. PC on 16-11-1965 and in consequence of that statement recovery was made of two articles. a woolen coat Ext. P. 3 and a pair of lachhas Ext. P 7 from a trunk in the house of Bal Krishan in village Salarpur. This recovery was made on 17-11-1965. The recovery memo is Ext. PQ and is attested by 3 panchas Rati Ram, Raghu Raj and Ghisa Ram. Out of these, only Ghisa Ram was examined at the trial and he is P.W. 10. The evidence of Ghisa Ram was rightly criticised by the learned Judge and we find no difficulty in agreeing with him that this witness who is from Delhi may not have been present at all at the time of recovery. The gap it) the evidence was sought to be filled up by the evidence of Nathu Singh (P.W. 38) who, though not an attesting witness on the recovery mem. Ext. PZ, is supposed to have accompanied the party to Salarpur 38 miles away. The learned Judge held that Nathu Singh was no unreliable witness and we have agreed with him. In this connection reference may be made to only one piece of criticism. NathuSingh along with LahiriSingh (P.W. 28) had attested the disclosure memo Ex PQ, of 16 11-1965. According to Nathusingh though they did not attest the recovery Memo. Ext. PQ they had both gone with the party to Salarpur to witness the recovery. On the other hand P.W 28) Lahirisingh has suggested in

his evidence that he had not gone to Salarpur for the purpose of recovery. Having regard to the fact that Nathusingh is not a witness who attested the recovery memo Ext. PQ, there is considerable force in the contention that his evidence with regard to recovery is unreliable. In the result, there is no independent evidence with regard to the alleged recovery of stolen articles made in consequence of a statement by Bal Krisban, and we are in agreement with the learned Judge that it would not have been safe, in the circumstances of the case, to rely only on the evidence of police officers.

10. It would thus be seen that the evidence with regard to the recovery of stolen articles in consequence of statements made by accused is not satisfactory and the learned Judge was right in rejecting it.

11. In the result on the evidence before the court, it could not have been reasonably possible to connect the respondents with the dacoity in the house of Mohd Yusuf and, therefore, the acquittal was correct. The appeals fail and are dismissed.