Ram Shankar Singh And Ors. vs State Of Uttar Pradesh on 19 April, 1955

Equivalent citations: AIR1956SC441, 1956CRILJ822, AIR 1956 SUPREME COURT 441, 1956 SCC 307

JUDGMENT

Sinha, J.

1. This is an appeal by special leave from the judgment and order of a single Judge of the Allahabad High Court confirming those of the Sessions Judge of Azamgarh so far as the appellants were concerned, convicting them under Section 395, I.P.C., and sentencing them to rigorous imprisonment for seven years each.

The three appellants along with three others including Bhirgu Singh were placed on trial for dacoity before the learned Sessions Judge of Azamgarh who convicted and sentenced all of them as aforesaid. On appeal to the Allahabad High Court, the learned Judge acquitted three of them but maintained the conviction and sentence of the three appellants.

2. The occurrence of dacoity which was the subject matter of the charge against the appellants and others, is said to have taken place at the house of one Kalapnath Singh (P.W. 1), whom we shall call the complainant. He sent a written report to the police station at Mohammadabad, sub-district Ghosi, through the village chowkidar (P.W. 8). That report was treated as the first information (Ex. P-6) dated 4-6-1951 at 3-15 A.M. The police station is about four miles from village Dangauli, where the occurrence is Said to have taken place.

The report is to the effect that between 1 and 2 A.M., when the complainant, his brother-in-law (P.W. 2) and his servant Baljore (P.W. 4) were sleeping on separate cots in the open courtyard in front of the residential house, they were awakened by the intrusion of 14 or 15 persons armed with lathis and spears. Some of the dacoits beat the complainant, some of them kept watch on the three (persons aforesaid and the others got the entrance opened by one of the female inmates of the house, Mt. Pyari (P.W. 11), the complainant's sister-in-law.

Some of the dacoits entered the premises and removed boxes containing ornaments and clothes. The dacoits are also said to have snatched away some ornaments from the neck of the complainant's wife, Mt. Saraswati (P.W. 12). On an alarm being raised by P.W 11, Surajbali Singh (P.W. 3), Balai Ahir (not examined), Chhotu Singh (P.W. 13), Ramchandra Tiwari (P.W. 6), and Jagdish Singh (P.W. 7) of the village arrived.

Some of the dacoits also beat P.Ws. 3 and 6 aforesaid. As more people of the village arrived, the dacoits made good their escape with their booty. It was also alleged that the dacoits had been lighting electric torches in the light of which, as also of a lantern kept burning at the door, the dacoits were recognized and the appellants along with three others of the very same village of the complainant were named as the accused and articles worth Rs. 500 are said to have been looted away.

The three appellants belong to the neighbouring village called Alipur. The Sub-Inspector (P. W. 14) arrived at the place of occurrence at 5 A.M. When he reached the spot, the complainant gave him a list of stolen property (Ex. P-2). The Sub-Inspector inspected the locality and found things scattered here and there. He also found a lantern hanging at the door of which he took possession.

About three furlongs to the west of the house of the complainant he found three boxes and some torn pieces of cloth. He took possession of them and drew up recovery lists. He sent the injured persons, namely, the complainant (P.W. 1), Suraj Ball Singh (P.W. 3) and Ramchandra Tiwari (P.W. 6) who all had simple injuries caused by a blunt weapon like a lathi. He interrogated the complainant and the other eyewitnesses, namely P.Ws. 2, 3, 4, 6, 7, 10, 11, 12 and 13 and got the statements of some of those witnesses recorded under Section 164, Criminal P. C. Ultimately he submitted a charge-sheet as a result of which the six accused named in the first information report only were placed on their trial after the necessary commitment proceedings. The charge against the six accused persons placed on the trial was in these terms :--

> "That you on or about the 3/4 night of June 1951 in vil. Dangauli, P.S. Mohammadabad at about midnight committed dacoity at the house of Kalapnath and thereby committed an offence punishable under Section 395, I.P.C., and within the cognizance of the court of session, Azamgarh.
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> And I hereby direct that you be tried by the court on the said charge".

The defence of the accused persons as disclosed in their examination under Section 342, Criminal P. C. and in the cross-examination of the prosecution witnesses was that they all had been implicated falsely on account of a pre-existing enmity between the complain ant's party to which belonged the prosecution witnesses who figure as eye-witnesses to the occurrence and that of the accused Bhirghu Singh, who was one of the three convicted persons acquitted by the High Court.

The appellants who belong to the adjoining village Alipur, also suggested the same defence. Their case was that as they had helped Bhirghu Singh in his dispute and litigation with the party to which the complainant belongs they had also been falsely implicated.

3. It is noteworthy that only the six persons named in the first information report were placed on their trial, though 14 to 16 persons are said to have participated in the dacoity. None of the unknown dacoits was placed on trial, apparently because none could be identified by any of the eye-witnesses during the investigation. The charge as framed does not refer to any other person besides the six accused to have been concerned with the occurrence. Besides the complainant and the inmates of

his house P. Ws. 2, 4, 11 and 12, the eye-witnesses were Surajbali (P. W. 3), Ramchander (P. W. 6), Jagdish (P.W. 7) and Jagtu (P. W. 10).

4. The trial court examined the evidence in a mechanical way and after referring to the evidence of the eye-witnesses, observed that "There does not appear to be any reason why the testimony of these witnesses should not be believed". Having come to that conclusion, it saw no difficulty in convicting and sentencing all the accused persons as indicated above, though significantly enough the assessors were unanimously of the opinion that none of the accused was guilty.

In a dacoity case it is not usual for assessors to be soft with persons accused of dacoity. The assessors, as will presently appear from the history of the previous litigation between the two parties in the village, naturally took the view that the prosecution evidence bearing on the question of the identification of the accused persons was unreliable.

5. On appeal, the learned Judge made the following observations :

> "It is significant that although Bhirgu Singh belongs to the same village he is not alleged to have taken any precaution to conceal his identity by means of a Dhata or any other device. This is something unnatural and improbable. Generally people do not g(c) out to commit dacoities in their own village for fear of identification.
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> Even if they have a hand in getting a dacoity committed in their own village they generally hire persons for the purpose from, outside so that they may not be easily identified. They keep themselves in the background. If, for any reason, they find it-necessary to be present at the scene of dacoity they take ample precautions to cover their faces by some device.
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> I find it difficult to believe that Bhirgu, Singh, who is well-known in the village and who was on bad terms with Kalapnath Singh could have gone to commit dacoity in his. own village without taking the least precaution to conceal his identity". The learned Judge gave the benefit of those observations only to the three accused belonging to the complainant's village and not to the other three belonging to the adjoining village Alipur, and equally well known as partisans of Bhirgu aforesaid.
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> It is admitted by the complainant, as also by some of the eye-witnesses that these appellants were well known to them for the last six or seven years, so much so that even a pardanashin woman like P.W. 11 claims to have known the first appellant Ramshankar, from before the occurrence, though it would be difficult to believe that statement in view of the following admission made by her in cross-examination:--
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> "Prior to dacoity I did not know any man of Alipur. After the dacoity nobody gave me name of anyone of Alipur. During the dacoity nobody told me name of anyone of Alipur".

That these appellants were well known to the eye-witnesses who deposed against them will be clear from the following facts as they emerge as a result of the cross-examination of the prosecution witnesses. All the Thakurs of the village of occurrence are descendants of a common ancestor and all the Thakurs witnesses,--and they are the majority of the prosecution witnesses of identification, -- are naturally agnatic relations. So was Bhirgu, the principal accused in the group from that village itself. Bhirgu and Lalta are brothers. This Lalta was said to have been adopted by Harbans Singh who had no son.

Naturally, the other agnatic relations of Harbans, namely Surajbali (P.W. 3), Jagdish (P.W. 7) and Chhotu (P.W. 13), who were said to be the first to turn up at the alarm of the dacoity raised by one of the inmates of the house as aforesaid, were not inclined to recognize the adoption and the legal consequences of the adoption, namely, that Harbans's property should go to Lalta.

This led to a collision between the party of Lalta's brother Bhirgu and the party to which the complainant belongs, namely, P.Ws. 3, 7, and 13. This resulted in a criminal case of assault in which Bhirgu figured as the complainant with certain injuries on the head and the prosecution witnesses aforesaid as the accused. Bhirgu had admitted in his statement under Section 342, Criminal P. C. as follows : . .

> "Harbans had no issue. He adopted my brother Lalta Singh. He had a field. After adoption Chhotu, Surajbali, Jagdish and others wanted to take possession of that field. Marpit took place in respect of that field between myself, other members of my family on the one hand and Chhotu, Surajbali and Jagdish on the other.
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> Galpu Singh also took part in that mar-pit on behalf of Chhotu, etc. I received injuries at my head during that marpit. My hand bone was also fractured. Kalpu had also received injuries at his head during that marpit. He had received good many other injuries as well. I lodged a complaint under Section 323, I.P.C. but I left out Kalpu because he had. received good many injuries. This happened two months prior to dacoity. Because of this and because of other litigations I have been falsely implicated".

6. This defence was taken before the Committing Court also and the prosecution witnesses like the complainant and P.Ws. 3, 6, 7 and 13 had been specifically questioned and though they admitted those litigations before the Committing Magistrate, at the trial they either took shelter behind a failing memory or told a brazenfaced lie by denying that they had made such statements. For example, P.W. 1 was questioned in cross-examination and answered as follows:--

> "Q: You stated before the Committing Magistrate:--
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> "After adoption a litigation took place between Bhirgu Singh and Surajbali, Chhotu and Jagdish P.Ws.?"

A: I do not remember". Similarly Surajbali (P.W. 3) gave the same answer to the following question in cross-examination:--

> "Q: You stated there (Committing Magistrate):
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> 'I had litigation with Bhirgu Singh. In that case Chhotu's brother Ram Adhar and Rikhdeo father of Jagdish witness were also with me. A criminal case had also been faught out'? A: I do not remember".

The witness was cornered in cross-examination after he had the audacity to deny in the earlier part of his cross-examination that he had any litigation with Bhirgu about the property of Harbans Singh. P.W. 7 was also severely cross-examined and questions about enmity and his previous statements before the Committing Magistrate to a similar effect were put to him and he had the audacity to deny having made such a statement previously.

Though he denied knowledge of Harbans having adopted Lalta, he admitted that a case was fought between Harbans and Bhirgu on the one side and his father, P.W. Chhotu's brother and Surajbali on the other. He also admitted that in respect of Harban's land, a case under Section 145, Criminal P. C. was also fought between the same parties.

That case started prior to the dacoity and terminated after the occurrence. Though at first he was inclined not to admit that there was a criminal prosecution also in respect of those very lands, he ultimately admitted that Bhirgu had brought a criminal case in which he (the witness) also was an accused in respect of the occurrence in which the complainant had received injuries on his-head. The witness has further admitted that the members of the family of P.Ws. Surajbali and Chhotu arid the members of his family, as also Ram Adhar brother of Chhotu figured as accused persons in that criminal prosecution.

7. There is thus ample evidence on the record as found by the High Court also, that there was litigation in respect of the property of Harbans between the party led by Bhirgu, brother of Lalta who was adopted by Harbans on the one side and the prominent prosecution witnesses in this case on the other. The litigation first began before the Tahsildar, presumably on the revenue side. Then there was a criminal prosecution of those prosecution witnesses in the case of assault brought by Bhorgu and ultimately there were proceedings under Section 145, Criminal P. C. by the magistrate for keeping the peace between the two contending parties. Those proceedings terminated after the occurrence in question.

8. So far as Ramshankar the first appellant is concerned, there is the further suggestion of enmity between him and Rambaz Singh admittedly the maternal uncle's son of P.W. 2. The witness denied any such enmity but P.W. 4 Ramchander has admitted that there was such enmity. It was suggested to the complainant in cross-examination that Ramshankar, and other accused were more substantial people of a higher social status than he. But he stoutly denied that. He had also denied that Ramshankar had a brick-built house, was a zamindar and had cultivation of three ploughs.

But P.W. 4 has in his cross-examination admitted that as a matter of fact Ramshankar has a house made of bricks, that he has some zamindari and has cultivation of three ploughs. He also admitted that Bhirgu and Ramshankar were men of higher status than the complainant. The most damaging admission made by this witness, so far as the prosecution case is concerned, is that the appellants "had always helped Bhorgu in getting possession of the fields", referring to the dispute between Bhorgu as representing his brother's cause as against the prosecution witnesses aforesaid.

9. The High Court was perfectly justified in brushing aside the evidence of the prosecution witnesses who apparently were not truthful witnesses, besides being very inimically disposed against the accused. The case against the three accused persons belonging to the same village did not fail for paucity of evidence of identification, but because the considerable body of evidence was tainted testimony.

But the High Court appears to have erred in making a distinction between the case of those three accused and of the appellants living in the adjoining village Alipur. In my opinion, the High Court did not give sufficient weight to the evidence elicited in cross-examination of the prosecution witnesses showing that all the six accused persons belonged to the party actively opposed to the party of the complainant and that they had good reasons for trying to utilize a true case of dacoity by falsely implicating their enemies.

In my opinion, there are no sufficient reasons for differentiating, the case of the appellants from that of the other accused who were acquitted by the High Court. And these considerations, however, arise on the factual aspect of the case. This Court on special leave does not ordinarily interfere with findings of fact of the courts below. But fortunately for the appellants, a clear question of law has been raised on the findings arrived at by the High Court.

10. The charge framed against the six persons placed on trial did not indicate that those six persons along with other unknown persons had committed dacoity. The charge was that the six persons placed on trial were the persons who had committed dacoity.

On the findings arrived at by the High Court resulting in the acquittal of three out of the six persons jointly tried, we are left only with the three appellants as the persons concerned with the crime. It is possible to direct a retrial on a proper charge being framed so as to give sufficient notice to the accused persons that more than five persons were actually concerned with the alleged crime. This aspect of the matter could not have been discussed by the trial court in the view it took of the evidence.

Having convicted all the six persons under Section 395, I. P. C., no such question of law could arise before it. Even in the High Court this question was not mooted, apparently because the appellants were all sailing in the same boat and a common argument appears to have been advanced.

The High Court having come to the conclusion that three out of the six convicted persons were not guilty, should have gone into the question whether there was satisfactory evidence to show that the three remaining appellants before it could be convicted under Section 395, I. P. C., on the charge as

framed. In any event, the three remaining accused persons could be convicted of the j lesser offence of robbery under Section 392, I.P.C., if there was evidence to show that they had committed acts of theft and used violence while committing the theft.

In such a situation their individual acts in connection with the alleged occurrence had to be considered. That also has not been done. The evidence led on behalf of the prosecution has not sought to bring home to each individual accused the part played by him. This would also necessitate a retrial. In this connection the counsel for the appellants urged, and this position was not controverted by the counsel for the prosecution, that the appellants have been in jail for a little less than three years, which period of imprisonment may have been enough as a sentence under Section 392, I. P. C. These are circumstances which point to the conclusion that this is not a fit case for ordering a retrial on an amended charge. If the evidence against the appellants were above serious criticism, and that is by no means the case as already indicated, I would have had no hesitation in ordering a retrial. But having regard to the circumstances of this case, I do not think that such a course should be taken in the interests of justice. I accordingly allow the appeal, set aside the conviction and direct that the appellants be set at liberty forthwith.

S.R. Das, J.

11. I agree that this appeal should be allowed but I prefer to rest my decision entirely on the second point referred to by my learned brother in the judgment just delivered by him. I entirely agree with the reasons he has given for his decision on that point.

Bhagwati, J.

12. I agree and there is nothing which I can usefully add.