Supreme Court of India
Man Singh And Anr. vs State Of Madhya Pradesh on 31 March, 1993
Equivalent citations: 1993 CriLJ 3669
Bench: K J Reddy, G Ray
JUDGMENT

1. These appeals are filed under Section 379 of the CrPC. These five appellants along with two others were tried for offences punishable under Sections 395, 397 and 449 of the Indian Penal Code. Two of them were tried under Section 25 read with Section 27 of the Arms Act. Mithlesh was tried for offences punishable under Sections 216 and 412, I.P.C. The trial Court acquitted all of them. The State preferred an appeal. During the pendency of the appeal the two accused Devi Singh and Kishore Singh died and the appeal against them stood abetted.

2. The High Court, however, relying on the evidence of the eye-witnesses who participated in the identification parade and the recovery effected allowed the appeal and set aside the acquittal and convicted Mansingh, Rati Ram, Narayan Singh and Shiv Ratan under Sections 395/397, 396 and 449, I.P.C. and sentenced each of them to undergo rigorous imprisonment for ten years under each count. Rati Ram was further convicted under Section 25 read with Section 27 of the Arms Act and sentenced to undergo three years' rigorous imprisonment. Mithlesh was convicted Under Section 412, I.P.C. and sentenced to undergo five years' rigorous imprisonment. His acquittal under Section 216 was affirmed. Sentences were directed to run concurrently.

3. Aggrieved by the said judgment of the High Court the convicted accused have preferred these two appeals. The prosecution case is as follows:

On the night of 11-11-78 at about 11 p.m. there was a dacoity with murder in the house of Premchand (P.W. 22) in Village Hardi, within the limits of Gadhakota Police Station, District Sagar. It is alleged that the dacoits removed gold and silver ornaments and cash of Rs. 500/- total valued at Rs. 22,465/- by breaking open the box and the safe. On the ground floor, Nathuram and Jagrani parents of the complainant, were sleeping and they were first assaulted. On the first floor complainant's sister-in-law Rajrani was killed with a Katarna. The complainant saw the incident from the second floor. Dacoits were unknown to the witnesses. After committing the looting the dacoits left the place. Premchand went and lodged a report (Ex. P-42) in the Police Station. The injured Nathuram and Jagrani were admitted in the Hospital. Rajrani also received injuries and she died. In post-mortem examination it was found that she died because of the incised wound cutting mexilla bone. Nathuram had 23 injuries including fracture of right forearm. The prosecution examined P.Ws. 17 and 18 who receive pellet injuries and Jagrani who received one lathi injury. On receipt of the information P.W. 23, P.S.I. reached the scene of the occurrence and prepared a Panchanama and effected some recoveries. He took into custody Mansingh in Village Sewda and the other accused were also arrested on different dates after the expiry of three months and some more recoveries were effected. A panchanama was drawn in respect of the recoveries and the recovered articles were identified as those belonging to the complainant.

4. An identification parade was held on two dates namely 16-3-79 and 30-3-79. The accused were said to have been identified by the eye-witnesses. On 4-4-79 another identification parade was held in respect of the articles recovered and they were said to have been identified by P.Ws. 2, 17 and 22. The trial Court acquitted the accused holding that identification of the persons as well as of the articles was doubtful.

5. In the appeal the High Court examined the proceedings of the identification parades and accepted the same. The High Court also accepted the prosecution case regarding the recovery of the stolen articles and accordingly convicted the accused as stated above.

6. In these appeals Shri Ranjit Kumar, learned Counsel for the appellants submits that the dacoity took place during night time and the assailants were totally strangers to the victims and they were arrested after a lapse of three months and identification was held again 22 days thereafter. Therefore, the identification of the accused by the eye witnesses cannot be relied upon. In this regard he also submits that the reasons given by the trial Court while rejecting the evidence regarding the identification of the eye-witnesses as well as the recovered articles are quite sound and the High Court erred in reversing the same. We have examined the proceedings and also the evidence given by the respective eye-witnesses. The dacoity is not in dispute. Though Mithlesh belonged to the same village but none of the eye-witnesses stated that he was present during the dacoity. Therefore, he was not put up for identification parade. The dacoits were strangers to the eye-witnesses. Then the question arose whether there was sufficient opportunity for these witnesses to recognise the accused. It is noted that none of their features even suggestively mentioned in the F.I.R. not even in the case diary as noted by the High Court. It is also to be noted that none of the eye-witnesses said that they recognised the dacoits while they were inside the house and on the other hand it becomes highly doubtful whether they could not have identified the strangers in the moonlight. Taking all these aspects into consideration the trial Court was not prepared to accept the evidence regarding the identification parade of the persons. We think this is a reasonable view in the matter. Therefore, the participation of the appellants in the actual dacoity becomes doubtful.

7. However, the recoveries are duly effected and the Sub-Inspector as well as the witnesses spoke about the same. Merely because certain stolen articles were recovered from the accused they cannot be held to be dacoits by invoking the presumption unless there is a recent possession. In this case admittedly, there is a lapse of nearly three or four months. In these circumstances, we think it would be safe particularly when they were acquitted by the trial Court to convict them only for the offence of being in possession of the stolen property.

8. A serious dacoity took place and must be known to all the people in the village as well as in the surrounding places. The accused who were found to be in possession of the stolen property which are the subject matter of the dacoity would be held liable under Section 412, I.P.C. In the result the convictions of Narayan Singh and Shiv Ratan in Crl. A. No. 573/83 under Sections 395/397, 396, 449, I.P.C., and the sentence of ten years' rigorous imprisonment under each count are set aside. Instead they are convicted under Section 412, I.P.C. and each of them is sentenced to three years' rigorous imprisonment. With regards the appellants Man Singh and Rati Ram in Criminal Appeal No. 623/84 their convictions under Sections 395/397, 396 and 449, I.P.C. and the sentence of ten

years' rigorous imprisonment awarded under each count are set aside. Instead they are convicted under Section 412, I.P.C., and each of them is sentenced to three years' rigorous imprison ment. The conviction of Rati Ram under Section 25 read with Section 27 of the Arms Act and the sentence awarded thereunder are confirmed. The conviction of Mithlesh one of the appellants in Crl. A. No. 573/83 under Section 412, I.P.C. is confirmed and the sentence is reduced to three years' rigorous imprisonment. His acquittal under Section 216, I.P.C. is confirmed. Sentences are directed to run concurrently.

9. Appeals are disposed of accordingly.