

A

GHURELAL AND ORS.

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1636 of 2005)

JUNE 17, 2011

B

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

*Penal Code, 1860:*

C

*ss. 395, 396 and 397 – Dacoity with two murders – Conviction of six accused-appellants affirmed by High Court – HELD: There are concurrent findings of fact of courts below about involvement and participation of all accused-appellants in the crime – They had been properly identified in test identification parades as well as in court by witnesses – The*

D

*looted property recovered also correctly identified – Recovery of looted property as also weapons and vehicle used in offence on disclosure statement made by accused, also stood proved – There is no cogent reason to take a view contrary to that taken by courts below.*

E

F

G

**The six accused-appellants along with three others were prosecuted for committing offences punishable u/ ss 395, 396, 397 and 398 IPC. An FIR was lodged by PW-13 on the morning of 17.12.1996 stating that in the previous night, 8-10 miscreants committed dacoity in his house, shot dead his chowkidar and one of the neighbours and decamped with cash, jewellery and silver wares etc. Nine accused were arrested. On the disclosure statements made by the accused, two 12-bore guns, one revolver, and one katta, some empty cartridges, some live cartridges, one ambassador car, and the looted jewellery, cash and silver wares etc. were recovered. One of the accused died pending trial. The trial court convicted all the remaining 8 accused u/ss 395, 396 and 397 IPC and**

H

sentenced them to imprisonment for life. Five of the accused were also convicted u/ss 3/25 and 3/27, Arms Act. On appeal, the High Court upheld the conviction and sentence of the accused u/ss 395, 396 and 397 IPC and acquitted two. Aggrieved, the six convicts filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1. There are concurrent findings of fact so far as the involvement and participation of all the six accused-appellants is concerned. They had been properly identified in the test identification parades as well as in the court by the witnesses. More so, the looted property, particularly, ornaments, jewellery, silver glasses have been recovered and identified correctly. In respect of this, the findings recorded by the trial court as well as by the High Court are based on the evidence of 'PW.26', the Judicial Magistrate, who conducted the Test Identification Parades and by the statements of 'PW.20', the Tahsildar, who conducted the proceedings of identification of stolen articles. According to 'PW.20', 'PW.12' and 'PW.13' accurately identified the stolen articles. Similarly, 'PW.26', the Judicial Magistrate, has deposed that on 23.12.96, he had conducted the identification parade of accused 'RV', 'K' and 'G'; and 'PW.13', 'PW.12' and PW-2 identified the three accused correctly. He further deposed that on 6.1.1997, he conducted the identification parade of accused 'SS', 'BS' and 'R' wherein PW.13 identified accused 'SS' and 'BS' correctly, but in place of accused 'R', he identified another accused. PW.12 identified accused 'SS', 'BS' and 'R' accurately. PW.26 also prepared memos Ext.P-3 and Ext.P-4 of the identification parades. These two witnesses have been cross-examined. However, nothing could be elicited by the defence to discredit their testimonies. [para 7] [1069-B-H; 1070-A-B]

A 1.2. The post-mortem report of the two deceased stood proved by the doctor (PW.21) who had conducted the autopsies. He deposed that the victims had died of the gun shot injuries. He also deposed that he had examined 'PW.2' on 17.12.1996 and had found 7 simple  
 B injuries on his body which had been caused by a blunt weapon. The said injury had been caused within 12 hours of examination. Thus, he corroborated the injuries as well as the manner and the weapon with which such injuries were caused. [para 9] [1070-E-F]

C 2.1. So far as the recovery is concerned, it stood proved by the Investigating Officer (PW-34), who stated that on the disclosure statements made by the accused u/s 27 of the Evidence Act and at their instances, he had recovered the stolen articles, alleged gun, revolver, pellet,  
 D scooter and an ambassador car used by the appellants at the time of committing dacoity. He also faced grilling cross-examination at length, but nothing came out from his statement to draw an adverse inference against the prosecution. [para 8] [1070-C-D]

E 2.2. The recoveries made at the instances of the appellants stood proved by examining the panel witnesses, except in case of recovery made on disclosure statement of accused 'G' in respect of one gun  
 F of 12 bore, live cartridges, some jewellery and a few silverwares, as the two panch witnesses, namely, 'PW.30' and 'PW.31' turned hostile. Both the courts below have held that the recovery from accused 'G' cannot be dis-  
 G believed merely because the panch witnesses turned hostile. There is no cogent reason to take a view contrary to the view taken by the two courts below. [para 10] [1070-H; 1071-A-B]

3. No material discrepancy in the statements of the witnesses has been pointed out which goes to the root  
 H of the case. There is no cogent reason to interfere with

the concurrent findings of fact, recorded by the courts below. [para 11] [1071-C] A

CRIMINAL APPEAL JURISDICTION : Criminal Appeal No. 1636 of 2005.

From the Judgment & Order dated 27.10.2004 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Appeal No. 1579 of 2002. B

Manish Singhvi, AAG, Milind Kumar, Altaf Hussain, Harbans Lal Bajaj for the appearing parties. C

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order dated 27.10.2004 passed by the High Court of Judicature for Rajasthan, Jaipur Bench in D.B. Criminal Appeal No. 1579 of 2002, upholding the conviction and the sentence of the appellants vide judgment and order dated 2.11.2002 in Sessions Case No. 4 of 2002 (14/2000) passed by Additional District and Sessions Judge, (Fast Track), Laxmangarh, Alwar, convicting the appellants under Sections 395, 396 and 397 of the Indian Penal Code, 1860 (hereinafter called the IPC). D E

2. Facts and circumstances giving rise to this appeal are as under: F

A. Santosh Jagwayan (PW.13) lodged an FIR on 17.12.1996 at 8.30 A.M. that in the intervening night between 16th and 17th December, 1996, on hearing a noise, he sent his Chowkidar Gopal Nepali (deceased) to the roof of his house. Gopal Nepali went upstairs, opened the gate of the roof, and found that 8 to 10 accused persons were trying to enter into the house by breaking upon the door of the roof. They immediately fired a shot at Gopal Nepali (deceased) and entered into the house. The accused persons locked Shashi G

H

- A Devi (PW.12), wife of complainant and Preeti (PW.14) and Sandhya (PW.15), his daughters, in the bathroom and started looting moveable properties. Meanwhile, the complainant's neighbours raised their voices. Thus, the accused immediately fired a shot at one of the neighbours, Mrs. Anita Yadav
- B (deceased), and as a result, she died on the spot. Kripa Dayal Yadav (PW.2), husband of Anita Yadav caught hold of one of the accused but was beaten with a gun's butt by the other accused persons who managed to get the accused released from his clutches. The accused decamped with cash, jewellery and silver wares etc.
- C

- B. On the basis of the said complaint, an FIR No. 240 of 1996 (Ex.P-30) was registered under Sections 395, 396, 397 and 398 IPC and investigation ensued. The dead bodies of Gopal Nepali and Smt. Anita Yadav were recovered and sent
- D for post-mortem examination.

- C. During the course of investigation, the appellants were arrested. Raghuveer was arrested on December 19, 1996 and one Ambassador car was recovered at his instance. On his
- E further disclosure and instance, one Kondhani of silver, 2 silver glasses, one silver Katori, one silver spoon and one torch were recovered. Raghuveer, Ghurelal and Kallu were put to the identification parade. On December 24, 1996, co-accused Ram Krishan (now dead) was arrested. On his arrest, case for
- F offence under Section 120B, IPC was also added. On the information and at the instance of accused Kallu, a 12 bore gun, one silver Katori, one pair of ear tops and one earring was recovered on December 29, 1996. On the information furnished by Ghurelal, one golden ring, one ear 'jhala', one necklace, one
- G Ilaychidani, one silver spoon and one Kondhani were recovered on December 30, 1996. On January 1, 1997, accused appellants Rajpal, Samay Singh and Chunchu @ Bhagwan Singh were arrested. One 12 bore gun, one worship platter, 4 silver glasses, one Katori and Rs.2,000/- in cash were recovered from Chunchu @ Bhagwan. On the information
- H

GHURELAL AND ORS. v. STATE OF RAJASTHAN 1067  
[DR. B.S. CHAUHAN, J.]

furnished by accused Samay Singh, one 32 bore revolver, two empty cartridges, 4 live cartridges, 5 glasses, one Katori, one silver spoon and two coin of silver along with Rs.8,900/- in cash and two notes of Nepal currency were recovered. On the information of appellant Rajpal, one 32 bore Katta, one empty cartridge, 5 live cartridges, two golden bangles (Kangan), 3 silver button, one Katori of silver, one silver glass and Rs.1000/- in cash were recovered. Some recoveries were also made at the instance of co-accused Kuniya and Talevar (acquitted by the High Court). Appellants Samay Singh, Chunchu and Rajpal were also put to the identification parade.

D. After completing the investigation, the police filed challan for offences punishable under Sections 395, 396, 397, 120B and 412 IPC, and under Sections 3/25 and 3/27 of the Arms Act, 1950. The charges were framed against the accused appellants. The accused denied the charges and claimed to be tried. Prosecution produced as many as 34 witnesses and exhibited 80 documents (Ex.P-1 to Ex.P-80) in support of its case. The accused appellants were examined under Section 313 of the Code of Criminal Procedure, 1973. They denied the correctness of the statements made against them and pleaded that they have been falsely implicated.

E. The trial court convicted all the accused under the provisions of Section 396 IPC and awarded them punishment to undergo life imprisonment and a fine of Rs. 1,000/-, and in default of payment of fine, to further undergo six months rigorous imprisonment. All of them were also convicted for the offence punishable under Section 397 IPC, and a sentence to undergo rigorous imprisonment for seven years and a fine of Rs.500/- and in default of payment of fine, three months rigorous imprisonment was awarded. They were further convicted under Section 395 IPC, awarded life imprisonment and fine of Rs. 1,000/- and in default of payment of fine, to further undergo six months rigorous imprisonment. Accused Ghurelal, Chunchu @ Bhagwan Singh, Kallu, Rajpal and Samay Singh were further

A convicted under Sections 3/25 and 3/27 of the Arms Act and to each, a sentence was awarded to undergo three years rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine, to further undergo three months rigorous imprisonment.

B F. Being aggrieved by the said decision, all the accused preferred Criminal Appeal No. 1579 of 2002 which has been decided by the High Court vide judgment and order dated 27.10.2004 acquitting the accused Talevar and Kuniya, though maintaining the conviction and sentence in respect of the other accused. Hence, this appeal.

D 3. Shri Altaf Hussain, learned counsel appearing for the appellants has submitted that the appellants had not been kept baparda. Therefore, the identification was not proper. He further submitted that there had been most material discrepancies in the deposition of witnesses which go to the root of this case, and therefore, the conviction and sentence of the appellants is liable to be set aside.

E 4. On the other hand, Shri Manish Singhvi, learned Additional Advocate General, appearing for the State of Rajasthan, has opposed the appeal contending that it is a case wherein two persons had been killed and one seriously injured, valuable moveable properties have been looted, appellants-accused have been identified by all the witnesses in jail as well as in court, and recoveries on their disclosure had been made and proved. Therefore, no interference is required, the appeal lacks merit and is liable to be dismissed.

G 5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

H 6. In the instant case, 9 persons were put to trial. One accused, namely, Ram Krishan died during the course of trial. Two persons, namely, Talevar and Kuniya stood acquitted by the High Court by the same impugned judgment and order. The

appeal against their acquittal i.e. Criminal Appeal No. 937 of 2005 is being dealt with separately. Therefore, we are concerned only with the remaining six appellants. A

7. There are concurrent findings of fact so far as the involvement and participation of all the six accused-appellants are concerned. They had been properly identified in the Test Identification Parades as well as in the Court by the witnesses. More so, the looted property, particularly, ornaments, jewellery, silver glasses have been recovered and identified correctly. In respect of this, the findings recorded by the Trial Court as well as by the High Court are based on the evidence of Shri G.L. Sharma (PW.26), Judicial Magistrate, who conducted the Test Identification Parade and by the statements of Narendra Singh Kulhari (PW.20), the Tahsildar who conducted the proceedings of identification of stolen articles. According to Narendra Singh Kulhari (PW.20), Smt. Shashi Devi (PW.12) and Santosh Jagwayan (PW.13) accurately identified the stolen articles as 15 silver glasses, 5-7 katories, silver spoons, silver plates, tagri, golden ear rings and 21 coins of silver as well as packet of notes. Similarly, Shri G.L. Sharma, (PW.26), Judicial Magistrate, has deposed that on December 23, 1996, he had conducted the identification parade of accused Raghuv eer, Kallu and Ghurelal. He further deposed that Santosh Jagwayan (PW.13), Smt. Shashi Devi (PW.12) and Kripa Dayal Yadav (PW.2) were summoned for identifying the accused. Santosh Jagwayan (PW.13) and Smt. Shashi Devi (PW.12) have also identified the accused Raghuv eer, Kallu and Ghurelal. Thereafter, Kripa Dayal Yadav was summoned and he identified accused Raghuv eer, Kallu and Ghurelal. All the three identified the aforesaid accused correctly. He further deposed that on January 6, 1997, on the order of the Chief Judicial Magistrate, Alwar, he also conducted the identification parade of the accused. Witnesses Santosh Jagwayan (PW.13), Smt. Shashi (PW.12) and Kripa Dayal Yadav (PW.2) appeared for identifying the accused. First of all, Santosh Jagwayan (PW.13) was called to identify the accused. He identified the accused B  
C  
D  
E  
F  
G  
H



- A Samay Singh and Bhagwan Singh, but in place of accused Rajpal, he identified another accused Suraj. Smt. Shashi Devi (PW.12) identified accused Samay Singh, Bhagwan Singh and Rajpal accurately. He also prepared memos Ex.P-3 and Ex.P-4 of the identification parade. These two witnesses have been cross-examined. However, nothing could be elicited by the defence to discredit their testimonies.

8. So far as the recovery is concerned, it stood proved by Laxman Gaur (PW.34), the Investigating Officer that on the disclosure statements made by the accused under Section 27 of the Indian Evidence Act, 1872 and at their instances, he had recovered the stolen articles, alleged gun, revolver, pellets, scooter and an ambassador car used by the appellants at the time of committing dacoity. He also faced grilled cross-examination at length, but nothing came out from his statement which may enable us to draw an adverse inference against the prosecution.

9. The post-mortem report of Smt. Anita Yadav and Gopal Nepali stood proved by Dr. Jitendra Bundel (PW.21) who deposed that he had conducted the autopsy on the body of Smt. Anita Yadav and she had gun shot injuries, lot of pellets in her body, and that she died of excessive bleeding because of gun shot injuries. Similarly, he deposed that Gopal Nepali also died because of gun shot injuries. He also deposed that he had examined Kripa Dayal Yadav (PW.2) on 17.12.1996 and had found 7 simple injuries on his body which had been caused by a blunt weapon. The said injury had been caused within 12 hours of examination. Thus, he corroborated the injuries as well as the manner and the weapon with which such injuries were caused.

10. The recoveries made at the instances of the appellants stood proved by examining the panel witnesses, except in case of recovery made on disclosure statement of Ghurelal in respect of one gun of 12 bore live cartridges, one golden ear ring, one necklace of gold, one Iliayachi Dani made of silver,

one silver spoon and one silver bowl, as the two panch witnesses, namely, Sher Singh (PW.30) and Udaibir Singh (PW.31) turned hostile. Both the courts below have held that the recovery from Ghurelal, one of the accused, cannot be disbelieved merely because the panch witnesses turned hostile. We do not find any cogent reason to take a view contrary to the view taken by the two courts below.

11. Shri Altaf Hussain, learned counsel appearing for the appellants, had taken us through the entire evidence. He could not point out any material discrepancy in the statements of the witnesses which goes to the root of the case. Nor could he satisfy us how the judgment impugned requires any interference. We do not find any cogent reason to interfere with the concurrent findings of fact, recorded by the courts below. The appeal lacks merit and is accordingly dismissed.

12. It is evident from the record, particularly, the order dated 28.4.2006 that all the six appellants had already served 9 years of actual imprisonment and, thus, had been enlarged on bail by this Court. Thus, their bail bonds are cancelled and they are directed to surrender within a period of two weeks from today, failing which, the Chief Judicial Magistrate, Laxmangarh, Alwar, will take them into custody and send them to jail to serve out the remaining part of the sentence. A copy of the judgment and order be sent to the learned Chief Judicial Magistrate, Alwar, for compliance.

R.P.

Appeal dismissed.