

## STATE OF RAJASTHAN

v.

## SUKHPAL SINGH &amp; OTHERS

December 16, 1982

[ Y. V. CHANDRACHUD, C.J. AND V. D. TULZAPURKAR, J. ]

*Evidence—Appreciation of—In an appeal against order of acquittal by High Court.*

Seven or eight armed dacoits entered a bank at Bayana, terrorised and beat up its employees, looted currency notes worth Rs. 15, 253/-, put the same in a black box and drove away with the booty in an Ambassador car. The F.I.R. was lodged within half an hour of the dacoity and wireless messages were sent out for interception of the car. Soon thereafter, an Ambassador car having seven persons seated in it and being driven in panic arrived near Weir from the direction of Bayana and met with an accident. The police and the public surrounded the occupants of the car when they came out but they tried to escape by firing from their pistols. They were chased and arrested but not before some members of the public received injuries on account of the firing. The prosecution case was that it was the respondents who looted the bank, escaped in the car and were chased and arrested; that each of them was carrying a bundle of hundred currency notes of Rs. 10/- each; that the black box found in the car contained currency notes of the value of Rs. 6,800 belonging to the looted bank; and that live cartridges and knives had been recovered from the possession of some of the respondents. At the trial, the respondents admitted that they had been arrested near Weir but denied any hand in the dacoity. The Sessions Judge rejected their plea and convicted them under s. 395, I.P.C.

The High Court acquitted the respondents on three grounds: (i) that the evidence regarding identification of the respondents was not convincing as some of the witnesses who had identified the dacoits in jail had failed to identify them before the trial court; (ii) that the evidence regarding recovery of stolen property was not acceptable as the recovery memos were not genuine, the knives and cartridges had not been produced before the court, and the story that each of the respondents was carrying currency notes worth Rs. 1000 while running away after leaving a sum of Rs. 6,800 in the black box was unnatural; and (iii) that the allegation that the respondents had escaped in the Ambassador car and had come out of that car after it met with an accident was not acceptable in the absence of an entry relating to the number of the car in the General Diary of the Police.

Allowing the appeal,

HELD: If two views of the evidence were reasonably possible in this appeal by special leave against acquittal, the court would not have substituted

A its own assessment of the evidence for that of the High Court. But it is impossible on any hypothesis to accept the conclusion of the High Court. It is difficult in an incident of this kind to have evidence as strong and clinching as it is before the Court. The only conclusion which one can come to upon that evidence is that the charge has been brought home to the accused.

[57 E-F; 60 B]

B (b) The judgment of the High Court is severely laboured and unrealistic. Evidence which is incontrovertible has been rejected on suspicion and surmises. Witnesses who had no axe to grind and had no personal motive to implicate the accused on a false charge have been disbelieved on feeble considerations. And the recovery of incriminating articles has been by-passed and disbelieved by characterising it as unnatural and incredible. Different crimes have different patterns and the offenders improvise their strategy according to the exigencies of the occasion. The prosecution story has been rejected as not fitting in with the common course of events on the supposition and insistence that a crime of the present nature had to conform to a pattern of the kind which the High Court harboured in its mind. [57 F-H]

D (i) The High Court gave exaggerated importance to the infirmities attaching to the ability of the witnesses to identify the respondents and overlooked the fact that they had been arrested red-handed and on the spot. The incident which took place in the bank, the attempt made by the offenders to escape and their pursuit by the police and the public, which had all been proved by the most clear and cogent evidence, were but links in the same chain of causation and were parts of one and the same transaction. [58 A-B & F]

E (ii) There was no infirmity attaching to the evidence of the Station House Officer, Bayana who was examined as a court witness by the High Court itself, regarding the recovery of the black box from the car and the High Court was not justified in rejecting his evidence. The submission that the box could have been easily planted by the police after the respondents were arrested is wholly unjustified. The box was not left in the car as a matter of sweet volition. The respondents had no option save to abandon it in the car when they were surrounded by the police and the public. What is natural by the test of common experience is that thieves, while running away in order to escape from those who are chasing them, would leave a biggish article containing the loot where it lies. [59 D-E]

F (iii) The circumstance that the number of the car was not mentioned in the police diary was a petty matter in the midst of a large mass of good evidence connecting the respondents with the crime. [59 G]

G **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 134 of 1973.**

H Appeal by special leave from the Judgment and Order dated the 13th November, 1972 of the Rajasthan High Court in S.P. Criminal Appeal Nos. 580 and 581 of 1972.

*B.D. Sharma* for the Appellant.

*D. Mookerjee and Dr. B.S. Chauhan* for Respondents 1 to 4. A

*R.K. Garg, A.K. Panda and Sunil Kumar Jain* for Respondents 2 and 3.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. The respondents were convicted by the learned Sessions Judge, Bharatpur, under section 395 of the Penal Code and were sentenced to rigorous imprisonment for three years. By its judgement dated November 13, 1972, the High Court of Rajasthan has set aside that judgment and has acquitted the respondents. The State of Rajasthan has filed this appeal by special leave against the judgment of the High Court. B

The State Bank of Bikaner and Jaipur had a branch at Bayana in the district of Bharatpur. At about 1.30 p.m., on March 17, 1971, seven or eight persons looted the Bank. Jugal Kishore Paliwal, the Agent of the Bank, was working in his chamber, while Bhagwan Dass Goyal, Head Cashier, and Suresh Chand Goyal, Assistant Cashier, were in the cash cabin at that time. The decoits, who were armed with country-made pistols, knives and a hand-grenade, ordered these Bank employees to stand up and raise their hands. Three dacoits entered the Agent's room, beat him up and opened the safe and the almirahs. They could not find any money therein. They then took the agent to the cash cabin, where they tore open the lid of an iron cash box and took away currency notes of Rs. 15,253 from it. They snatched a black-coloured confidential box lying on a nearby table, threw away the papers which were in that box and put the money in it. They carried away the black box, got into a blue Ambassador car and drove away. C

The first Information Report of the occurrence was lodged by the Head Cashier, Bhagwan Dass Goyal, within about half an hour i.e. at 2.00 p.m., at Police Station Bayana. The Police Officer there sent wireless messages to the surrounding police stations as also to police outposts. On receipt of the message, the Head Constable in charge of the police station at Weir, posted police personnel to block the car on the road. Soon thereafter, an Ambassador car bearing No. DLJ 7458, in which seven persons were seated, arrived from the direction of Bayana. Driven in panic, the car dashed against an oil barrel in front of a shop and was damaged. The occupants of the car were forced by that circumstance to come out of the car, whereupon they were surrounded by the police and the members of the D

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A public. The occupants fired from their pistols and tried to escape under cover of fire but the police and the public gave them a hot chase for over a mile and succeeded in surrounding them once again. The occupants of the car opened fire causing injuries to some members of the public. Ultimately, they were over-powered and caught. Babu Lal, Station House Officer of the Bayana Police Station, arrived on the scene and arrested the respondents. It transpired during the investigation that the Ambassador car which the respondents had used was stolen from New Delhi a day before the occurrence. The case of the prosecution is that the respondents before us were the very persons who looted the Bank, escaped in the car and were chased and arrested.

C The respondents admitted that they were arrested near Weir but they denied that they had any hand in the loot of the Bank. Each of them furnished a different explanation as regards his presence at Weir at the time of their arrest. They also examined four witnesses to show, principally, the reason of their presence at the place of arrest.

D It would appear from the judgment of the learned Single Judge of the High Court of Rajasthan that three points were argued on behalf of the respondents : (1) There is no evidence regarding the identification of the respondents; (2) There is no trustworthy evidence regarding the recovery of the stolen property from their possession; and (3) There is no evidence to show that they had escaped in the particular Ambassador car and had come out of the car after it met with an accident.

E On the question of identification of the respondents, the High Court has rejected the evidence of the Agent of the Bank Jugal Kishore Paliwal (PW 4), Head Clerk Radhey Charan Bhargava (PW 5), Head Cashier Bhagwan Dass Goyal (PW 6), Agricultural Asstt. Murari Lal (PW 7), Daftaries Radhey Shyam Sharma (PW 8) and Amba Prasad (PW 9), and Asst. Cashier Suresh Goyal (PW 10), on the ground that though some of these witnesses had identified the dacoits in the jail, they had failed to identify them before the trial court. It appears that these witnesses had wrongly identified some of the accused in the committing court as also before the trial Court. According to the High Court "The only irresistible conclusion which can be drawn from their statements is that their evidence regarding identification is not convincing."

On the question of recovery of the stolen property from the possession of the respondents the case of the prosecution is that each of the respondents was carrying a bundle of hundred currency notes of Rs. 10 each. It is further alleged that the black box lying in the Ambassador car was found to contain currency notes of the value of Rs. 6,800 belonging to the Bank. In addition, live cartridges and knives are also alleged to have been recovered from the possession of some of the respondents. The High Court has rejected the whole of this evidence on the ground that the recovery memos "cannot be said to be genuine" and were prepared subsequently, that the knives and live cartridges were not produced before the Court, that the story that each of the respondents was carrying currency notes worth Rs. 1000, while running away is unnatural and that, it is not likely that the respondents would leave the sum of Rs. 6,800 in the black box in the car and would each carry a sum of Rs. 1,000, as if to create evidence against themselves.

On the third question regarding the allegation that the respondents has escaped in the Ambassador car and had come out of that car after it met with an accident, the High Court has rejected the evidence that the respondents had fled away in the particular car on the ground that in the entry Exhibit D-40, in the General Diary of the Police Station, relating to the First Information Report the number of the car was not mentioned.

If two views of the evidence were reasonably possible, we would not have substituted our own assessment of the evidence for that of the High Court in this appeal against acquittal. But, we are of the opinion that it is impossible on any hypothesis to accept the conclusion of the High Court that the prosecution has failed to establish its case. With respect, we regard the judgment of the High Court as severally laboured and unrealistic. Evidence which is incontrovertible has been rejected by the High Court on suspicion and surmises. Witnesses who had no axe to grind and had no personal motive to implicate the accused on a false charge, have been disbelieved on feeble considerations. And the recovery of incriminating articles has been bypassed and disbelieved by characterising it as unnatural and incredible. Different crimes have different patterns and the offenders improvise their strategy according to the exigencies of the occasion. The High Court has rejected the prosecution story as not fitting in with the common course of events on the supposition and insistence that a crime of the present nature had to conform to a pattern of the kind which the High Court harboured in its mind.

**A** On the first question, that is to say the question of identification, the High Court gave an exaggerated importance to the infirmities attaching to the ability of the witnesses to identify the respondents. It was overlooked, and when an argument in that behalf was made it was rejected, that the respondents were arrested red-handed and, in a manner of speaking, on the spot. There was no dispute that the incident of the kind alleged by the prosecution had taken place in the premises of the Bank. And it requires no strong persuasion to hold that after the Bank was looted, the offenders, whosoever they may be, would try to escape. The lodging of the First Information Report within half an hour of the incident, the prompt flashing of the wireless message to the police stations and police outposts in the vicinity, the posting of police guards on the road to stop the car bearing a particular description if it was detected, the accident which the car met with, the emergence from the car of six or seven persons, the pursuit which the police and the public gave them, the shots fired by those persons, the beating given by members of the public to them and the fact that they were ultimately over-powered, caught and arrested, are all matters which are proved by the most clear and cogent evidence. Respondents are the persons who got down from the car after it met with an accident and they are the very persons who bear tell-tale marks of the rather severe drubbing given by the public. We are unable to understand how, in these circumstances, the High Court could have held that since the accused were not arrested on the spot, the evidence regarding their identity must assume importance. The incident which took place in the Bank, the attempt made by the offenders to escape and their pursuit by the police and the public, are but links in the same chain of causation. They are parts of one and the same transaction. This, therefore, is a case in which the offenders were caught red-handed near the place of offence while they were trying to escape. They fired while fleeing and caused injuries to those who were bravely trying to surround them but eventually, the police and the public got the better of them. No further question survives but, since the High Court has given great importance to some other aspects of the case, we must advert to them.

**H** Equally significant is the circumstance that an office box (Article 3) containing Rs. 6,800 was seized from the Ambassador car from which the respondents came out after the accident. The Memo of Seizure is at Exhibit P-22. The bundles of currency notes found in the box bore chits in the name of the Bank of Bikaner and

Jaipur, Bayana Branch. The box also contained certain documents belonging to the Bank, including a passbook of Head Clerk Radhe Shyam Bhargava (PW 5). Some of the witnesses examined by the prosecution turned hostile, which only shows what terror a lawless group of dacoits can strike in the minds of men. But the evidence of Babu Lal, the Station House Officer, Bayana, who was examined as a Court witness by the High Court itself, shows that the black box containing the money and the other articles was seized from the Ambassador car. The High Court has rejected this evidence with a broad and unfounded observation that the recovery memo was prepared subsequently. We are unable to share that view. The High Court says that "It is not easily believable that the accused would leave Rs. 6,800 in the box lying in the car and each would run away with a thousand rupees". The story that a sum of Rs. 1,000 was found on the person of each of the respondents may or may not be accepted. But there is no infirmity attaching to the evidence of Babu Lal regarding the recovery of the black box from the car. Shri R.K. Garg, who appears on behalf of the respondents, urged that the box could have been easily planted by the police after the respondents were arrested. This submission is wholly unjustified. The box containing the currency notes, which were a part of the loot, was not left in the car as a matter of sweet volition. The respondents had no option save to abandon it in the car in which they were travelling, when the car met with an accident and they were surrounded by the police and the public. What is natural by the test of common experience is that a biggish article containing the loot would be left by the thieves where it lies. They would not take it with them, while running away in order to escape from the clutches of the people who were chasing them.

The High Court has dwelt copiously on the question as to whether the number of the Ambassador car was disclosed in the first Information Report. The number of the car may or may not have been mentioned to the police by Goyal who gave the F.I.R. But we consider that to be a petty matter in the midst of a large mass of good evidence connecting the respondents with the crime. The fact that the respondents escaped in an Ambassador car is specifically mentioned in the F.I.R., Exhibit P-1. In fact, the F.I.R. mentions that the Ambassador car bore the number DLJ 7458 but the High Court considered it as an interpolation since, the entry, Exhibit D-40 in the General Diary of the Police Station relating to the F.I.R., does not mention the number of the car. The inference drawn by the High Court that the F.I.R. was prepared later is unsustainable. The entry

**A** D-40 is after all a summary and summaries are not intended to be exhaustive. Then they would cease to be summaries.

It is difficult in an incident of this kind to have evidence as strong and clinching as we have before us. The only conclusion which one can come to upon that evidence is that the charge has been brought home to the accused. Accordingly, we allow the appeal, set aside the judgment of the High Court and restore the order of conviction recorded by the learned Sessions Judge against the respondents under section 395 of the Penal Code. The learned Judge had sentenced each of the respondents to rigorous imprisonment for three years. The judgment of the High Court is already a decade old. (We are beholden that we are not yet faced with cases in their Silver jubilee year). Respondents have been on bail after undergoing a substantial part of the imprisonment. We understand that some of them are not working as Veterinary doctors or Assistants and have settled down as married men with children. Taking these factors into account, we sentence each of the respondents to rigorous imprisonment for the period already undergone by them. We, however, impose upon each one of them a fine of rupees three thousand, which they shall pay within three months from to-day. Failing such payment, the respondents shall each undergo rigorous imprisonment for a period of six months.

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H.L.C.

*Appeal allowed.*