

In Chamber

Reserved on 27.01.2020

Delivered on 30.04.2020

Criminal Appeal No. 786 of 1983

Ram Baran

Sri Chandra

..... Appellants

Vs.

State of U.P.

..... Respondent

For Appellant : Sri Anjeet Singh

For Respondent : Sri Amit Singh Chauhan, A.G.A.

Hon'ble Raj Beer Singh, J.

1. This criminal appeal has been preferred against judgment and order dated 23.03.1983 passed by learned 5th Additional Sessions Judge, Fatehpur in Session Trial No. 28/1982 (State Vs. Ram Baran and another) under Sections 399/402 of IPC, Police Station Sultanpur Ghosh and Session Trial No. 371 of 1982 (State Vs. Ram Baran and another) under Section 25 of Arms Act, Police Station Sultanpur Ghosh, Fatehpur whereby accused-appellants Ram Baran and Sri Chandra have been convicted under Sections 399/402 of IPC and Section 25 of Arms Act and sentenced to three years rigorous imprisonment under Sections 399/402 of IPC and two years rigorous imprisonment under Section 25 of Arms Act. Both the sentences were to run concurrently.

2. Prosecution version in brief is that on the intervening night of 25/26.07.1981, after receiving a secret information that a gang of dacoits would assemble in grove of Chandrapal Yadav at village Paharpur, PW-2 S.I. Uma Kant Sachan, in-charge of Police Station Sultanpur Ghosh

constituted a raiding party comprising some other police officials as well as some public witnesses including PW-1 Manzoor Ahmad and one Arjun Goyal and Shivpal. At around 11:00 pm, this police party including above stated public persons reached at alleged spot and took position around that area. After half an hour, three persons came in the said grove and later on, they were joined by three more persons. They started making plan to commit dacoity at house of one Gulab Singh. The said police party challenged them but said miscreants tried to run away by making fire. However, at around 12:00 night, two dacoits were apprehended whereas four dacoit ran away. The identity of one of them was revealed as Ram Baran and a double barrel gun was recovered from his possession. Identity of another was revealed as Sri Chandra and one country made pistol of 12 bore was recovered from him. Recovered weapons were sealed and taken into possession vide recovery memo Ex.Ka.1 and a case was registered on 27.07.1981 at 02:15 am under Sections 399/402 of IPC and Section 25 of Arms Act vide FIR Ex.Ka-8.

3. Investigation was conducted by S.I. Mathura Prasad Mishra. Site plan of the spot was prepared vide Ex.Ka-2 and after completion of investigation, charge sheet Ex.Ka.3 was submitted against accused appellants Ram Baran and Sri Chandra for the offence under Sections 399/402 of IPC while separate charge sheets were submitted against both the accused appellants for offence under Section 25 of Arms Act.

4. Learned trial Court framed charges under Sections 399/402 of IPC and Section 25 of Arms Act against accused-appellants.

5. In order to bring home guilt of the accused persons, prosecution has examined three witnesses. Accused persons were examined under Section 313 Cr.P.C. wherein they have denied the prosecution evidence and claimed false implication. However, no evidence was led in defence.

6. After hearing and analysing evidence on record, accused appellants were convicted under Sections 399/402 of IPC and Section 25 of Arms

Act by trial court vide impugned judgment and order dated 23.03.1983 and sentenced as stated in para no. 1 of this judgement.

7. Being aggrieved by the impugned judgment and order, accused-appellants preferred this Criminal appeal.

8. Heard Sri Anjeet Singh, learned counsel for the appellants and Sri Amit Singh Chauhan, learned A.G.A. for the State and perused the record.

9. During pendency of the appeal accused-appellant no. 2 Sri Chandra has passed away and thus, appeal against him stands abated.

10. In evidence, P.W.1 Manzoor Ahamad has supported prosecution version and stated that he has joined the police party, which has conducted the raid at Paharpur and that two of the miscreants namely Ram Baran and Sri Chandra were apprehended and that a double barrel gun and a country made pistol were recovered from them. However, in his cross examination he has stated that his house is situated after 50 houses from the police station and he was called by a police constable. He denied the suggestion that he is stock witness of police and no such incident took place in his presence.

11. P.W.2 S.I. Uma Kant Sachan has also repeated nearly the same version as mentioned in the F.I.R. and stated that at the night of 26.07.1981, after receiving the secret information above stated two accused persons were apprehended.

12. Accused-appellant has been convicted under Section 399/402 of IPC and Section 25 of Arms Act. For better understanding, Sections 399 and 402 IPC are reproduced herein as under:

"399. Whoever makes any preparation for committing dacoity, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine."
"402. whoever at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

13. In order to prove the charge under sections 399/402 IPC, it is necessary for the prosecution to prove that five or more persons have assembled with the intention to commit dacoity, which is punishable under section 402 IPC, whereas for proving the offence under section 399 IPC, it is necessary for the prosecution to prove that some additional steps have been taken in the course of preparation to commit dacoity.

14. After considering the entire evidence and all attending facts and circumstances of the case, the prosecution version, that police have laid a trap at alleged spot at about 11:00 P.M. and after that alleged miscreants reached in the said grove and that police have heard their conversation that they were making plan to commit the dacoity at the house of Gulab Singh, does not appear convincing and reliable. The version of prosecution that one of miscreants was heard saying that he knows the house of Gulab Singh and that their number and weapons are sufficient to commit dacoity and that they can easily rob valuables from the house of Gulab Singh and another had stated that it would not be proper to delay and they must proceed to commit dacoity, appears to be unnatural and improbable. It is not natural that they would talk in such loud voice that it could be heard by members of police party, which has concealed itself around that area. The allegations as well as the evidence led by the prosecution is that Station House Officer, PS Sultanpur Ghosh received a secret information from the informer that a gang of dacoits would assemble in the grove of Chandrapal Yadav in village Paharpur in the night to commit dacoity in the house of Gulab Singh. Accordingly police reached the spot and apprehended only two accused namely Ram Baran and Sri Chandra while four accomplices managed to escape. Despite there being sufficient number of police officials present at the spot, how four accused managed to escape is a question, which the prosecution has failed to give answer and neither any step has been taken by the police to apprehend the remaining accused nor the police constables, who chased the accused were examined so as to establish the charge under section 402

i.e. assembly to commit dacoity. Even during investigation, identity of said four persons could not be established.

Hon'ble Supreme Court in the case of Shridhar Koeri Vs. State of Bihar, 2001 (43) ACC 5 has held that the mere fact that the accused was arrested on the spot and some articles including fire arms were recovered from his possession would not be sufficient to prove the charge that he had assembled for making preparation for commission of dacoity.

Further alleged gun and country made pistol, recovered from accused persons, were not sent to FSL for examination. In case of State of Punjab Vs. Jagga Singh, AIR 1998 SC 3113, Hon'ble Supreme Court observed as under:

"Though the evidence of PW 1, HC Baldev Singh and PW 3, Basant Singh establishes that the respondent was found in possession of one 12 bore DBBL gun and found live cartridges, there is no satisfactory evidence to show that the said gun and the cartridges were sent for examination by the Central Forensic Scientific Laboratory. There is no report from the Forensic Scientific Laboratory nor any other evidence to prove that the said gun was in a working condition or that the said cartridges were live cartridges..... Therefore, in absence of any evidence to show that the respondent was found in possession of one .12 bore DBBL gun in a working condition and four live cartridges, the respondent cannot be convicted."

Thus, instant case is also affected on the ground that alleged gun and pistol recovered from accused persons were not sent to FSL and there is no such report that these arms were in working order.

15. In the case of State of UP Vs. Punni, 2008 Cr.L.J 1028 (SC), Hon'ble Supreme Court held that dacoits were arrested without any resistance or struggle and contents in the FIR that police had received information from an informer was not supported by the sub-Inspector. The accused were held entitled to acquittal. In the instant case too there is nothing to show that alleged miscreants have offered any resistance. It is not believable that if they would have fired at police party, no one would have sustained any injury.

16. As per prosecution version, police party has left police station on

25.07.1981 after receipt of secret information but neither the G.D. entry of departure has been placed on record nor proved.

17. Another important aspect involved in this case is that as per prosecution version entire raid proceedings were conducted in supervision of Station Officer Uma Kant Sachan and case was also lodged by him but investigation has been conducted by P.W.3 S.I. Mathura Prasad Mishra, who was subordinate to complainant of case. It is apparent that if investigation has been conducted by complainant's subordinate, it would create doubt in authenticity of investigation.

18. Considering the entire evidence it appears that prosecution version lacks genuineness and authenticity. The prosecution version is little bit unnatural and it is not in conformity with natural conduct. Besides, as stated above, neither general diary entry of departure has been proved nor there is any expert report that alleged weapons were in working order. Apart from the aforesaid, investigation was conducted by police personnel who was subordinate to complainant. Considering entire facts and evidence, prosecution version appears doubtful and thus, accused appellant deserves benefit of doubt.

19. In view of above, the conviction and sentence of accused-appellant Ram Baran is set aside and he is acquitted from the charges levelled against him.

20. Appeal is accordingly, allowed.

21. Office is directed to transmit the record of trial Court as well as copy of the judgement to the Court below.

Dated: 30.04.2020

Mohit Kushwaha/S.Ali

(Raj Beer Singh, J)