

Neutral Citation No. - 2024:AHC:170031

Court No.86

Case :- CRIMINAL APPEAL No. - 1149 of 1982

Appellant :- Onkar

Respondent :- State

Counsel for Appellant :- V.S.Chaudhary,Archana Tyagi,P.K.Tyagi

Counsel for Respondent :- A.G.A

With

Case :- CRIMINAL APPEAL No. - 1038 of 1982

Appellant :- Raj Kumar And Others

Respondent :- State

Counsel for Appellant :- B.P.Gupta,Dr. C.P.Upadhyaya

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. The Court of V Additional Sessions Judge, Meerut vide judgment and order dated 20.4.1982 convicted the accused - Onkar, Raj Kumar, Rajendra, Dharam Pal and Iqbal under Sections 399, 402 IPC in Sessions Trial No.398 of 1979 (State Vs. Onkar and Others) arising out of crime nos.47 of 1979, 48 of 1979, 49 of 1979 and 50 of 1979 and sentenced them to undergo 5 years rigorous imprisonment under Section 399 IPC and 3 years rigorous imprisonment under Section 402 IPC each. The two accused namely, Raj Kumar and Onkar were also convicted under Section 25 Arms Act and sentenced to undergo 1 year rigorous imprisonment and all the sentences were directed to run concurrently, feeling aggrieved of which the present criminal appeals have been filed.

2. The prosecution story, as unfolded in the F.I.R., is that on receiving information in respect of some dacoits, who were planning to make dacoity at the house of one Pritam Singh Jat in village Ratauli, the police force assembled at village Ratauli and after some time, some miscreants came over there. The police party parted itself into three groups and when some other miscreants came over there, the police made an alarm whereupon fire was made upon the police personnel by the assailants and in retaliation police party also exchanged fire and some of the miscreants namely, Niranjana, Onkar, Raj Kumar, Rajendra, Dharam Pal and Iqbal were caught hold by the police personnel on spot and some of the assailants fled away from there, whose names were disclosed as Ranveer, Sarjeet, Chandrapal, Veeru, Tara and Vison by the accused persons held by the police. However, no person from either side received any firearm injury. One country made pistol in live condition with 5 live cartridges and one country made pistol in live condition with 4 live cartridges were recovered from the possession of present appellants Onkar and Raj Kumar respectively and some incriminating articles were also recovered from the possession of other co-accused persons namely, Dharam Pal, Rajendra and Iqbal. The memos of search, arrest and recovery were prepared on spot and F.I.R. was lodged.

3. After lodging of the F.I.R. on 14.2.1979 at 4:30 A.M. under Sections 399, 402, 307, 412 IPC and 25 Arms Act, the Investigating Officer performed the proceedings of the investigation, recorded the statement of the witnesses and after collecting sufficient evidence and completing the formalities of the investigation, submitted charge-sheet against the accused

Onkar, Rajendra, Dharam Pal, Raj Kumar, Iqbal and Niranjana under Sections 307, 399, 402 IPC and three other charge-sheets under Section 25 Arms Act were also submitted against the accused Onkar, Raj Kumar and Niranjana. Prosecution sanction was also obtained to initiate proceedings under the Arms Act against the present accused appellants Onkar, Raj Kumar and Niranjana (now dead).

4. The case, being exclusively triable by the Court of Sessions, was committed by the Magistrate Court to the Court of Sessions. The accused persons namely, Onkar, Rajendra, Dharampal, Raj Kumar and Iqbal were charged for the offence under Sections 307, 399, 402 IPC and the present appellants Onkar and Raj Kumar were further charged under Section 25 of the Arms Act. The accused persons denied all the charges and claimed for trial. Accused Niranjana died prior to the framing of charges.

5. The prosecution, to bring home the charges, relied upon the oral evidence of P.W.1 S.I. Rajveer Singh, the eyewitness, P.W.2 Ziley Singh, public witness of fact, P.W.3 Satpal, public witness of fact, P.W.4 Dhan Singh, public witness of fact, P.W.5 S.I. Chhotey Lal, the Investigating Officer of this case and P.W.6 Constable Clerk Ram Singh, the scribe.

6. To corroborate the oral testimony of the witnesses, the prosecution also relied upon the documentary evidence which are Memo of Search from accused Niranjana Ex.Ka.-1, Memo of Search from accused Onkar Ex.Ka.-2, Memo of Search from accused Raj Kumar Ex.Ka.-3, Memo of Search from accused Dharampal Ex.Ka.-4, Memo of Search from accused Rajendra Ex.Ka.-5, Memo of Search from accused Iqbal Ex.Ka.-6, Memo

of Recovery of Pistol and other materials Ex.Ka.-7, Memo of recovery of bidi, cigarette Ex.Ka.8, Site Plan Ex.Ka.-9, Report for prosecution sanction Ex.Ka.-10 & Ex.Ka.-11, Prosecution Sanction orders against accused Raj Kumar and Onkar under Section 25 Arms Act Ex.Ka.12 & Ex.Ka.-13, Charge-sheet against all accused persons Ex.Ka.-14, Charge-sheets against accused Onkar and Raj Kumar under Section 25 Arms Act Ex.Ka.-15 & Ex.Ka.-16 respectively, Chik F.I.R. Ex.Ka.-17, Registration G.D. Ex.Ka.-18 and Ravangi G.D. Ex.Ka.-19.

7. After completion of the prosecution evidence, incriminating circumstances and evidence were put to the accused persons in their statement under Section 313 Cr.P.C. wherein they flatly refused to accept the prosecution evidence adduced against them and claimed it to be false and fabricated. However, no defence evidence was adduced by the accused persons.

8. On the basis of oral and documentary evidence and after hearing the parties at length and also analysing the evidence of the defence, vide judgment and order dated 20.4.1982, the learned trial court recorded the conviction of the accused persons under Sections 399, 402 IPC and 25 Arms Act and sentenced them as here-in-above mentioned.

9. Feeling aggrieved with the impugned judgment and order, criminal appeal no.1149 of 1982 was preferred by accused convict Onkar, criminal appeal no.1038 of 1982 was preferred by convicts Raj Kumar, Rajendra and Dharam Pal and criminal appeal no.1328 of 1982 was preferred by convict Iqbal.

10. On account of death of appellant Iqbal, criminal appeal no.1328 of 1982 filed on his behalf has already been abated qua him on 10.4.2007.

11. In criminal appeal no.1038 of 1982, on account of death of appellant no.2 Rajendra and appellant no.3 Dharam Pal, as reported by the Chief Judicial Magistrate, Meerut, the appeal stands abated qua them.

12. Now the present appeal no.1038 of 1982 is effective against sole surviving appellant no.1 Raj Kumar and criminal appeal no.1149 of 1982 is effective against appellant Onkar only.

13. Heard Dr. C.P Upadhyaya, learned counsel for the appellant - Raj Kumar in Crl. Appeal No.1038 of 1982 and Sri Pankaj Kumar Tyagi, learned counsel for the appellant - Onkar in Crl. Appeal No.1149 of 1982 and learned A.G.A. appearing for the State.

14. The impugned judgment and order has been assailed for the surviving appellants on several grounds. It has been submitted by the learned counsel for the appellants that the appellants have committed no crime and even in the absence of any reliable and cogent evidence, the trial court has recorded the conviction of the appellants which is contrary to law and the evidence available on record. It was further submitted that the offence in this matter was committed in the dark night and it was never plausible for the police personnel and also by the public witnesses to identify the accused persons in the dark night. It was also submitted that no article, which is said to be robbed by the accused persons, has been recovered from the possession of present appellants nor any incriminating article has been retrieved on their pointing out. It was also submitted that all the

witnesses of public, which are claimed to be the independent witnesses by the prosecution, are not reliable as they never saw any such occurrence as claimed by the prosecution. It was further submitted that this Court may take into account the fact that it is a case of no injury. Any member of the police personnel or miscreants and also any villager in this case has not received any kind of injury. It is also submitted that Peetam Jat who according to prosecution case was the proposed victim, as the miscreants were making preparation to commit dacoity in his house, has not been produced as prosecution witness. Further, the other persons and the natives of the village have also not been examined before the trial court. It was also submitted that the appeal pertains to year 1982 and the incident is said to have taken place in the year 1979 and both the appellants are very old at present and they are entitled for the mercy of the Court as well.

15. Per contra, learned A.G.A. vehemently opposed both the appeals and it has been submitted that in this case the prosecution version is corroborated by the public witnesses and the prosecution case is proved on the basis of ocular, formal and other witnesses. It was also urged that the arms which were used in the commission of the crime were retrieved from the present appellants on spot. It was also submitted that the case under the Arms Act as well as the main offence of making preparation to commit dacoity and the recovery of weapons / arms from the possession of the present appellants are additional facts corroborative to the story of the prosecution. It is further submitted that there is ample oral evidence on record that a fire for lightening was made by the police due to which light was

spread over there and the accused persons were easily identifiable to the police team and the witnesses.

16. This is a case where the prosecution case rests upon not only the oral testimony of the witnesses of police, but is also supported by the evidence of independent witnesses of public. As per prosecution case, when the information regarding the miscreants was received by the police team, first of all they searched for independent witnesses and found Ziley Singh, Satpal, Dharm Singh and Ram Krishan to accompany the police team to the place of occurrence. The prosecution case as proceeds further discloses a police encounter when the miscreants were alarmed by the police.

17. P.W.1 S.I. Rajveer Singh, the witness of fact, deposes the whole incident before the Court as is disclosed in the F.I.R. of this case. The presence of independent public witnesses Ziley Singh, Satpal, Dharm Singh and Ram Krishan at the place and time of occurrence has been affirmed by P.W.1. He also corroborates the prosecution version in material terms when he states the story of the police encounter, the fire made from the accused side and by the police as well and also states that six miscreants were held on spot and rest were fled away making fire over the police party. The search made by the police and the recovery of several incriminating articles from the possession of the accused persons held on spot has been proved by P.W.1. He has separately described the recovery made from all the accused persons caught on the place of occurrence. Since these appeals at present pertain to appellants Onkar and Raj Kumar only, it is evident from the testimony of P.W.1 that a desi pistol alongwith five live cartridges was retrieved from the possession of accused

Onkar and one desi pistol alongwith four live cartridges was retrieved from the possession of accused Raj Kumar. The memos of recovery have been proved as Ex.Ka.-2 and Ex. Ka.-3 respectively by P.W.1 and the incriminating articles were also proved as Material Exs.-5 to 9 pertaining to accused Onkar and Material Exs.-10 to 14 pertaining to accused Raj Kumar. The further proceedings of seizure, seal, preparation of other memos of recovery and lodging of the F.I.R. have also been proved by P.W.1 and all the documents and articles have been produced and exhibited before the Court.

18. In the same fashion, P.W.2 Ziley Singh, the independent public witness, also narrates the same story as P.W.1 states. There is evidence on record that the police made three teams on spot and P.W.2 was attending the team to which S.O. was Incharge alongwith the witness Ram Krishan and 4 - 5 other police personnel. The arrest of six miscreants and recovery of incriminating articles from their possession, the preparation of memos on spot and the whole story of incident, all have been sufficiently explained by P.W.2 in his testimony. He has also identified his signatures over three bundles. This witness has no enmity with the accused persons and there was no reason on his part to make false evidence against the accused persons before the Court.

19. In the same fashion, P.W.3 Satpal also corroborates the evidence of P.W.1 and the prosecution evidence strengthens by the ocular evidence of this witness. He has specifically mentioned that prior to the incident, they were also searched by the police and vice versa. This witness also states that he was

attending the team led by Inspector Bishnoi. The alarm made by the police, the fire made from either side and the recovery of arms and cartridges have been proved by him, but since he was unable to identify the accused persons during his testimony before the Court and also to explain as to which incriminating article was recovered from which particular accused, he was declared hostile by the prosecution. However, he has identified his thumb impression over the documents Exs.Ka.-1 to Ka-8.

20. P.W.4 Dhan Singh is also a public witness who affirmed this fact that he had gone to the Gher of Pritam with one Constable from his house alongwith Satpal and Ram Krishan. He also states that three teams were made on spot and he was also attending one team. Further he states that the miscreants assembled on spot were making preparation to commit dacoity and when alarm was raised by the police, they opened fire. The factum of arrest of six accused persons alongwith incriminating articles has been proved by him. He further proves his thumb impression over the memos Exs. Ka.-1 to Ka.-8.

21. P.W.5, S.I. Chhotey Lal is the Investigating Officer of this case who has proved the proceedings of the investigation. Sketch map Ex.Ka.-9 and charge-sheets Exs.Ka.-14, Ka.-15 & Ka.-16 have also been proved by him. For the prosecution under the Arms Act, report was submitted by him to the District Magistrate and prosecution sanction was obtained in respect of both the accused persons Onkar and Raj Kumar and the relevant documents in respect thereof have been proved as Exs.Ka.-10, Ka.-11, Ka.-12 & Ka.-13.

22. P.W.6 Constable Clerk Ram Singh is the scribe who has proved the Chik F.I.R. Ex.Ka.-17, Registration G.D. Ex.Ka.-18 and Ravangi G.D. Ex.Ka.-19 as well in his testimony.

23. The promptness of the F.I.R. in itself is a proof of genuineness of the prosecution case. Although there are so many components which the prosecution is always under obligation to prove but a prompt F.I.R. certainly is the leading one of them. In the present matter, F.I.R. was lodged on 14.2.1979 at 4:30 A.M. whereas the incident occurred on 13/14.2.1979 at 11:30 P.M. The place of occurrence is situated at a distance of seven miles from the police station and if the case is examined into entirety of the facts and circumstances, it is found that there was no delay in lodging of the F.I.R. Since several accused persons were held by the police at the time of incident and many incriminating articles were recovered from their possession, it naturally took a long time for the police party to prepare the memos and to complete the formalities of seal and seizure on spot and that is why the F.I.R. was lodged just in the early morning after the incident. Hence, the F.I.R. in this case is a prompt one and undoubtedly a prompt F.I.R. lodged without any unnecessary delay may be taken as a reliable piece of evidence free from any blemish or consultation and the prosecution can safely rely upon such an F.I.R.

24. P.W.6, the scribe, has proved the lodging of the F.I.R. and registration G.D. of this case and the ravangi G.D. of the police force from the police station as well which further strengthens the prosecution story.

25. Actually, a prompt lodging of the F.I.R. always draws a presumption in favour of the prosecution and the same normally is not viewed by the Courts with suspicion because there is no possibility of concoction or embellishment of the occurrence sketched in such an F.I.R. and as held in **Gajanan Dashrath Kharate Vs. State of Maharashtra, 2016 (4) SCC 604**, the object of insisting upon a prompt lodging of the report is to obtain early information not only regarding the assailants but also about the part played by the accused, the nature of the incident and the names of witnesses.

26. Hence the F.I.R. in this case, which was proved as Ex.Ka.-17 in the evidence, is a genuine document which was lodged promptly after the incident and virtually there was no delay in lodging the same, which eliminates the chance of false implication.

27. The prosecution, first of all, is under obligation to prove the facts that the surviving appellants alongwith other accused persons, who are now dead, assembled at the place of occurrence making preparation to commit dacoity and for the purpose of committing dacoity and when they assembled on the spot, the police encounter took place and some of the accused persons were held by the police alongwith arms and other incriminating articles.

28. As per F.I.R. of the case, a prior information was received by the Special Officer J.P. Verma in respect of the accused persons who were planning to be assembled at a particular place for committing dacoity and also for making preparation for the same. The police force proceeded for the place of occurrence and prior to the occurrence public witnesses Ziley Singh, Ram

Krishan, Satyapal and Dhan Singh were also taken by the police who resided in the village Ratauli. It is to be added here that as per information received by the police, the dacoits were planning to commit dacoity at the house of Peetam Jat resident of village Ratauli, District Meerut. The police force when reached near the place of occurrence was divided into three parts and prior to that a search of one another was made by the police force and the witnesses as well.

29. The prosecution story proceeds when some of the accused persons reached on spot and they were talking of committing dacoity and were also waiting for some other miscreants. When the police had reason to believe that the miscreants have assembled for the purpose of committing dacoity and they are more than five in numbers, the police force alarmed the miscreants and then a fire for lightening was made by S.O. J.P. Verma which was responded by the miscreants and they also opened fire upon the police force and during the exchange of fire, the police force succeeded to hold six miscreants on spot namely, Niranjana, Onkar, Raj Kumar, Rajendra, Dharam Pal and Iqbal. Six other miscreants namely, Ranveer, Sarjeet, Chandrapal, Veeru, Tara and Vison fled away from the spot who were identified in the light of torch and moon. The accused persons who were held by the police on spot were carrying some arms and cartridges and other incriminating articles. A desi pistol alongwith five cartridges 12 bore and a desi pistol alongwith four live cartridges were retrieved from the possession of appellants Onkar and Raj Kumar respectively. Some incriminating articles including torch, lathi, cigarette, matchbox, axe, golden rings were also recovered from the possession of other miscreants who

were held on spot by the police and they confessed on spot that the golden rings were the case property in another matter when they had committed dacoity earlier. The memo of arrest and recovery was also prepared by the police team and the accused persons alongwith the incriminating articles were taken to police station where F.I.R. was lodged.

30. Rajbeer Singh, S.I., P.S. Daurala, District Meerut who has been examined as P.W.1, corroborates the prosecution story as narrated in the F.I.R. The factum of assembling and division of police party, F.I.R. made by both the sides, the assembling of the accused persons for the purpose of committing dacoity and the preparation thereof, the recovery of arms and other incriminating articles from the possession of accused persons, the preparation of memo of arrest and recovery, all these facts have been well proved by P.W.1 S.I. Rajbeer Singh, who was a member of one of the police parties which proceeded to the spot for the arrest of the accused persons. The arms and incriminating articles retrieved from the possession of six accused persons have been produced before this witness and he has identified the same in his evidence. So far as the present surviving appellants are concerned, one country made pistol alongwith five cartridges from the possession of accused Onkar has been proved as Material Ex.-5 to Material Ex.-9 and the memo of recovery as Ex.Ka.-2 by this witness. In the same manner, country made pistol alongwith four live cartridges retrieved from the possession of accused Raj Kumar alongwith the memo of recovery relating thereto has been proved by P.W.1 as Material Ex.-10 to Material Ex.-14 and Ex.Ka.-3 respectively. The incriminating article and memo of recovery relating to four other

accused persons who were held on spot namely, Niranjana, Dharam Pal, Rajendra and Iqbal alongwith the memos of recovery have also been proved by P.W.1. The khokha from the fire made by S.O. J.P. Verma was also taken into possession from the place of occurrence and P.W.1 further proves it as Material Ex.-18 and the memo of possession thereof as Ex.Ka.-7. P.W.1 further identifies all the accused persons before the Court except accused Niranjana who had died. P.W.1 also proves the fact that all the memos of recovery were signed by the witnesses as well. P.W.1 has been cross-examined at length by the respective counsels for the accused persons, but no adverse statement is found in his entire testimony. In his cross-examination, the defence has tried to shatter his credibility, but the testimony of P.W.1 is consistent and reliable. He has admitted that although the police party which was led by him was not in a position to see whether the accused persons were carrying some arms or not and also the nature of arms, but he corroborates this fact that the conversation made by the accused persons was audible to him. An attempt was made by the defence to test the credibility of this witness on the point of place of occurrence, but P.W.1 has been intact on this point.

31. P.W.2 Ziley Singh, who is a public witness, also corroborates the deposition made by P.W.1. He has also been the member of a police party as an independent public person. Significantly he discloses this fact that the police had already told him the purpose why he was asked to accompany the police team. He also affirms this fact that all the witnesses and members of police team have made a search of one another. He also states that when the accused persons assembled on spot and they were

talking of commission of dacoity, the police parties on overhearing their chats, were under the genuine belief that the miscreants had been gathered for the purpose of committing dacoity and they were making preparation for the same. It is notable that the accused persons Onkar, Raj Kumar, Dharam Pal, Rajendra and Iqbal have been identified by him during the course of his deposition before the Court. P.W.2 further proves the recovery of arms, cartridges, axe, lathi, battery, torch and country made pistol from the possession of the respective accused persons. He has made his signatures over the memos Ex.Ka.-1 to Ex.Ka.-6 which according to him were written on spot and he identifies his signature over each and every memo. P.W.2 further identifies his signature over the bundles wherein the incriminating articles were sealed. He also clarifies that it was a dark night but also states that a fire for lightening was made by the S.O. and light spread over there. The factum of exchange of firing from both sides has also been proved by P.W.2 who further states that no casualty took place during the incident.

32. P.W.3 Satya Pal is also the native of the same village where Peetam Jat resides. P.W.3 clarifies that the police had disclosed the purpose why it came to his house. He further states that he was a member of the team of Vishnoi and the police team was divided into three parts. The whole story of the incident has been narrated by P.W.3 in the same manner as P.W.2 states. Although, on the request of the prosecution P.W.3 has been declared hostile on the point that he was unable to identify the accused persons who were standing in the dock in the Court room but he affirms the whole prosecution story regarding the incident and also

identifies his thumb impression over the memos Ex.Ka.-1 to Ex.Ka.-8.

33. The prosecution story has further been corroborated by the ocular evidence of P.W.4. He is also a public person and has been a member of one of the three police parties led by a junior police officer. The whole story of assembling of the miscreants, making preparation for committing dacoity, the exchange of fire on spot and the recovery of incriminating articles, all these facts have been narrated by P.W.4 in his testimony and he also identifies his thumb impressions over the memos Ex.Ka.-1 to Ex.Ka.-8 and the accused persons present in the Court room as well.

34. P.W.5 S.I. Chhotey Lal is the Investigating Officer of this case who affirms the proceedings of the investigation in his deposition. He proves the site plan as Ex.Ka.-9 and further states that a report regarding prosecution sanction in respect of the matters relating to Arms Act was given by him in his own handwriting and signature and the said reports were proved by him as Ex.Ka.-10 and Ex.Ka.-11 and further he proves the prosecution sanction orders passed by the District Magistrate as Ex.Ka.-12 and Ex.Ka.-13. He also states that on completion of investigation, charge-sheet for the main offence Ex.Ka.-14 was submitted by him and further he proves the charge-sheets relating to the cases under Section 25 Arms Act as Ex.Ka.-15 and Ex.Ka.-16.

35. P.W.6 Ram Singh is the scribe. F.I.R. Ex.Ka.-17 and G.D. Ex.Ka.-18 have been proved by him and significantly ravangi G.D. whereby the police team made an exit from the police station has also been proved by P.W.6 as Ex.Ka.-19.

36. From the perusal and scrutiny of the entire oral and documentary evidence adduced by the prosecution it appears that the prosecution had successfully proved its case. Since only two accused persons Onkar and Raj Kumar are surviving, in my view the scrutiny and analysis of the entire prosecution evidence relating to other accused persons, who are now no more, is not required except that which is related to the surviving appellants Onkar and Raj Kumar.

37. The learned trial court elaborately discussed the prosecution story and the evidence of witnesses coupled with documentary evidence rendered in support thereof has been discussed by the trial court in legal and proper manner. The learned trial court took into account the evidence adduced to prove the case under Arms Act as well. The place of occurrence of this case is village Ratauli, P.S. Sardhana, District Meerut. Although defence has tried to shatter the credibility of the prosecution witnesses by way of cross-examination on the point of place of occurrence, but it never succeeded. The prosecution has come forward with a clear case that the information which was received by the police was to the effect that the dacoits were preparing to commit dacoity in the house of Peetam Jat. In the site plan Ex.Ka.-9, house of Peetam Jat has been shown in the north of the tubewell and all the three places where the three different police teams were hidden have been shown in Ex.Ka.-9. The direction of entry and exit places of the accused persons alongwith distance from one point to another has also been clearly shown in Ex.Ka.-9 and importantly the sketch of the place of occurrence as shown in Ex.Ka.-9 also gets support from the testimony of the ocular witnesses.

38. The learned counsel for the appellants have further argued that the story of recovery of arms and the case relating to Arms Act have not been proved properly by the prosecution but this plea does not get support from the evidence on record in any manner. Since illegal arms were recovered from the possession of both the appellants Onkar and Raj Kumar, a case under Section 25 Arms Act was also lodged against them. The memos of recovery relating to appellants Onkar and Raj Kumar have been proved as Ex.Ka.-2 and Ex.Ka.-3 respectively, which bear the signature / thumb impression of the police personnel and the witnesses. P.W.5 proves his two reports relating to prosecution sanction and the prosecution sanction orders passed by the District Magistrate Sri R.S. Mathur as Exs.Ka.- 4, 10, 11, 12 & 13 respectively. P.W.5 further proves the charge-sheet relating to appellants Onkar and Raj Kumar under Section 25 Arms Act as Ex.Ka.-15 and Ex.Ka.-16 respectively. There is nothing on record which might be able to raise any suspicion regarding the genuineness of the prosecution version. The number of arrested miscreants as well as number of those also who fled away from the spot and a huge recovery of arms and other incriminating articles are indicative of the fact that present is not a case of false implication and in that way in my view the prosecution has proved its case beyond reasonable doubt. Significantly no defence evidence has been adduced by the present appellants. Since the prosecution had a bounden duty to prove its case beyond reasonable doubt, the prosecution relied upon the oral and ocular as well as documentary evidence.

39. The contradictions and inconsistencies found in the testimony of the witnesses of fact are minor and do not hit the root of the prosecution case, hence they are ignorable.

40. The Three Judge Bench of Hon'ble Supreme Court in **Mukesh Vs. State for NCT of Delhi & Others**, AIR 2017 SC 2161 held that if there are no material discrepancies or contradictions in the testimony of a witnesses, his evidence cannot be disbelieved merely on the basis of some normal, natural or minor contradictions, inconsistencies, exaggerations, embellishments etc. The distinction between material discrepancies and normal discrepancies are that minor discrepancies do not corrode the credibility of a party's case but material discrepancies do so.

41. In **Dharnidhar Vs. State of U.P.**, (2010) (6) SCJ 662, the Hon'ble Supreme Court held that when witnesses are examined in the court after a considerable lapse of time, it is neither unnatural nor unexpected that there can be some minor variations in the statements of the prosecution witnesses.

42. In **Nankaunoo Vs. State of U.P.**, (2016) 3 SCC 317 (**Three-Judge Bench**), the Hon'ble Supreme Court held as under - "Where the witnesses give consistent version of the incident, it has been held by the Supreme Court that the consistent testimony of the witnesses should be held credible."

43. The learned trial court elaborately discussed the evidence on record and the facts and circumstances of the case and has rightly held the present appellants alongwith three other accused persons because one Niranjana died during trial, guilty for the offences alleged against them under Sections 399, 402 IPC alongwith Section 25 Arms Act.

44. It is notable that charge under Section 307, 399, 402 IPC was framed against the present appellants, but however after analysing the evidence on record the learned trial court opined that no offence under section 307 IPC is made out in this case and rightly passed an order of acquittal of the appellants of the charge under Section 307 IPC.

45. The learned counsel for the appellants made a submission for taking lenient view in this matter. It has been submitted that the present appeals are critically old pertaining to the year 1982 and the occurrence happened in the year 1979 and the matter was initiated about 45 years ago. The appellants have been sufficiently punished in the present case as they are running to the Court for the last about 45 years. They have no other criminal antecedents to their credit and they are entitled for lenient approach of the Appellate Court. It is also submitted that the sentence awarded to the appellants by the trial Court may be reduced to the period already undergone by them in jail.

46. The learned State counsel has not opposed the aforesaid submission made by the learned counsel for the appellants. It was brought to the notice of this Court that the appellants have spent a considerable period of incarceration in the case in hand. Appellant Onkar was aged about 20 years at the time of recording his statement under Section 313 Cr.P.C. whereas appellant Raj Kumar was aged about 24 years at that relevant time and now both of them are running into the age of 65 – 70 years. No fruitful purpose will be served if they are sent to jail to serve the sentence as imposed by the learned trial court at this juncture. They have been sentenced to undergo rigorous imprisonment for 5 years under Section 399 IPC and 3 years

rigorous imprisonment under Section 402 IPC and further 1 year rigorous imprisonment under Section 25 Arms Act. Notably no fine has been imposed upon them whereas the offences were punishable with fine as well alongwith the period of imprisonment as provided under the relevant law.

47. Keeping in view the facts and circumstances of the case and also considering the entire evidence on record and impugned judgment passed by the learned Trial Court, this Court is of the view that the conviction of the appellants is liable to be upheld and the ends of justice would be met if the appellants are sentenced with the period already undergone by them in prison. In regard to non-imposition of fine upon the appellants by the learned Trial Court, this Court finds it fit to impose some reasonable fine upon the appellants for the offences they were convicted wherefor.

48. Thus, the findings recorded by the trial court regarding the conviction of the appellants under Sections 399, 402 IPC and 25 Arms Act are hereby affirmed. So far as the quantum of sentence is concerned, the appellants have been adequately punished in the present case as they are running to the Court for the last about 45 years. They have remained in jail for few months. Considering the aforesaid detention period, the sentence of five years, three years and one year R.I. awarded by the trial Court for the respective offences appears to be excessive and this can be reduced to the period already undergone by the appellants in jail with imposition of some fine amount in the entirety of the facts and circumstances of the case in hand.

49. Resultantly, both the appeals preferred by the appellants are allowed partly. The conviction of the appellants for the

offences under Sections 399, 402 IPC and 25 Arms Act is affirmed but the sentence for five years, three years and one year rigorous imprisonment respectively as awarded by the trial Court is modified to the extent that the appellants are sentenced to the period already undergone by them with a fine of Rs.2000/- for the offence under Section 399 IPC, fine of Rs.2000/- for the offence under Section 402 IPC and fine of Rs.1000/- for the offence under Section 25 Arms Act. In default of payment of fine, they will suffer further imprisonment for one month respectively.

50. Appellants Onkar and Raj Kumar are on bail, their personal bonds are cancelled and sureties are discharged. They need not to surrender, if not wanted in any other case.

51. The case property shall be disposed of by the concerned authority / court in accordance with relevant rules / law.

52. Let a copy of this judgment along with trial court record be sent forthwith to the court concerned for necessary compliance.

Order Date :- 7.8.2024

SS