

[1] Criminal Appeal-S-2318-SB of 2004

Date of Decision: March 04, 2020.

Amar Singh @ Arvind and othersAppellants

versus

State of HaryanaRespondent

[2] Criminal Appeal-S-2395-SB of 2004

Jai RajAppellant

versus

State of HaryanaRespondent

[3] Criminal Appeal-S-2424-SB of 2004

Aas Mohammad @ AasuAppellant

versus

State of HaryanaRespondent

[4] Criminal Appeal-S-2416-SB of 2004

Rajinder Singh @ RajuAppellant

versus

State of HaryanaRespondent

[5] Criminal Appeal-S-58-SB of 2005

Dinesh Kumar alias DewaAppellant

versus

State of HaryanaRespondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Tapan Kumar Yadav, Advocate,
for the appellants in CRA-S-2318-SB of 2004.
Mr.Subhash Chander, Advocate, for
Mr.P.R.Yadav, Advocate,
for the appellant in CRA-2424-SB of 2004
Mr.Naveen Chokker, Advocate,
for the appellants in CRA-S-2395 and 2416-SB of 2004.
Mr.Sulinder Kumar, AAG, Haryana.

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Vivek Puri, J. (Oral)

[1] This order shall dispose of the aforesaid five appeals which are against the judgment of conviction dated 19.11.2004 vide which the appellants have been convicted under Sections 399 and 402 IPC, whereas, the appellants Rajveer alias Jinni, Rajinder, Leelu, Aas Mohammad, Dinesh and Jai Raj have been convicted under Section 25 of the Arms Act, and the order of sentence dated 20.11.2004 vide which the appellants have been sentenced as following:-

<i>Sr.No.</i>	<i>Name of the convict.</i>	<i>Under Sections</i>	<i>Sentence (RI)</i>	<i>Fine</i>	<i>Sentence in default of payment of fine.</i>
1	Dinesh Kumar	399 IPC 402 IPC 25 Arms Act	5 years 3 years 2 years	1000/- 500/- 500/-	6 months 3 months 2 months
2	Rajender Singh	399 IPC 402 IPC 25 Arms Act	5 years 3 years 2 years	1000/- 500/- 500/-	6 months 3 months 2 months
3	Jai Raj	399 IPC 402 IPC 25 Arms Act	5 years 3 years 1 year	1000/- 500/- 500/-	6 months 3 months 1 month
4	Aas Mohammad	399 IPC 402 IPC 25 Arms Act	5 years 3 years 2 years	1000/- 500/- 500/-	6 months\ 3 months 2 months
5	Amar Singh	399 IPC 402 IPC	5 years 3 years	1000/- 500/-	6 months 3 months
6	Leelu Ram	399 IPC 402 IPC 25 Arms Act	5 years 3 years 2 years	1000/- 500/- 500/-	6 months 3 months 2 months

<i>Sr.No.</i>	<i>Name of the convict.</i>	<i>Under Sections</i>	<i>Sentence (RI)</i>	<i>Fine</i>	<i>Sentence in default of payment of fine.</i>
7	Rajveer @ Jinni	399 IPC	5 years	1000/-	6 months
		402 IPC	3 years	500/-	3 months
		25 Arms Act	2 years	500/-	2 months.

[2] The case, as put forth by the prosecution, is to the effect that on 22.4.2002 at about 7.00 p.m., Inspector Ramehar alongwith Inspector Banwari Lal and fellow police officials were present at National Highway No.8, about half kilometer ahead of Vikas Service Station, Petrol Pump, towards Dharuhera in relation with the investigation of case bearing FIR No.8 dated 28.01.2002 under Section 394 IPC and Section 25 of the Arms Act, registered at Police Station Bawal, on their official jeep bearing registration No.HR-35-B-2484. In the meantime, Ghanshyam, complainant of the above said case, joined the police party. Inspector Ram Sarup, SHO, Police Station Dharuhera and ASI Kartar Singh, HC Dayanand and HC Sukhbir Singh also came at the spot and they were having a casual conversation with each other. A secret information was received that near the bridge of Sahabi river, in the area of village Khaliawas in between National Highway and Dharuhera-Rewari road, seven youths armed with weapons were present in an abandoned room. They were armed with weapons and making planning to commit dacoity. On receipt of the information, Inspector Ramehar gave necessary instructions to the police officials. It was planned that Inspector Ramehar and other police officials will over-hear the conversation of the appellants by concealing their location. Accordingly, the police party besieged the abandoned room.

Inspector Ramehar over-heard the conversation of the appellants that one of

the appellants was stating that Jinni will fire bullet to the person having cash bag; Leelu will snatch the cash bag and the others will take control of the persons present at the petrol pump by showing their weapons and furthermore, Raju will go to the petrol pump to take stock of the situation and then all of them will go on the Tata vehicle for committing dacoity.

[3] On hearing the conversation, Inspector Ramehar gave pre-panned signal to the other police officials to challenge the appellants and they were apprehended at the spot. Identity of the appellants was verified and their search was conducted. Appellant Jinni alias Rajveer was found in possession of a 32 bore revolver concealed in his right dub alongwith four live cartridges kept in the right pocket of his trouser. Appellant Rajender alias Raju was found in possession of a country made pistol of 315 bore concealed in his right dub alongwith three live cartridges. Appellant Leelu was found in possession of a country made pistol of 315 bore concealed in right dub of his pant alongwith two live cartridges. Appellant Aas Mohammad was found in possession of a country made pistol of 315 bore concealed in right dub of his pant alongwith three live cartridges. Appellant Dinesh was found in possession of a country made pistol of 12 bore and three live cartridges concealed in right dub of his pant. Appellant Jai Raj was found in possession of a "Gupti" kept in a cover and concealed in his back under bushirt. Appellant Amar Singh was found in possession of an iron rod. Separate sketches of all the weapons were prepared and sealed with the seal bearing impression 'RP' and taken into possession vide separate recovery memos. Ruqa was recorded and dispatched to the police station and on the basis of thereof the present FIR was registered.

[4] On completion of the investigation, challan was presented in the Court. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. A prima-facie case under Sections 399 & 402 IPC and 25 of the Arms Act was made out against the appellants to which the appellants pleaded not guilty and claimed trial.

[5] In support of its case, the prosecution has examined as many as 10 witnesses, namely, PW-1 ASI Jagat Raj, PW-2 Data Ram, Reader of the District Magistrate, Rewari, PW-3 Jai Bhagwan Armourer, PW-4 C.Suresh Kumar, PW-5 Mukesh Kumar, PW-6 HC Rambir, PW-7 Birender, PW-8 ASI Jaspal Singh, PW-9 Inspector Banwari Lal and PW-10 Inspector Ramehar, besides producing the documentary evidence. Statements of the appellants under Section 313 Cr.P.C. had been recorded wherein they denied the correctness of incriminating evidence against them and pleaded their false implication. However, no defence evidence has been led by them.

[6] Vide the impugned judgment of conviction and order of sentence, the appellants were convicted and sentenced as aforesaid.

[7] Aggrieved against the aforesaid judgment and order, the appellants have preferred the aforesaid five appeals which are being disposed of by a common judgment as the same have been preferred against the same judgment of conviction and order of sentence.

[8] I have heard learned counsel for the parties and perused the record.

[9] It has been contended by learned counsel for the appellants that the case of the prosecution hinges upon the deposition of the official witnesses only. A public witness was joined at the time of raid but he was given up being won over by the appellants. Furthermore, there are inherent

improbabilities in the case of the prosecution. There is lack of material to indicate that the appellants had assembled for the purpose of making preparation to commit dacoity. The version put-forth by the prosecution is unnatural and does not inspire confidence and is improbable. Consequently, the judgment of the trial Court is liable to be set-aside and the appellants become entitled to acquittal.

[10] On the contrary, it has been argued by the learned State counsel that there is no bar to base the conviction on the basis of deposition of the official witnesses. Although Ghanshyam, an independent witness, was joined at the time of raid but he was given up being won over by the appellants. Moreover, he was not examined by the appellants in their defence evidence. The eye witness count hinges upon the deposition of PW-9 Inspector Banwari Lal and PW-10 Inspector Ramehar. The oral and documentary evidence adduced on record proves and establishes the guilt of the appellants beyond the shadow of reasonable doubt. The judgment of conviction has been correctly recorded on the basis of sufficient and reliable evidence establishing the guilt of the appellants and adequate sentence has been imposed by the learned trial Court.

[11] The case has been registered on the basis of a secret information received by PW-10 Inspector Ramehar to the effect that the appellants armed with deadly weapons are present in an abandoned room and they are making preparation to commit dacoity. In pursuance of the raid conducted, the appellants were apprehended and the weapons were recovered from them.

[12] For the purpose of proving the charge under Sections 399 and 402 IPC, the prosecution is duty bound to establish the assemblage of five

or more persons for the purpose of committing dacoity and also that preparation for commission of dacoity was being made. For making the preparation to accomplish that object of dacoity, there is no hard and fast rule that any particular act or any particular kind of step towards the commission of offence, amounts to preparation. The act or step has to be evaluated in the light of other attending circumstances, but however, conceiving of the design and step further has to be established by the prosecution which could have shown the conspiracy on the part of the persons concerned and the steps further taken by them. The possession of weapons by itself would not be sufficient to come to the conclusion that the appellants who have assembled with possession of weapons were making preparation to commit dacoity. The assembly could have been for assaulting someone and the material on record must indicate that the appellants have assembled with an evil design to commit dacoity.

[13] In the case in hand, Ghanshyam, a public witness, was joined at the time of raid. His signatures also appear on the sketches and recovery memos prepared at the spot. Significantly, he was not examined during the course of trial and was given up being won-over by the appellants. It may also be mentioned here that the said witness has not been examined by the appellants during the course of their defence evidence. In such circumstances, the case of the prosecution hinges upon the deposition of the official witnesses. Primarily, the case of the prosecution rests upon the deposition of PW-9 Inspector Banwari Lal and PW-10 Inspector Ramehar who had conducted the raid, effected the arrest of the appellants and recovered the weapons from them at the spot. The deposition of the police officials is not liable to be discarded merely on the score of their official

status, unless and until there is cogent ground therefor. However, in the circumstances of the case, particularly when a public witness had been joined and given up being won over by the appellants, a stringent duty is cast upon the Court to scrutinize the evidence adduced by the prosecution, more carefully and cautiously. In the event of close scrutiny of the evidence of such witnesses, the Court comes to the conclusion that the same is reliable, the mere non examination of the independent witness will pale into insignificance.

[14] In addition, the prosecution had to prove from sufficient and reliable evidence, direct or indirect or from attending circumstances that the appellants had assembled for no other purpose than to make preparation for commission of dacoity. Mere recovery of fire arms or weapons from the possession of the appellants cannot be construed a circumstance to conclude that assemblage was made for the purpose of committing dacoity.

[15] As per the version of the prosecution, the appellants were sitting in an abandoned room. A secret information was received to the effect that the appellants were present in the said room, armed with weapons and making preparation to commit dacoity. Significantly, no further overt act was specified in the secret information. In an endeavour to establish the over-act, the prosecution has put forth a case to the effect that PW-10 Inspector Ramehar had over-heard the conversation between the appellants which indicates that they were preparing to commit dacoity at petrol pump. The story with regard to over-hearing of conversation does not inspire confidence and appears to be unreliable. The solitary statement of PW-10 Inspector Ramehar in this regard is not corroborated by any other evidence and appears to be improbable. No such version to the effect that PW-10

Inspector Ramehar had over-heard any conversation which took place between the appellants and thereafter gave signal to the police party, is emerging in the statement of PW-9 Inspector Banwari Lal. Furthermore, PW-10 Inspector Ramehar was standing outside the room and a wall was intervening there and in such circumstances, it may not be probable that the appellants would be speaking in loud voice which may be audible to a person standing outside the room particularly when they were making preparation to commit dacoity. Such a conversation, if any, must have taken place in a low pitch keeping the entire plan carefully guarded secret. In such circumstances, it becomes doubtful that the appellants may be speaking loudly so that their conversation could be heard outside the room and such version cannot be termed to be acceptable. In this regard, reference can be made to the judgment reported as 1999(2) R.C.R. (Criminal) 377 (SC) Suleman versus State of Delhi through Secretary.

[16] It has been pointed out by the learned State counsel that the appellants were armed with deadly weapons and furthermore, their confessional statements were also recorded which indicate that they were planning to commit dacoity and had also committed dacoity in the past. In this regard, it may be mentioned here that merely because deadly weapons were recovered from the possession of the appellants, it cannot be construed that they were making preparation to commit dacoity and furthermore, the confessional statements made by the appellants before the police officials without being followed by any recovery are inadmissible and liable to be excluded from consideration. In this regard, reference can be made to the judgment reported as 1979 AIR (SC) 1412, Chaturi Yadav and others

versus State of Bihar, wherein it has been laid down as following:-

“4. The Courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1 a.m. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 a.m., does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparation to accomplish that object. The High Court itself has, in its judgment, observed that the school was quite close to the market, hence, it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him, that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from the consideration. In this view of the matter there is no legal evidence to support the charge under Sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In

these circumstances, therefore, we are unable to sustain the judgment of the High Court.”

[17] The discrepant version is also appearing in the case of the prosecution. It is emerging in the statements of PW-9 Inspector Banwari Lal and PW-10 Inspector Ramehar that at the time of raid three different police parties were constituted but no such version has been mentioned in the ruqa exhibit PA which unfolds the first version of the case.

[18] Furthermore, there is nothing on record to suggest that any of the appellants made any attempt to escape or attack on the police party. Even the fire arms were in the dubs of the appellants and were not loaded. It sounds improbable that five of the seven appellants who were allegedly carrying fire arms had not loaded any of the fire arm and had kept the live cartridges separately in their pockets. It appears to be unnatural that a gang of dacoits will submit before the police without offering any resistance.

[19] In the instant case, identity of the appellants is not sufficiently established because during the course of cross-examination of PW-9 Inspector Banwari Lal, it is emerging that he had identified the appellants Jinni and Raju. He has failed to identify and specify the remaining appellants by pin-pointing their names and has also not specified by identifying the appellants as to which weapon was recovered from which of the appellant. It may be recapitulated that entire proceedings were conducted in the presence of PW-9 Inspector Banwari Lal and is a witness of all the recovery memos and sketches of the weapons recovered from the appellants. In such circumstances, the identity of all the appellants as perpetrators of crime cannot be termed to be free from doubt.

[20] As a cumulative effect of the above observations, it has to be concluded that the case of the prosecution cannot be termed to be free from

reasonable doubt. In order to secure the verdict of conviction, the prosecution was required to prove and establish the guilt of all the accused-appellants beyond the shadow of reasonable doubt. In such circumstances, all the appellants become entitled to the benefit of reasonable doubt.

[21] For the reasons aforestated, finding sufficient merit in all the appeals, the same are accepted. The impugned judgment of conviction and order of sentence are set-aside and the appellants are acquitted of the charges levelled against them.

March 04, 2020

mohinder

(VIVEK PURI)

JUDGE

Whether speaking/reasoned

:

Yes

Whether Reportable

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Yes