

(1999) 05 AHC CK 0230

Allahabad High Court

Case No: Criminal Appeal No"s. 1824 and 1856 of 1983, Spl. Case No"s. 31 and 35 of 1982 and Cri A. No. 2723 of 1984

Ram Sewak

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: May 19, 1999

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 392, 399, 402

Citation: (1999) CriLJ 4680

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: V.S. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

B.K. Sharma, J.

Ram Sewak, Bhanni Singh, Shankar Lal and Chhakki Lal were convicted by Sri S. K. Verma, the then Special Sessions Judge, Jhansi of the offences u/s 399/402 I.P.C. and sentenced to undergo five years rigorous imprisonment each and each one of them was further convicted of the offence u/s 25 Arms Act and sentenced to undergo rigorous imprisonment for a period of one year.

2. Being aggrieved by the same, Ram Sewak, accused preferred Criminal Appeal No. 1824 of 1983, Shanker Lal, accused preferred Criminal Appeal No. 1856 of 1983 and Chhakki Lal accused preferred Criminal Appeal No. 2723 of 1984. Chhakki Lal, accused remained in Jail during the pendency of this Appeal and he has already been released after serving out his entire sentence, so his appeal was dismissed as infructuous by this Court's order dated 21-4-1999. Now there remains the appeals preferred by Ram Sewak and Shanker Lal, the accused appellants. Both the appeals

have been heard together and are being disposed of by this common judgment.

3. The prosecution story was that on 11-7-1982 at about 8.15 P.M. Uma Kant Sachan, P.W. 4, S.O., Police Station Bara Goan, district Jhansi received information from a reliable informer that a gang of five to six dacoits would assemble at the CHABOOTRA constructed on the south of the Kothari situate in the front of Shankar Gadh "forest" and would commit dacoity at the house of Bansi Pradhan in village Shanker Gadh, that he made an entry about this information in the general diary of the Police Station and then proceeded" from the Police Station along with necessary force and picked up witnesses Sarnam Singh and Soni from village Digara and also took witness Parvat of village Koda Bhanwar, told them the purpose of calling them and then took them to Shanker Gadh forest and stopped at about half a furlong before the scene of occurrence at about 9.45 P.M., that the S.O. despatched two constables for the security of Bansi Pradhan, the intended victim of the proposed dacoity. That the S.O. then went to the scene of occurrence made spot inspection and came back where he had left the police party and the witnesses and then made two parties - Party No. 1 in his own leadership in which he kept Sarnam Singh, P.W. 2 and some of the police force and made another party (Party No. 2) in the leadership of Suresh Chandra Pandey, S. I., P.W. 1 in which he kept the remaining force and Parwat, P.W. 3, that then he issued necessary instructions to the force and the witnesses and mutual search was taken to ensure that there is no illicit item (sic) with anyone of them and then the entire raiding party reached the spot and Party No. 1 took position to the east of Eastern wall of the Kothari at the southern end and Party No. 2 took position to the west of the Kothari, near the southern end of the wall, that after that the parties took their respective position at about 10.45 P.M., that after waiting for about half an hour the dacoits started coming in ones and twos and sat on the CHABOOTRA, that the total number swelled up to five, that they have smoked Biris and started conversing with each other, that one of them said "BANSI KO ACHCHI TAREH JAANTA HOON. KAFI MAAL MILEGA", while another said DACAITY KA SAMAY HO GAYA HAI, CHALA JAAI", that on this all of them started to proceed, that the S. C. Uma Kant Sachan became satisfied and that it was a gang of dacoits assembled and preparing to commit dacoity at the house of Bansi Pradhan and so he challenged them saying that "they are under the seige of the police and commanded them to surrender the weapons saying that if they did not they will be done to death, that at this the dacoits tried to run but both the raiding parties surrounded them and arrested three of them along with their weapons on the spot while two of their companions managed to. escape towards south, that the dacoits who had run away were seen in the light of torch and identified as Mata Deen and Chhakki Lodhi that the arrested accused disclosed their names as Bhanni Singh, Ram Sewak and Shanker Lal, that on search being taken a gun and six cartridges were recovered from Bhanni Singh co-accused, a TAMANCHA and three live cartridges were recovered from Ram Sewak accused applicant and a Tamancha and three live cartridges were recovered from Shanker Lal accused appellant, that half

burnt pieces of Biris and match sticks were also found at the spot, that all these items were taken into custody and sealed at the spot and necessary memo was prepared and then the police party returned to the Police Station along with the arrested accused Bhanni Singh, Ram Sewak and Shanker Lal and the recovered properties and lodged them at Police Station. A chick report was prepared on the basis of recovery memo at 4.15 A.M. and the case was registered u/s 399/402 I.P.C. against the arrested accused persons and the remaining two Mata Deen and Chhakki Lal who had managed to escape; that separate cases u/s 25 of Arms Act were also registered against the arrested accused persons.

4. During investigation Chhakki Lal co-accused was arrested and put up for test identification. It seems that the accused Mata Deen could not be arrested during investigation. Charge sheet was consequently submitted against Bhanni Singh, Ram Sewak, Shanker Lal and Chhakki Lal accused and after committal, their joint trial took-place at which the convictions were made and sentence awarded as aforesaid.

5. At the trial, prosecution had examined S.O. Uma Kant Sachan the architect of that raid and leader of party No. one as P.W. 4 and Suresh Chandra Pandey, S.L, the leader of the party No. 2 as P.W. 1. Out of the public witnesses Soni was examined as P.W. 2 and Parwat was examined as P.W. 3. Rest of the evidence on the record was formal.

6. Shanker Lal, accused-appellant claimed in the statement u/s 313, C.P.C. that he was falsely implicated in this case due to enmity between Har Vilas and his Mause Sita Ram. Suresh Chandra Pandey S.I. (P.W. 1) was suggested in cross-examination on behalf of Shanker Lal accused-appellant that he was called from his house and was falsely implicated in this case. Ram Sewak accused-appellant in his statement u/s 313, Cr.P.C. has claimed that he had been arrested by the police from his house and falsely implicated in this case. Uma Kant Sachan, S.O. the architect of the raid had also been suggested in his cross-examination that Shanker Lal and Ram Sewak accused appellant were arrested from their houses and falsely implicated in the case and actually no recovery was made from them.

7. Heard the learned counsel for the accused-appellants and the learned A.G.A.

8. The learned counsel for the accused-appellants before me has argued that the entire prosecution story of information by the informer, the going of the police force, the taking of witnesses, the assembly and the preparation for committing dacoity, the hearing of their conversations, the raid, the arrests and the recoveries is a concoction; that the accused-appellants have been falsely implicated in the case and further that the public witnesses were under the thumb of the police and that no reliance can be placed on the testimony of the two police witnesses or the public witnesses produced at the trial. He claims that the prosecution story was unnatural and improbable regard being had to the common course and that the prosecution evidence was replete with material discrepancies. There is substance in the

submission of the learned counsel for the accused-appellants. While according to the prosecution story, the accused-persons were arrested at the spot along with arms and ammunitions. Surprisingly enough, not one of them is said to have opened fire on the police when the challenge was made nor there was any fire alleged to have been made from the side of the police in the raid. It was highly doubtful that the culprits carrying weapons and ammunitions would meekly submit to the raiding party without firing a single shot and without offering any resistance and without inflicting any injury whatsoever on the members of the police force and the public witnesses allegedly associated with the raid. In the ordinary course, one will expect some use of fire-arms and infliction of injuries on the bodies of at least some of the person participating in the transaction of raid and arrest. One further circumstance, which tends to throw doubt on the prosecution story is that none of the weapons allegedly recovered from the accused is said to be in a loaded condition. In the ordinary course, one would expect that persons assembling and preparing to commit dacoity would be having their weapons ready for action. So the prosecution case bristles with improbabilities.

9. The prosecution story was that the police party picked up Sarnam and Soni from their village Dimara and then Parwat, public witness was taken from near village Koda Bhanwar. Suresh Chandra Pandey S.I. (P.W. 1) said so. Soni (P.W. 2) has claimed that he and Sarnam were picked by the police to his village Bara Gaon but he did not testify to the taking of Parwat, public witness by the police at any stage. Uma Kant Sachan S.O. (P.W. 4) claimed that Soni and Sarnam were taken from village Digara and he also took Parwat public witness. Parwat public witness claimed in his examination-in-chief that when the police met him Sarnam and Soni were already with it. However, in his cross-examination, he stated that the Station Officer was coming from Digara on foot and at that time the Station Officer was accompanied by police men and nobody also. This excluded Soni (P.W. 2) and Sarnam witness (not examined).

10. Parwat (P.W. 3) claimed that he was returning from the sugar mill to his own house at Kara Bhanwar. Sri Suresh Chandra Pandey S. I. (P.W. 1), the leader of the party No. 2 on the other hand, claimed that his witness was coming to the village after easing himself when he was taken by the police.

11. The architect of the raid Uma Kant Sachan Station Officer (P.W. 4) claimed that after reaching one furlong before the scene of occurrence he despatched two constables to guard the house of the victim and himself went to the spot and made inspection and came back to the place where he left the police party and the witnesses and then there was mutual search taken and then the parties took their position as instructed. Suresh Chandra Pandey S.I. (P.W. 1) leader of party No. 2 does not make any reference to the visit of the Station Officer to the scene of proposed assembly of dacoits and his coming back after the spot inspection of that place. He only testified to the taking of the witnesses from the way, the making of

the parties at about one furlong before the scene of occurrence and then going to the scene of occurrence and taking position at the scene of occurrence as instructed. Soni public witness (P.W. 2) testified that the Station Officer and the policemen went towards the house of Partu Gadaria and came back after ten to fifteen minutes and then the parties were made, Parwat (P.W. 3) did not testify to the going of the Station Officer to the spot from the place where the police party and the witnesses were stopped one furlong prior to the place of occurrence and the coming back to that place. So there is discrepancy everywhere.

12. There is discrepancy in the evidence about the retorts between the dacoits said to have been heard at the spot by the police and the public witnesses. I have noted the retorts as testified to by Uma Kant Sachan, Station Officer in the prosecution story narrated above in this judgment. Suresh Chandra Pandey S. I. (P.W. 1) claimed that the dacoits were saying "SAMAY HO GAYA HAI BANSI LODHI SHANKERGARH MEN DAKAITIDALNA HAI" and nothing further is claimed to be heard by him. Soni (P.W. 2) said that he heard the dacoits retorting "BANSI KE YAHAN DAKAITY DENGE" and nothing further. Parwat (P.W. 3) claimed that he heard the retort "BANSI PRADHAN KE YAHAN DAKAITY DENE CHALNA HAI. TIME HO GAYA HAI CHALO DAKAITY DALNE CHALAIN". Such discrepancies in the contents of the retorts by themselves might not make much of a difference but in the circumstances of this case, as discussed above, even these discrepancies assume importance. As a matter of fact, Parwat (P.W. 3) stated in his cross-examination "JAISE HI MULZIMAN DIKHAIDIYE THEY UNKO GHER KAR PAKAR LIYA THA". this statement, if believed, would tend to show that there was no occasion to hear conversation among the dacoits and that the retorts were inserted in the prosecution story to indicate intention and object of the persons assembling. So this also adversely effected the entire prosecution story.

13. As per prosecution story, the accused persons did not open fire while going to the CHABUTRA in front of the Kothari of Partu. The defence claims that they would not have failed to detect the presence of the police parties and the witnesses on the east and west of the Kothari of Partu if they were really there, while coming towards the CHABOOTRA whether it was dark night or moonlit night and could not have failed to open fire on them. It is further pointed out that if Biris were smoked by the dacoits, as claimed by the prosecution on assembling at CHABOOTRA then at least that stage they would have seen the police and the witnesses in its said and opened fire at them. Nothing of the sort has been claimed by the prosecution to have taken place. As observed earlier, it is difficult to believe that a gang of dacoits that came assembled at the CHABOOTRA and after preparing to commit dacoity would meekly submit to a police party and the witnesses without any exchange of fire and without any physical violence from both the sides. Suresh Chandra Pandey, S.I., P.W. 1 claims that while the dacoits were coming a sound was heard but they were not visible and that he could not see whether all the dacoits had come together or they came individually and that he could not also see as to how many dacoits were coming.

Soni P.W. 2 claimed that from the place from where he was finding the coming of the accused persons was clearly visible from a distance of 25 to 30 paces. He also claimed that the weapons which they were holding in their hands were visible to him. Parwat, P.W. 3 claimed that the weapons which were being held by accused persons were visible to him and that the accused persons and they (police parties and witnesses) were in as such a situation place from where they could see each other from a distance of 20-25 paces. Uma Kant Sachan, S. O. P.W. 4 claimed that when the dacoits came near them they were seen, then he stated that shadows were seen from a distance at that place and that the weapons they were holding were not visible. He claimed that it was a dark night. Whether full faces were visible and the weapons were visible or only their shadows were visible it could not be believed that dacoits would come to the CHABOOTRA to assemble on it for the purpose of committing dacoity but would fail to mark the presence of the police parties and witnesses in the immediate vicinity. Uma Kant Sachan, S. O. no doubt claimed that the land was uneven in that vicinity and Suresh Chandra Pandey, P.W. 1 also claimed that on the east and west of the Kothari there were pits and pits. He however did not claim that he had told about these pits to the I.O. The I.O. Nand Kishore has given a lie to both the police officers by saying that the surface of the place where both the police parties were hiding was even. This statement of fact demolishes the assertion of the leaders of the two police parties about the land having pits or the land being uneven on the spot set out by them to explain how they could successfully conceal themselves from the dacoits who came to the CHABOOTRA in batches.

14. The S. O. has claimed that two parties were formed by him at distance of a furlong from the Kothari where the dacoits were supposed to assemble and prepare to commit dacoity. If that were so then in the ordinary course both the parties would go from there to the place of that Kothari together. Parwat, P.W. 5 on the other hand claimed that after the making of the parties all the members of those parties had separated from each other and it was only at the time of arrest of dacoits that the members of the raiding parties joined together again. The other witnesses do not make a similar claim. This also throws further doubt on the prosecution story.

15. It is also pointed out by the learned counsel for the defence that Soni (P.W. 2) admitted in his cross-examination that he did not know the contents of the documents on which he had made his signatures. It has been argued-by the defence that the police had called these public witnesses at the police station and obtained their attestation on the documents prepared by it without revealing to them what it was about.

15A. Soni (P.W. 2) denied that he used to visit the police station off and on but admitted that Station Officer knew him from before and that he visited the police station when he had any work. In fact, his cross-examination reveals that he is a professional witness. He denied having given evidence in that Court (in the Court of

Sessions where he was deposing) in any other case but admitted that he had given evidence in other Courts whenever there was occasion for it. After that he stated that he has given evidence in one more case.

16. The cross-examination of Parwat public witness (P.W. 3) is revealing. He admitted that he was tried for the offence u/s 392 I.P.C. but claimed that he was acquitted therein. He admitted that he was prosecuted in 5-6 cases of Challan of motor vehicles. The claim of the defence is that he was prosecuted in 5-6 cases of theft and MARPIT and that he had appeared as a witness from the side of police in 5-6 cases. He, of course, denied the suggestion. However, he admitted that he was a tempo driver. He testified that he knew Uma Kant Sachan, Station Officer because he (the witness) drives tempo and the Station Officer had gone several times in his tempo to the police station. It seems that he was under the thumb of the police because of the earlier prosecution.

17. In view of the above discussion, it is difficult to place any reliance on the prosecution story. The prosecution story appears to be highly doubtful and prosecution evidence led at the trial is discrepant on material points and is wholly unreliable. The story of spot arrest and recovery thus falls to the ground. Consequently, the conviction of the accused-appellants under Sections 399/402 I.P.C. and 25 Arms Act cannot be sustained.

18. For the reasons aforementioned, Criminal Appeal No. 1824 of 1983 is allowed. The conviction and sentence of accused-appellant Ram Sewak for the offences under Sections 399/402 I.P.C. and 25 Arms Act is set aside. He is acquitted of the said offences. He is on bail from this Court. He need not surrender to it. His bail bonds are cancelled and sureties are discharged.

19. Appeal No. 1856 of 1983 Shanker Lal v. State is also allowed. The conviction and sentence of accused-appellant Shanker Lal for the offences under Sections 399/402 I.P.C. and 25 Arms Act are set aside and he is acquitted of the said offences. He is on bail from this Court. He need not surrender. His bail bonds are cancelled and sureties are discharged.

20. Let a copy of this judgment be sent to the learned Sessions Judge concerned in a week for information and compliance in the records.