

State of Uttar Pradesh

Vs

Rajju and Others

Criminal Appeals Nos. 201-203 of 1969

(CJI J. C. Shah, S. K. Hegde, A. N. Grover, S. M. Sikri, V. Bhargava, I. D. Dua JJ)

06.01.1971

JUDGMENT

SIKRI, J. -

1. This appeal by Special Leave by the State of Uttar Pradesh is directed against the judgment and order of the High Court of Judicature at Allahabad allowing the appeals of the nine accused and setting aside the convictions recorded against them by the learned Sessions Judge, Banda, who had convicted them under Sections 399 and 402, I.P.C. and also five of them under Section 25(a) of the Indian Arms Act.

2. Nine accused were sent up for trial. Out of them the State has filed appeal against eight. Chiri is reported to have expired and appeal against him has become infructuous. Bimla is reported to have been murdered and the appeal against him had also become infructuous. Sunwa is not traceable and the notice of the filing of the appeal has not been served on him yet. He is reported to be absconding. The appeal against him will be kept pending will be disposed of when he has been served with the notice.

3. Accordingly, we are concerned with the appeal of the State against Rajju, original accused No. 2 in Sessions Trial No. 91 of 1964, Dharamraj alias Dharma, original accused No. 7, Chunnilal, original accused No. 3, Gaya Prasad, original accused No. 5 and Happa, original accused No. 8.

4. The case of the prosecution is given by Abdul Nain Siddiqui, P.W. 1, who S.O., Police Station, Baberu. On April 11, 1964, he had gone to village Hardauli in connection with the investigation of another case. At about 3 p.m. an informer contacted him and told him that Chunnilal, accused No. 3, was bringing Bimla accused, since deceased, and members of his gang to his house of Keshav Maharaj situate in village Jugarhali at night. He promised to give further information later. On his return to the Police Station P.W. 1 made entry to this effect in the general diary. At 3-15 p.m. he telephoned the S.P., but he was not available at the headquarters. He, therefore, telephoned the Kotwali requesting for a police force. The force did not arrive by 5-17 p.m. At 8-15 p.m. the informer contacted him at the Police Station and reported that the gang had arrived at the Baithak of Chunnilal, accused No. 3, and gave particulars of the members of the gang, and the arms with them. P.W. 1 asked the informer to meet him at about 10 p.m. on the same night outside the Abadi of village Ahar. He made an entry to this effect in the general diary at 8-15 p.m. At 8-30 p.m., P.W. 1, with a number of persons, who were armed, left the Police Station. P.W. 1 also directed constable Sadiq Hussain to reach Jugarhali and inform /Keshav Maharaj that he should collect the members of V.D.S. and the licensees and keep watch. P.W. 1, with the police force, then proceeded to village Ahar in a truck and they got down near the Ballah outside the Abadi about 1 1/2 furlongs from it an

waited for the informer to contact them. Dinanath, constable, in the meantime had brought members of the V.D.S. and persons who were licensees of firearms. The informer contacted them and informed P.W. 1 and the other members of his party that the dacoits were having their meals and drinking wine and when the dacoits leave the place for committing dacoity he would come out first from the Baithak of Chunnilal and would strike a matchstick twice to indicate the departure of the dacoits towards Jugarhali. P.W. 1 then divided the police personnel and other persons into three parties and gave suitable instructions. It is not necessary to give details of the persons who were in each party. At about 11.30 p.m. the informer came out of the Baithak of Chunnilal and struck a matchstick twice. On this P.W. 1 fired a shot from the V.L. pistol and then one of the dacoits fired a shot from his gun, and P.W. 1 fired two shots from the double-barrel gun in reply. Then the members of the three parties surrounded the accused and caught them there and then. The informer and the dacoit who had fired the shot disappeared.

5. Various arms and cartridges were recovered from the dacoits. A rifle, six cartridges and a torch were recovered from the accused Bimla, now deceased; a gun, a belt containing 11 cartridges and a torch were recovered from the accused Happa; a gun and four cartridges from the accused Dharamraj; a gun and five cartridges from the accused Chiri, now deceased; from the accused Chunnilal one country-made pistol, 3 live cartridges and a Lathi; a Pharsa from the accused Rajju; a Pharsa from the accused Gaya Prasad; a Lathi from the accused Sunwa and one Alanakab (house breaking instrument) from the accused Matru. From the Baithak of Chunnilal he recovered two empty bottles, one glass, Donas, pieces of Bidi and matchsticks. He brought the accused to the Police Station and prepared F.I.R. and also made an entry at 5 a.m. on April 12, 1964, in the general diary.

6. This story was supported by Jhallu Prasad, P.W. 5, Gangotri Prasad, P.W. 6 and Ram Kirpal, P.W. 3, who were members of the raiding party assembled by P.W. 1. The statement of P. W. 1 that an informer had contacted him finds support from the entries in the general diary and also in the evidence of Shiv Kumar Sharma, P.W. 7.

7. It was argued before the learned Sessions Judge that P. W. 1 was not able to give the number of the truck in which they travelled from Baberu to village Ahar. P.W. 1 explained it on the ground that he had not taken down the number, and the learned Sessions Judge rightly observed that "neither the fact whether the police party had travelled by truck or otherwise is in issue nor does it have any important bearing on this case inasmuch as it is not contended that the police party could not have reached village Ahar by that time".

8. The learned Sessions Judge then examined the defence of each accused. Accused Happa had stated that he was arrested at the bus stand when he was coming to Court to present himself in connection with a quarrel between him and the members of his Biradari in village Jorahra, P. W. Bissenda, and that P.W. 1 had implicated him in this case as he had not paid Rs. 800/- to him which he wanted in connection with another dacoity in which he was falsely involved and acquitted. The learned Sessions Judge rightly observed that there was no evidence on the record which substantiated his case.

9. Regarding Dharmaraj's defence that the police had arrested him from his house and the witnesses had deposed against him under the pressure of the police, the learned Sessions Judge again found that there was no evidence on record to substantiate his contention.

10. The case of Gaya Prasad, accused, that he was called by P.W. 1 and was falsely implicated in

this case at the instance of Jagmohan of his village with whom he was on bad terms was not believed.

11. Chunnilal, accused, had stated that he and his brother, Matru, co-accused, were sentenced to 7 years' R.I., in connection with the murder of Nazar Mohammad, that two constables had taken him and Matru to the Police Station about noon and then they were indicated in this case. The learned Sessions Judge held that there was no evidence on record which showed that he was called to the Police Station in connection with the other case and thereafter detained at the Police Station.

12. The defence of Rajju, accused, was that he had gone to the house of his cousin, Chunnilal, situate in village Ahar and that the constables had taken him from the Baithak of Chunnilal to the Police Station at about 12 noon and he was falsely implicated in this case. No evidence was led by Rajju and the learned Sessions Judge held that it could not be said that the accused was not arrested at the time of the occurrence.

13. Sunwa, accused, stated that he had been engaged by Government to remove some earth from the fields of Raja Ram Pradhan and Ram Lal and that Raja Ram and Ram Lal had felt annoyed and they got him implicated. No evidence was produced by him substantiate this and the learned Sessions Judge found that it could not be said that he was not arrested at the time of the occurrence or that he had been falsely implicated.

14. It was urged before the learned Sessions Judge that as no identification proceedings were held in the case it could not be said that the accused were the persons who were actually arrested at the spot. The learned Sessions Judge rightly held that it was not necessary for the State to hold identification parade when according to the prosecution they were arrested at the spot. If the accused felt that the witnesses would not be able to identify them they should have requested for an identification parade.

15. The learned Sessions Judge summarised the case thus :

"It would appear from the above that none of the accused has been able to show that he was arrested at a place other than the place of occurrence, that he had any enmity with any of these accused and that he had been implicated in this case due to it. The witnesses have also not been shown to be partisan witnesses or to have been under the influence of the police. Further there does not appear to be any inconsistency in their statements. There does not, therefore, appear to be any reason to disbelieve the statements of the witnesses, Sri Abdul Naieem Siddiqi, P.W. 1, Ram Kripal, P.W. 3, Jhallu Prasad, P.W. 5, and Gangotri Prasad, P.W. 6. It would follow from it that all these accused were arrested outside the Baithak of Chunnilal, accused, at about 11.30 p.m. on the night between April 11, 12 of 1964, with the arms, etc., which were recovered from them." The learned Sessions Judge further found that except for Chunnilal and Matru, who belonged to village Ahar itself, all the accused had come from villages situate at a distance varying from 8 miles to 20 miles. He further found that none of the accused had been able to give any reasonable explanation as to how he happened to be at the Baithak of Chunnilal at that hour of the night. The learned Sessions Judge accordingly convicted the accused, as stated above.

16. The High Court, after mentioning the story given by the P. Ws. disposed of the appeal in the following Para :

"I have heard the learned counsel for the parties. It is stated by the prosecution that Sri Siddiqi was informed at 8 p.m. that a dacoity was going to be committed at the house of Kesho Maharaj in village Jugarhali and that the dacoits had collected at the house of Chunnilal in village Ahar, but it is strange that they did not take immediate steps to apprehend the dacoits. Moreover, the informer has not been produced. The informer would have been the best person to corroborate the story as given by Sri Siddiqi. It is correct that it is not necessary for the police to produce the informer, but, as mentioned above, he would have been the best person to corroborate the story of Sri Siddiqi. It is also the prosecution case that the dacoits were taking meals in the house of Chunnilal but it is strange that the police party did not rush into the house and arrest them while they were unarmed. It is not understood why the police waited for two hours to arrest them when they emerged out of the house. No injury has been caused to any one. It is difficult to convict the appellants on the sole testimony of Sri Siddiqi who does not remember the number of the truck in which they went to village Ahar. I, therefore, find force in these appeals."

17. With great respect, the learned Judge has not given any good reason for disagreeing with the judgment of the learned Sessions Judge. The fact that the informer has not been produced does not weaken the prosecution case, especially as P.W. 1 had recorded the information in the general diary. We are unable to find it strange, as the learned Judge did, that the police party did not rush into the house and arrest them while they were unarmed. It seems to us that the police had to wait for the dacoits to come out of the Baithak of Chunnilal. We are of the opinion that the police were very wise in waiting outside and not rushing into the house for then it would have been argued that no preparation for dacoity had taken place and no offence had been made out. Further it would have involved more risk to the raiding party.

18. We find it difficult to appreciate the last reason given by the learned Judge that it would be difficult to convict the accused on the sole testimony of P.W. 1. The fact that he did not remember the number of the truck can hardly destroy his evidence. Secondly, his evidence was corroborated by a number of other witnesses. Therefore it is not correct to say that there was only the sole testimony of P.W. 1. The learned Judge had himself given a brief summary of the evidence of the other witnesses.

19. Mr. Garg, who appeared for the accused Rajju, says that he was a cousin of Chunnilal and if he was staying with Chunnilal the mere fact of his presence could not be sufficient to establish the charge under Section 399, I.P.C., against him. He says that the explanation of Rajju is reasonable, and although there is no evidence to establish it his explanation being probable should be accepted. There might have been some force in this argument if the party of the dacoits had not left the Baithak of Chunnilal. It is only after the dacoits started coming out of the house that they were arrested. We may assume, although there is some dispute, that he was a cousin of Chunnilal, but even assuming this the fact that he was arrested outside the house destroys the version of Rajju that he was at the Baithak of Chunnilal for innocent purposes. Moreover, a Pharsa was recovered from his possession. We are unable to agree with Mr. Garg that on these facts the charge under Section 399, I.P.C., is not made out.

20. Mr. B. P. Mauriya, arguing on behalf of the accused Happa and Dharmaraj, first said that in the first information report there was no mention of the V.L. pistol. It was pointed out to him that in the first information report it is mentioned by P.W. 1 that "one miscreant, Jaikaran of Tarai, whom I and the witnesses have recognised in the light of V.L.P. and torches, succeeded in running away with his

arms". The second point he raised and which we have already dealt with is regarding the police party waiting outside the Baithak of Chunnilal and not entering inside when the dacoits were unarmed. Lastly, he urged that three cartridges had not been produced although the V. L. pistol cartridge was produced in Court. We are unable to attach any significance to these facts and draw any adverse inference against the prosecution.

21. The learned Sessions Judge had awarded the following sentences :

"Each of the accused Bimla alias Chunna, Rajju, Chunnilal, Matru, Gaya Prasad, Sunwa, Dharamraj alias Dharma, Happa and Chiri is convicted under Sections 399 and 402, I.P.C. and each of them is sentenced to R.I. for seven years under Section 399, I.P.C., and to R.I. for years under Section 402, I.P.C. Each of the accused Bimla alias Chunna, Happa, Dharamraj alias Dharma. Chiri and Chunnilal is also convicted and sentenced to R.I. for two years under Section 25(a) of the Indian Arms Act. All the accused are in jail. They shall serve out the sentences awarded to them.

The sentences, which have been awarded to these accused under Section 399 and 402 of the I.P.C. and under Section 25(a) of the Indian Arms Act, shall run concurrently."

These sentences seem reasonable. Accordingly we allow the appeal against the five contesting respondents and award the following sentences :

"Each of the accused Rajju, Chunnilal, Gaya Prasad, Dharamraj alias Dharma and Happa is convicted under Sections 399 and 402, I.P.C., and each of them is sentenced to R.I. for seven years under Section 399, I.P.C. and to R.I. for five years under Section 402, I.P.C. Each of the accused Happa, Dharamraj alias Dharma, and Chunnilal is also convicted and sentenced to R.I. for two years under Section 25(1) of the Indian Arms Act. The sentences shall run concurrently."

There will be no order on the appeals against Chiri and Bimla as the appeals have become infructuous due to their deaths. The appeal against Sunwa shall be heard when he is traced and arrested.

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