

Rishipal and ors. Vs. State

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Court : Allahabad

Decided On : Apr-27-1961

Reported in : AIR1962All13

Judge : D.P. Uniyal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 339 and 402; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 238

Appeal No. : Criminal Appeal No. 2081 of 1960

Appellant : Rishipal and ors.

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : B.C. Saxena and ;S.N. Mulla, Adv.

Disposition : Appeal partly allowed

Judgement :

D.P. Uniyal, J.

1. The appellants, who are seven in number, have filed this appeal against their conviction and sentences under Sees. 399 and 402 I.P.C. and Section 19(f) of the Arms Act. Each of them has been sentenced to 5 years' R. I. under Section 399 I.

P. C. and to 3 years' R. I. under Section 402 I.P.C. Baijnath and Ram Pratap appellants have further been sentenced to one year's R. I. each under Section 19(f) of the Arms Act. The sentences awarded to the appellants under the various counts have been ordered to run concurrently.

2. The facts, shortly stated, are as follows. On the 14th November, 1959 at 6-30 a.m. B.D. Sharma, Station Officer, Police Station Fatehganj East, District Bareilly, received information through a reliable source that a gang led by Gokaran dacoit was hiding itself near village Nagaria for committing dacoity. The Station Officer collected a police force and reached Sadhu-ki-Madhi near village Nagaria. There the informant again met him and told him that the gang was concealing itself in the sugarcane field of one Kasturi. The Station Officer sent for some men from the village and then divided the raiding party into three groups. The sugarcane field was surrounded in three directions, namely, north, east and west.

The dacoits fired a shot towards the police force and started running in the southerly direction. They were chased by the raiding parties up to the bank of the river Ramgantra. During this period several shots were exchanged between the police party and the miscreants. Finding themselves outmanoeuvred three of the miscreants jumped into the river and appear to have been drowned in the swift current of the river along with the firearms carried by them. Seven miscreants, who are the appellants before me, were, however, arrested by the raiding party near the bank of the river. One of their companions, named Tula Ram, was severely assaulted by the police party while trying to escape. He fell down near the bank of the river and died shortly afterwards.

3. After the raid was over a search of the persons of the arrested culprits was made by the police party. One country-made pistol and four live cartridges were recovered from Baijnath appellant; one country made pistol and two live cartridges were recovered from the possession of Ram Pratap appellant; one bhala each was recovered from the possession of the appellants Hori and Rishipal; and one lathi each was recovered from the possession of appellants Ram Swarup, Chuni and Sita Ram. From the field of Kasturi, in which the gang was hiding, one overcoat, two ordinary coats, two pairs of shoes, one towel, one muffler, one underwear

andone cap were recovered. :

Besides the above articles the police party found a single-barrel gun and three live cartridges in the possession of Tula Ram, deceased dacoit. From near the bank of the river the police party recovered a jhola which was said to have been left by the miscreants who had jumped into the river. From inside the jhola 8 live cartridges, one knife and one torch were recovered. Sixteen fired cartridges were found lying at die place of occurrence and these were also taken into possession. All these articles were sealed up at the spot and recovery memos were prepared. B.D. Sharma prepared a report of the occurrence and sent it through Constable Radha Krishan at about 2-15 p.m the same day. Radha Krishan was directed to first proceed to Faridpur and inform the Superintendent of Police about the encounter on the telephone and thereafter go to Police Station Fatehganj to hand over the report.

Thereafter at about 5 p.m. the same day the S. O. sent the seven arrested persons to Police Station Fatehganj through constables and chaukidars. He remained behind and stayed in the night at the spot along with other members of the raiding party. The Superintendent of Police, Sri Hingorani, arrived at the place of occurrence at about 11-15 p.m, in the night in the company or the Deputy Superintendent of Police, Circle Inspector and an armed guard. Before coming to the spot the Superintendent of Police had sent communication to the District Magistrate about the encounter and about the death of one of the culprits in the course of the occurrence.

4. On the following morning Sri Chitragad Singh, Sub-Divisional Magistrate, who had been deputed to hold a judicial inquiry into the death of Tula Ram, deceased dacoit, arrived at the spot. Before this a search for the dead bodies had been started in the river bed with the help of divers. As a result of the search a 12 boredouble barrel gun was recovered from the river bed. A loaded cartridge was found inside the chamber of the gun. Recovery memos in respect of the gun and the cartridges was prepared in the presence of the S. D. M. The S. D. M. held inquest over the dead body of Tula Ram and after completing the inquiry left the place.

5. After completing the investigation the seven appellants were challenged for the offences mentioned above.

6. It may be pointed out that of the seven appellants, Sita Ram and Rishipal are residents of village Manpur, Police Station Fatehganj, District Barielly; Baijnath and Ram Pratap appellants are of village Rasain, Police Station Katra, District Shahjehanpur; and Chunni, Ram Swarup and Hori appellants are of village Dali Nawada, Police Station Katra, District Shahjehanpur.

7. It appears that appellants Sita Ram and Rishipal belong to the same khandaan and are related to each other. Appellants Ram Swarup, Hori and Chunni are related to Rishipal appellant through his maternal grandfather. Appellants Baijnath and Ram Pratap are Brahmans and are said to be purohits of Ram Swarup, Chunni and Hori accused.

8. The accused denied the prosecution allegation that they had been arrested by the police party near village Nagaria after a chase. They also denied that any arms or ammunition, etc. was recovered from their possession. The defence version of the occurrence was that Sita Ram, father of Rishipal accused, has purchased some land from one Sumer on the 21st August, 1959 in village Sheorajpur. Roshan and Lakhpatt P.W. I wanted to purchase this very land and felt annoyed when Sita Ram obtained it for a higher price.

As this land was close to village Nagaria, Roshan and Lakhpatt started putting obstruction in the way of Sita Ram to cultivate the land. Mahendrapal Singh constable P.W. 11, who was posted at Police Station Fatehganj East, was friendly with Roshan and Lakhpatt and in collusion with him Roshan and Lakhpatt brought a police force there and got the accused arrested after killing three or four men of their party when the latter were going to the river for bath after finishing ploughing of the field.

The accused stated that a false case had been manufactured against them by the police at the instance of Roshan and Lakhpatt, with the active assistance of Mahendrapal Singh constable. Subsequent to this occurrence the accused filed a complaint for the alleged murder of three of their relations by Mahendrapal

constable and others and the same was pending. The defence adduced evidence to show that they had cultivated the field purchased by Sita Ram on the date of the occurrence and had been falsely roped in the case.

9. In support of the prosecution case B.D. Sharma P.W. 16, Mahendrapal Singh constable P.W. 11, Lakhpat Singh P.W. 1, Gokaran Singh P.W. 4, Durbijai Singh P.W. 5, Dalpat P.W. 10, and Sarnam Singh P.W. 12 were examined as eye-witnesses of the occurrence. They fully supported the prosecution case that the Station Officer B.D. Sharma in the company of a police force, including Mahendrapal Singh constable, had raided the sugarcane field of Kasturi between 11 a.m. and 12 a.m. on the 14th November, 1959 and had succeeded in arresting the seven appellants after a hot chase near river Ramganga. These witnesses deposed that seeing the police party the accused had fired at them. Thereupon the police party replied by firing towards the miscreants who were hiding themselves in the sugarcane field.

The accused ran in the southerly direction and were chased by the raiding party. During the chase several rounds of gunfire had been exchanged between the miscreants and the police party. It was only when the miscreants found their escape barred that three of them jumped into the river and were swept away by the current. One of their party was felled on the ground and seven of the appellants were apprehended by the police force. The witnesses also proved the recoveries of arms, ammunition and other articles recovered from the possession of the appellants soon after their arrest. They also testified to the recoveries made from the spot and the recovery of a gun and cartridges from the possession of Tula Ram deceased. The recovery of a German-make gun from inside the river on the forenoon of the 15th November, 1959 was also proved by the evidence of these witnesses. It is said that this gun was in the possession of Gokaran, the notorious dacoit to whose gang the appellants belonged.

10. It was admitted by the accused that they were arrested near village Nagaria and close to the bank of river Ramganga. The difference between the prosecution and the defence version is only in regard, firstly, to the recovery of unlicensed arms and ammunition, and, secondly, with respect to the manner of arrest of the

accused persons. The accused denied that they had any arms in their possession. They stated that they had gone there to help Sita Ram in cultivating the plot purchased by him from Sumer. The defence story, as given in the statement of Sita Ram accused, is in these terms :

'Rishipal accused is my khandani nephew. Accused Chunni, Saroopi and Hori are relations of accused Rishipal. Tula Ram, Ram Bhajan and Gokaran were also relations of Rishipal. Accused Ram Pratap and Baijnath are purohits of accused Saroopi, Hori and Chunni. Lakhpat, Roshan, and Mahendra Pal had not allowed me to cultivate my 32 bighas of land on previous occasion also.'

The statements of the other accused were to the effect that Sita Ram, father of Rishipal accused, had asked them to get his field ploughed and they had proceeded there to help him in ploughing the field. Roshan and Lakhpat (P.W. 1) called the police party and got them falsely arrested in order that they may be able to take forcible possession of the land purchased by Sita Ram.

11. The question, therefore, that falls to be decided is firstly, whether the defence version that the police party had arrested the accused near village Nagaria where they had gone to plough the field of Sita Ram, is acceptable and proved by the evidence adduced by the defence. The second question is whether the recovery of arms and ammunition by the police party from the possession of the accused has been satisfactorily proved.

12. It is not disputed that Sita Ram (D.W. 9) had purchased some land in village Sheorajpur in 1959. There is also evidence that there was some dispute about this land between one Roshan and Sita Ram (D.W. 9). It is clearly proved that objections had been filed on behalf of Roshan in the mutation proceedings in respect of this land. Ex. Kha-16 is the objection filed by Roshan in the mutation case. Lakhpat P.W. 1 did not raise any objection at any stage against the right of Sita Ram to cultivate the plot. There is not an iota of evidence on the record to connect Lakhpat with any dispute relating to this land. The defence allegation, therefore, that Lakhpat was the prime mover in obtaining possession of this plot from Sitaran and was instrumental in seeking the help of Mahendrapal Singh constable to oust Sita Ram is without any substance. The defence has not been

able to show any relationship between Roshan and Lakhpat. It is not understood why Lakhpat should have taken any interest in this matter.

13. The defence sought to prove that there was hostility between the accused and Lakhpat. They produced an application (Ex. Kha-10) dated 13th August, 1958 sent by Maiku Lal (D.W. 5), Parmeshwari, and Ram Singh to the Superintendent of Police, Bareilly against Sita Ram and others, alleging that they had encroached upon a village path. This application was produced in court by Jamil Ahmad (D.W. 2), Record Keeper, Police Office, Bareilly. Maiku Lal D. W. 5 stated that the police had gone to make enquiry in respect of this application and that the dispute had been amicably settled on 3rd September, 1958. Maiku Lal in his capacity of Pradhan had given a written report (Ex. Kha-37) on 3-9-1958 in which he had stated that the differences between the parties had been settled and the matter should not be proceeded with.

It is thus established that there was really no outstanding dispute between Roshan and Lakhpat on the one hand and Sita Ram (D.W. 9) on the other after the 3rd September, 1958. The defence allegation that Lakhpat was vitally interested in the plot purchased by Sita Ram (D.W. 9) is a pure myth, and is not supported by any reliable evidence. No connection or friendship between Roshan and Lakhpat P.W. 1 has been established by the defence. It is difficult to imagine why Lakhpat, of all persons, should have interfered with the possession of Sita Ram over the plot purchased by him from Sumer.

14. It now remains to consider whether the defence version that accused Ram Swarup, Chunni, Hori, Baijnath and Ram Pratap had been called by Sita Ram (D.W. 9) from villages Dali Nawada and Rasain to cultivate his plot in village Shecraipur, has any truth behind it. It may be pointed out that village Dali Nawada and Rasain are at a distance of 6 miles from village Nagaria where the plot in question is situate. Villages Manpur and Nagaria are adjoining villages and so is village Sheorajpur. The defence story that the above mentioned accused had been called from a distance of 6 miles to get the field of Sita Ram ploughed is by itself too fantastic to be believed. It has not been suggested that ploughmen were not available in village Manpur which is a fairly big village.

In fact the accused have not stated that the villagers of Manpur were not willing to help Sita Ram in cultivating the plot. It is, therefore strange that persons from such a distance as six miles should have been invited to help in the cultivation of the plot. The police party did not find any bullocks or ploughs at the scene of occurrence. No suggestion was made to the witnesses in cross-examination that the field of Sita Ram was found ploughed up by the investigating officer when he reached there. The defence witnesses stated with one voice that the whole field measuring 32 bighas had been ploughed by the accused persons and that they had started the operations at 6 in the morning and continued until 11 in the forenoon.

Had it been a fact that the field had been recently cultivated and ploughed the Station Officer could not have failed to notice it because the incident had occurred close to that plot. Secondly, the defence would have cross-examined the witnesses on this point and would have brought out the fact that the plot in dispute was actually lying ploughed when the police party went there. The absence of any suggestion on the part of the defence to the prosecution witnesses on this point belies their allegation that the accused had gone there to help Sita Ram in ploughing the field.

I have no hesitation in holding: that the accused had put up a false defence and that their presence at the spot was for an unlawful purpose. The accused had gone there to commit an offence and not to cultivate the plot of Sita Ram as alleged by them.

15. The recovery of number of arms and ammunition from the possession of the accused has remained unexplained. Their denial that no arms and ammunition had been recovered from their possession is equally false. The large haul of arms and other lethal weapons from the possession of the accused immediately after their arrest has been established by independent and reliable evidence and nothing has been elicited in the cross-examination of these witnesses to shake their credit. In this connection it is noteworthy that one of the weapons which was recovered from the bed of the river as a result of the search made by divers was a German-make gun.

How it was possible for the police to come by these weapons, some of which were of rare quality, unless they were recovered from the possession of the accused, is a matter on which the accused have not thrown any light. There is no evidence on the record to prove any connection between Lakhpat P.W. 1 and Mahendrapal Singh constable, nor is there any evidence to show that Mahendrapal Singh had anything to do with Roshan. It seems to me that the defence allegations in this case are nothing but a figment of imagination. I agree with the findings recorded by the trial Judge that the appellants had collected in village Nagaria on the morning of the 14th November, 1959 and were in possession of unlicensed arms and ammunition.

It is also established that the accused had concealed themselves in the sugarcane field of Kasturi for the purpose of committing some offence. They were certainly members of an unlawful assembly. The fact that the accused belonged to three different villages, two of which are situated at considerable distance from village Nagaria, leads to the inevitable inference that the purpose of the assembly was unlawful. The fact that they were in possession of unlicensed arms and ammunition lends further support to the fact that they had assembled there to commit an offence.

16. Sri Mulla very fairly and candidly conceded that the assembly of the accused in village Nagaria could not have been for a lawful purpose. He, however, contended that the prosecution had failed to establish that the assembly of the accused was necessarily for the purpose of committing dacoity. The accused were no doubt carrying unlicensed arms and ammunition, but this fact by itself would not be conclusive evidence of their intention to commit dacoity. It was emphasised that the accused were not in possession of any house-breaking implements.

The prosecution case was that the accused had assembled in the field of Kasturi after daybreak. If their intention was to commit dacoity, surely that was not a propitious time for perpetrating such offence, because the villagers were up and doing and there was little chance of the accused succeeding in their design, particularly when two of them were of village Manpur where the alleged dacoity was to take place. Learned counsel argued that it is strange that most of the

accused were related inter se and were known to the complainant party. In these circumstances, it is incredible to believe, so the argument proceeds, that the assembly of the accused could have been for the purpose of committing dacoity.

The learned counsel urged that it may as well be that Sita Ram apprehending that his opponents might interfere with the cultivation of his plot, had collected his friends and associates near his village for his assistance. The fact that the accused were found hiding in the sugarcane field of Kasturi, which is contiguous, to the plot purchased by Sita Ram in this village, would go to indicate that the intention of the accused might have been to help Sita Ram in shooting down persons in case there was obstruction to the cultivation of the disputed plot by Sita Ram.

17. It is no doubt true that according to the prosecution case the accused had started collecting there from 6 o'clock in the morning and were found concealed in a field which adjoins the Plot of Sita Ram. It is also a fact that two of the appellants, namely, Rishipal and Sita Ram, belong to village Manpur where the incident took place and that the other appellants are closely connected with them. It cannot, therefore, be said that the purpose of the assembly could not have been for committing an offence other than dacoity.

Having regard to the background of the dispute which had arisen between Sita Ram on the one hand and Roshan on the other over the field purchased by the former, it cannot be ruled out that Sita Ram and his associates might have been responsible for inviting the accused to the village in order to over-awe or, if necessary, to kill his opponents. No implements of house-breaking were recovered from any of the accused. The time chosen by the accused to assemble near the abadi of village Manpur and Jagdishpur does not appear to be consistent with the prosecution case that the assembly of the accused was for the purpose of committing dacoity.

The informer who had informed the Station Officer of Fatehganj about the assembly of the accused has not been examined in the case, albeit the prosecution was not bound to do so. The fact, however, remains that the information which he had supplied to the Station Officer was to the effect that

Gokaran's gang was hiding in the kundli for 'rahzani'. It was not alleged that the intention of the accused was to commit dacoity. The informer seeing the accused carrying unlicensed arms and ammunition probably thought that they were likely to commit highway robbery.

18. The intention which animates an accused person to commit an offence is always a difficult matter for the court to decide. The purpose or intention with which a crime is committed is a matter to be deduced from the facts and circumstances of each case. Where no offence is actually committed, and the purpose of the accused has to be judged by reference to the surrounding circumstances and the conduct of the accused, the proper test, in my opinion, would be that the circumstances sought to be relied upon must be consistent with the one and the only purpose or intention set out in the charge.

If the facts and circumstances are susceptible of two interpretations, one in favour of the prosecution and the other in support of the de-fence version, then the rule which applies to circumstantial evidence would prevail, and the benefit of doubt, if any, would have to go to the accused.

19. Applying the above test to the circumstances of this case, it cannot, in my opinion, be held that the purpose with which the accused had assembled in the sugarcane field of Kasturi was necessarily for committing dacoity, though it cannot be doubted that the purpose of the assembly was certainly unlawful. The presence of large number of arms and ammunition in the possession of the accused cannot be consistent with the theory of peaceful assembly.

20. Similarly, the recovery of unlicensed arms from the possession of some of the accused would render them liable for unlawful possession of these arms.

21. I, therefore, find that the prosecution has proved that the accused were hiding themselves in the sugarcane field of Kasturi and were in possession of unlicensed arms and ammunition and that when they were challenged by the raiding party they had fired at them and it was after a hot chase that they could be apprehended and taken into custody. On these facts the conclusion is irresistible that the assembly of the accused was for an unlawful purpose, which fact is reinforced by

the presence of unlicensed arms in their possession.

22. I allow this appeal in part and set aside the conviction and sentences of the appellants under Sections 399 and 402 I.P.C. I, however, convict Baijnath and Ram Pratap under Section 148 I.P.C. and sentence each of them to 2 years' rigorous imprisonment. The conviction and sentences passed on these appellants under Section 19(f) of the Arms Act are maintained. The sentences passed on the appellants under the two counts shall run concurrently. Rishipal, Sita Ram, Chunni, Ram Swarup and Hori are convicted under Section 147, I.P.C. and each of them is sentenced to one year's rigorous imprisonment. Appellants Rishipal, Sita Ram, Chunni, Ram Swarup and Hori are on bail. They shall surrender to their bail bonds and serve out the sentences awarded to them.

23. I may point out that the absence of a specific charge under Section 147 I. P. C., does not and cannot prejudice the accused. The charge under Section 402 I.P.C. which was laid against them fully covered the ingredients of Sections 147 and 148 I.P.C. and accordingly there could be no question of prejudice being caused to them.

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