

Than Singh and ors. Vs. Rex

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Court : Allahabad

Decided On : Jul-07-1949

Reported in : AIR1950All93

Judge : Bind Basni Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 402

Appeal No. : Criminal Appeal No. 351 of 1948

Appellant : Than Singh and ors.

Respondent : Rex

Advocate for Def. : K.L. Misra, Asst. Govt. Advocate

Advocate for Pet/Ap. : E.V. David, Adv.

Disposition : Appeal dismissed

Judgement :

Bind Basni Prasad, J.

1. This appeal arises out of a case under Section 402, Penal Code and Section 19(f), Arms Act. There are four appellants -- Than Singh, Durga, Chiranji and Phagni. They have been sentenced to three years' rigorous imprisonment each under Section 402, Penal Code and Than Singh has in addition been sentenced to

six months' rigorous imprisonment and a fine of Rs. 100 or in default to three months' rigorous imprisonment under Section 19(f), Arms Act.

2. It appears that on 23rd February 1947 Sub-Inspector Riasatullah Khan of police station Dadon, district Aligarh received information that certain persons were going to assemble for the purpose of committing a dacoity. He took some police force with* him and went to the place known as Sarak-ka Nagla. The police party divided itself into different groups and they arranged themselves in appropriate positions. When darkness set in, a number of persons including the four accused came to a grove near the canal armed with a gun. The police party surrounded the grove from different sides and Riasatullah fired a gun from his own side. The accused returned the gun fire. Ultimately the four appellants were overpowered and caught but others of their party escaped.

3. The police sent up the accused under Sections 399/402, Penal Code. The learned Sessions Judge, however, was of opinion that the offence under Section 399, Penal Code was not made out.

4. The appellants pleaded not guilty. It was alleged that Than Singh had been arrested out of grudge by the police at 5 P.M., and the other three appellants were arrested because they came to the rescue of Than Singh.

5. It is important to note here the recoveries made from the appellants. From Than Singh a gun, some gun shots and gun-powder were recovered. From Durga appellant a dagger and a stick were recovered. From Chiranji, appellant a chisel and a stick were recovered and from Phagni an electric torch and another stick were recovered.

6. No evidence was produced on behalf of the defence. The learned Sessions Judge has accepted the prosecution story in toto. Learned counsel for the appellants contends that on the facts found a conviction under Section 402, Penal Code is not sustainable because there is no proof that the purpose for which the appellants had assembled in the grove was commission of dacoity. The purpose of the assembly can be gathered only from the circumstances. It is difficult to give any direct evidence of such purpose. Having regard to the circumstances which

led the police party to come to the grove and in view of the articles recovered from the possession of the appellants there is hardly any room for doubt that the purpose of the assembly was to commit dacoity. The articles usually recovered from dacoits were found in the possession of the appellants. I see no good reason to differ from the conclusion reached by the learned Sessions Judge.

7. The appeal fails and it is hereby dismissed. The appellants are on bail. Their bail bonds are cancelled. They shall be taken into custody to serve out the rest of their sentences.

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