

Khusali and ors. Vs. the State of U.P.

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Court : Allahabad

Decided On : Jan-24-1968

Reported in : 1968CriLJ982

Judge : H.C.P. Tripathi, J.

Appellant : Khusali and ors.

Respondent : The State of U.P.

Judgement :

H.C.P. Tripathi, J.

1. Criminal Appeal No. 208 of 1936 from jail by Khushali and Criminal Appeal No. 800 of 1966 by Narain and others who are represented by a counsel arise out of the same judgment of the learned Civil & Sessions Judge, Hardoi, and they are being disposed of together. Each of the live appellants has been convicted under Sections 399 and 402 I.P.C. and sentenced to seven years' rigorous imprisonment and five years' rigorous imprisonment respectively under those counts. Appellants Narain Rim Lal, Maiku and Khushali have further been convicted under Section 25A (sic) of the Arms Act and sentenced to two years' rigorous imprisonment each. While the sentences under Sections 399 and 402 I.P.C. have been directed to run concurrently the sentence under Section 25A (sic) Arms Act, has been made consecutive.

2. The prosecution case in brief is as follows:

3. On 29th April, 1965, Sub-Inspector Zainul Abdin of police station Mallawan, district Hardoi, was informed that a gang of miscreants led by Khushali was assembling at the canal bridge in Tillage Goswa during the night of 29th or 30th April for the purpose of committing dacoity at the house of Dilla Chamar in that village. Accordingly he collected a force and having armed themselves went to the destination and waited for the miscreants during the night of 29th but none of them turned up. On 30th April, 1965, also Zainul Abdin went with his armed force to the canal bridge at Goswa and having divided it in three groups lay in ambush for the arrival of the miscreants. At about 10.80 p.m. the miscreants including these appellants assembled near the canal bridge and began to discuss among themselves the plan for committing dacoity at the intended house. The police party which was lying concealed nearby was, therefore, satisfied that they had assembled for committing dacoity and when they were preparing to move Sub-Inspector Zainul Abdin flashed his torch towards them and exhorted his men to charge the dacoits. All the three groups ran towards the dacoits and shots from very light pistols were fired by the members of the raiding party which illuminated the whole scene. There was also an exchange of fire between the miscreants and the raiding party but none appears to have received any gun shot injury. As a result of the raid these five appellants were beaten and captured at the spot but six others escaped. On a search being taken a pistol and two cartridges were recovered from the person of Maiku, four live cartridges from Bam Lal, a Banka from Baboo a gun and a used cartridge from Khushali and one pistol with a live cartridge in its barrel from Narain. These articles were taken in possession and the recovery memos were prepared at the spot in the presence of the witnesses. The captured miscreants and the recovered articles were then taken to the police station and a report of the occurrence was dictated by Sub-Inspector Zainul Abdin which was recorded in the general diary and a case was registered against the appellants.

4. After completion of the investigation these appellants were sent up for trial.

5. At the trial appellants pleaded not guilty and denied to have assembled near the culvert for committing dacoity or to have been arrested by the raiding police party. Narain Ram Lal, Maiku and Khushali also denied the recoveries. All of them attributed their false implication in the case due to enmity with the police but they were not able to give any specific details of the aforesaid enmity. None of them produced any evidence.

6. The prosecution case rested on the testimony of seven eyewitnesses namely Sub-Inspector Zainul Abidin, head constables Zihid Ali and Babu Lal and constable Rum Sugar and three members of the public namely Rajendra Pal Singh, Chandrika Prasad and Thakur Prasad. These witnesses stated to have seen the aforesaid appellants as ambling at the time and place suggested by the prosecution and to have heard them chalking out a plan for committing dacoity at the house of Dilla in village Goswa. They also confirmed to have charged on them and then to have succeeded in capturing them at the spot and recovered certain illicit arms from the possession of some of them.

7. The learned trial Judge on an assessment of evidence reached a conclusion that the testimony furnished by these witnesses inspired complete reliance and unmistakably connected the appellants with the crime under consideration. Accordingly he convicted and sentenced them as has been stated above. As regards two others who were not arrested at the spot and had been sent up on trial on the basis of evidence of identification the learned Judge observed that as they had not been identified by any public witness but only by constables of the same police station within the jurisdiction of which they resided the possibility of their having been known to those constables from before could not be ruled out and, therefore, they were entitled to the benefit of doubt. Accordingly he acquitted them.

8. learned Counsel for the appellants has strenuously contended that the story of the prosecution bristles with improbabilities and that the evidence furnished by the eye-witnesses does not inspire confidence. It is contended that although according to the prosecution there was an exchange of fire between the two sides none had received any fire arm injury and though the incident had taken place at about 10-

30 in a summer night no one from the neighbouring village of Goswa is alleged to have reached the scene. learned Counsel contends that these features of the case throw a cloud of doubt round the veracity of the prosecution story the benefit of which must go to the appellants. I regret my inability to agree with these contentions.

9. The prosecution case has been supported not only by the members of the police force who had participated in the raid but also by three residents of village Goswa namely Rajendra Pal Singh (P.W. 7) who is a teacher in the Government Higher Secondary School, Chandrika Prasad (P.W. 8) who is Pradhan and Thakur Prasad (P.W. 10) who is a Panch of the Nyaya Panchayit. There is nothing on the record to suggest that these witnesses were under the influence of the police or had any particular reason for deposing against the appellants. They appeared to be persons enjoying social status and it is difficult to conceive that for no rhyme or reason they will come forward to support a false case only on the behest of the police. The trial Judge has placed reliance on the testimony of the aforesaid witnesses and I see no reason to differ with his assessment of their evidence. These appellants are residents of different villages which are located several miles away from village Goswa and within the jurisdiction of another police station. It is, therefore, difficult to believe that the police would have arrested them from different places and then sent them up in this case.

10. In the result I am satisfied that the evidence led by the prosecution has brought the various charges home to the appellants beyond the realm of doubt and they have been rightly convicted by the trial Judge.

11. Then there remains the question of (sentence, The usual sentence in a case for an offence under Section 399, I.P.C., unless it is attended with violence, is four years' rigorous imprisonment. In my opinion, therefore the sentence of seven years' rigorous imprisonment awarded to the appellants under Section 399 and sentence of five years' rigorous imprisonment under Section 402, I.P.C. are excessive. As regards the sentence under Section 251 (sic) of the Arms Act it must be noticed that the arms were recovered during the same transaction which has resulted in the conviction of the appellants under Sections 399 and 402, I.P.C.

and a sentence of one year's rigorous imprisonment under that count will, therefore, meet the ends of justice.

12. Accordingly the conviction of the appellants for the various offences as recorded by the trial Judge are affirmed but their sentences are reduced from seven years' to four years' rigorous imprisonment under Section 399, I.P.C., from five years' to three years' rigorous imprisonment under Section 402, I.P.C., and from two years' to one year's rigorous imprisonment under Section 25A (sic) of the Arms Act. All the sentences are directed to run concurrently. With these modifications in the sentences of the appellants the appeals are dismissed.

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