

**Lekh Raj and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/616647](http://sooperkanoon.com/616647)

**Court :** Punjab and Haryana

**Decided On :** Oct-13-1959

**Reported in :** AIR1960P& H482

**Judge :** I.D. Dua, J.

**Acts :** Punjab Borstal Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 399 and 402;  
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 562

**Appeal No. :** Criminal Appeal No. 233 of 1959

**Appellant :** Lekh Raj and ors.

**Respondent :** The State

**Judgement :**

(1) These four connected appeals (Criminal Appeals Nos. 233, 327, 328 and 329 of 1959) relate to the same occurrence and will, therefore, be disposed of by one judgment.

(2) The prosecution story in short is that on the night between the 19th and 20th of October, 1958 Sub-Inspector Mehnga Ram P.W. 6 along with his Assistant Sub-Inspector and some foot constables was patrolling the city of Rohtak. When they came to the civil lines side and near the Gandhi Camp, they met Bhagwan Dass P.W. 2 who was checking the watch in the locality. The Sub-Inspector invited Bhagwan Dass to join the party. They then came towards the city and near Dhobi

Gate they met Bhagwana P.W. who was similarly on the beat and who also joined the police party.

When this party reached Mohalla Garhi they heard some noise coming from the side of a house nearby. The Sub-Inspector Shri Mehnga Ram flashed his torch and saw some persons standing there; one of them was, however, sitting and trying to make a hole in the wall of the house. Mehnga Ram fired a shot in the air from his service revolver and called upon the persons to stay where they were and to raise their hands otherwise they would be shot dead. On hearing this noise Gordhan, Sher Singh and Jodha prosecution witnesses who are residents of the locality also came there and the entire party thereupon surrounded the five persons found at the spot. The Sub-Inspector searched them and found a loaded pistol in the hand of Lachhman accused. It was immediately unloaded and the cartridge was taken out. Another pistol was found on the person of Mohar Singh in his right hand along with six cartridges. They were also taken possession of.

Sital accused had a jhola under his right arm and from his jhola another pistol with four cartridges was recovered. Near the place where Tara Chand was standing a phali was found lying on the ground; Lekh Raj accused had, however, only lathi in his hand. In the wall was found an incomplete hole 1 3/4'x 1'. The learned Additional Sessions Judge, Rohtak, who tried the case believed the prosecution witnesses and convicted all the five accused under sections 399 and 402, Indian Penal Code, imposing on them a sentence of five years' rigorous imprisonment on each count; the sentences to run concurrently. The plea in defence put forward by the accused that they were arrested not at the spot but elsewhere and were falsely implicated, was negated by the trial Judge.

(3) Mr. Shamair Chand has appeared in support of the appeals by Lekh Raj and Tara Chand and Mr. S. S. Mahajan, has argued the appeals on behalf of Lachhman, Mohar Singh and Sital. I have been taken by the counsel through the evidence of the prosecution witnesses but on going through the evidence I have not the slightest hesitation in upholding the conviction of all the accused-appellants. The minor discrepancies as to where the accused or some of them were actually standing at that time are, in my opinion, wholly immaterial and do

not, in any way, discredit the prosecution version and its essential particulars. Mr. Shamair Chand tried to make a point out of the fact that on Tara Chand's search a watch and sweets were found, the point being that person who goes out to commit dacoity would not carry with him a watch and sweets. I do not see on what basis the counsel has advanced this argument. The dacoits might well take to have a watch with them to know the time so that they may decide when to start their nefarious activities and when to stop or to escape. Similarly the possession of sweets does not in any way negative the desire to commit dacoity.

(4) The counsel next contended that the offence did not fall under Section 399 and 402, Indian Penal Code. Section 399 says that whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Dacoity is defined in Section 391 and is in the following terms:

'391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and person present and aiding such commission or attempt, amount to five or more every person so committing, attempting or aiding is said to commit 'dacoity'.

In this connection it is also helpful to reproduce the definition of the word 'robbery' which is contained in section 390:

'390. In all robbery there is either theft or extortion.

Theft is 'robbery' if, in order to the committing of the theft, or in committing thefts or in carrying away or attempting to carry away property obtained by the theft the offender for that end voluntarily causes or attempts to cause any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

Extortion is 'robbery' if the offender at the time of committing the extortion is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, of instant hurt and or of instant wrongful restraint to

that person or to some other person and by so putting in fear induces the person so put in fear then and there to deliver up the thing extorted.

Explanation--The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.'

The counsel contends that unless the accused persons could be shown to have caused to any person death or hurt or wrongful restraint, or fear of instant death, or of instant hurt or of instant wrongful restraint, the provisions of S. 391 and of S. 399 could be attracted. The argument of the learned counsel suffers from a basic fallacy. Section 399 makes any preparation of committing dacoity an offence which means that preparation for committing a robbery by five or more persons is an offence which falls within the purview of S. 399.

If preparation by itself is an offence then I cannot see how the counsel expects the actual causing of death, hurt or wrongful restraint to be the essential ingredient of the offence, as contemplated by S. 399. But this apart, preparation for putting persons even in fear of instant death or of instant hurt or of instant wrongful restraint is made an offence by S. 399, Indian Penal Code. If this be the correct legal position, I fail to understand how it is necessary for actual injury to be caused in order to attract the provision of S. 399, Indian Penal Code. I have, therefore, no hesitation in repelling this contention.

(5) The counsel then argued that the offence under S. 402 has not been established. This section is in the following terms:

'402. Whoever, at any time after the passing of this Act, shall be one of five or more person assembled of the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.'

On the language of the section I think the offence as contemplated by it is also fully established though the offence falling under this section and the offence falling under S. 399 would probably involve almost similar ingredients, the only difference being that under S. 402, mere assembly without other preparation is

enough whereas S. 399 is attracted when some additional step is taken in the course of preparation.

(6) Lastly, the learned counsel contended that the sentence imposed is too server. In this connection Mr. Shamair Chand emphasised that Tara Chand is 17 years of age, Lekh Raj and Sital are 19 years of age. Mohar Singh is 20 years and Lachhman is 22 years old and therefore if these young boys are sent to jail, they would come back hardened criminals. The question of sentence, in cases like the instant one, is a delicate matter but the primary consideration, which generally weighs with Courts, is to see that the sentence imposed is such as effectively does not pay; such life should be made increasingly difficult and it should also serve as a warning to others who may be thinking of adopting a criminal course. Public is also entitled to be protected against people who consciously and deliberately ignore the rules framed for the protection of society.

I am not unmindful of the fact that a person, who spends some years in the Company of hardened criminals in jail, may, by the time he comes out, become much more callous then when he entered the State prison, but I am also aware of the view, taken in some decided cases, that a short stay in jail sometimes proves more harmful to the accused. It brands a person as a previous convict without affording him the advantage of living a disciplined life in jail for a sufficiently long time.

The stigma of a convict without the healthy effect of disciplined influence, which a reasonably long period, in a properly administered jail in a welfare State, can have, is likely to result in more harm than good, but the remedy for this situation lies in reformation of the administration of the State jails and not to abstain from punishing people for such grave offences as have been established in the instant case. It appears to me to be for the legislative and the executive wings of the Government, rather than for the judiciary, to come to the rescue of the citizens in this connection.

The hands of the courts are tied down but those of the Parliament and the State Legislature are not. Where as the former have to pass orders with in the framework of the existing laws, the latter can, and indeed, are expected to make all

appropriate and suitable laws which are considered to be for the general welfare of the society. In the instant case it is just a matter of chance and good luck that the appellants, who were suddenly notified by the Sub-Inspector, were taken unawares and apprehended before they could get an opportunity of actually using the dangerous weapons with which they were armed: they were successfully called upon to surrender by the police party because the latter consisted of a fairly large number of persons. Under the circumstances I cannot persuade myself to agree with the counsel that the sentences imposed are too severe.

(7) The learned counsel also suggested--and indeed he laid great emphasis on it--that the accused being first offenders, action may be taken under S. 562, Criminal Procedure Code. Application of the provisions of S. 562 calls for exercise of discretion by the Court requiring a considerable sense of responsibility. The fact that the accused is a first offender is by itself not enough; the additional fact that he is a youthful offender also does not itself conclude the matter.

In order to attract the provisions of this section the nature of the offence, the circumstances in which it is committed, the age, character and antecedents of the offender must also be taken into account; and it is only if, after considering all these factors, the courts consider it to be expedient to do so that action under this section should be taken. Generally this provision of law is applied to crimes committed out of mere thoughtlessness, inadvertence or ignorance, sudden temptation or uncontrolled impulse, or under the influence of others, or by those who have been led astray for the first time by the force of circumstances; it can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relations or other causes like these, attempt to put an end to their own lives.

But where the Act constituting the offence is an Act of a reprehensible nature involving previous well-planned preparation and deliberate effort, it would, in my opinion, amount to misplaced sympathy and unjust leniency; more so when the accused is otherwise mature enough to appreciate his action and its consequences. To apply this section to such a case is likely to lead the public to suppose that all juvenile offenders may commit any crime they take without fear of

punishment; it may even operate as an incentive to criminally inclined parents to initiate their children or juvenile relations into a life of crime.

This section, as I understand it, is really intended to enable the Court to carry out the highly desirably object or reformation and to give the accused person a chance in that direction; from this point of view it is generally applied to cases where the offender, but for such isolated lapse are led him to commit the offence, would be expected to make a good citizen. In this instant case I have not been shown that the appellants have been led astray on account of some strong and sudden temptation and that their parents or family members are in a position to and desirous of reforming them, and that they can effectively check and control the young offenders and bring them to the right path of life.

The appellants, as appears from the record, constitute an organized band for committing very serious offences, with the result that it is not possible to pass orders under S. 562. Criminal Procedure Code. Besides, now that India is a social welfare republic, it is undoubtedly the duty of the State to see that in the State Prisons reformation of the convicted persons, particularly those of comparatively younger age, is properly and effectively attempted so that they can become useful members of the society.

I need hardly emphasis that out of the four object of punishment for crimes (i) deterrent, (ii) preventive, (iii) retributive and (iv) reformative, great stress is laid in all progressive and welfare states on the last objective. Of course, I do not, as at present advised, intend to unduly minimize the position properly assignable to the first three objectives in the present state of our society, but it cannot be denied that increasing importance is being attached to the last named objective and most of the progressive societies are concentrating more and more on reforming the social delinquents, by properly educating them and making them realise the importance of being peace abiding citizen.

I have now to consider if it is permissible to make some kind of an order with respect to the reformation of the appellants. Nothing was said at the Bar as to whether action could legally be taken by this Court under the Punjab Borstal Act. It is under the circumstances not possible for me to express any considered opinion

with respect to the applicability of the said Act to the appellants. I would, however, leave it to them, if so advised and if permissible under the law, to take appropriate proceedings under the above Act or under any other provision of law.

(8) For the reasons given above, all these appeals fail and the convictions and sentences of the appellants are maintained. I, however, do hope that during their stay in jail some attempt would be made to reform these young boys and to educate them so that they may realise the evil effects of the life of crime and become useful members of society.

ED/H.G.P.

(9) Order accordingly.

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