

**Yog Raj Vs. State**

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**Court :** Delhi

**Decided On :** Aug-19-1985

**Reported in :** 1985(9)DRJ297

**Judge :** Charanjit Talwar, J.

**Acts :** Indian Arms Act; Indian Penal Code (IPC), 1908 - Sections 399 and 402

**Appeal No. :** Criminal Appeal Nos. 166, 167 and 238 of 1984

**Appellant :** Yog Raj;davinder Singh;avtar Singh

**Respondent :** State;state;state

**Judgement :**

**Charanjit Talwar, J.**

(1) As common questions of law and fact arise in these three appeals, this judgment will cover all of them.

(2) The appellants, namely. Yog Raj, appellant in Cr. A. 166, Davinder Singh @ Bittoo, appellant in Cr. A. 167 and Avtar Singh, appellant in Cr. A. 238, were found guilty by a common judgment dated 31st May, 1984, for offences under Sections 399 and 402 of the Indian Penal Code and Under Section 27/54/59 of the Indian Arms Act. By order dated 18th August, 1984, each of the appellants was sentenced to two years' rigorous imprisonment under Section 399 and 402 of the

Indian Penal Code and also to undergo rigorous imprisonment for two years under Sections 27/54/59 of the Indian Arms Act. The sentence were, however, directed to run concurrently, Separate appeals of Yog Raj and Davinder Singh appellants were filed through counsel. Both these appellants were directed to be released on bail on furnishing bond in the sum of Rs. 5000.00 with one surety in the like amount by each of them. Avtar Singh, however, submitted his appeal through jail. The learned Judge who admitted the appeals appointed Mr, D. K. Jain, Advocate, as amicus curiae. I may note that these connected appeals have been on my board since last week. The appeals reached for hearing on 16th August, 1985, after lunch. As I was busy in a Division Bench matter, the appeals could not be taken up on that day. On 16th August as well as to-day the counsel who had filed appeals 166 and 167 of 1984 did not put in appearance. Even Mr. D. K. Jain, Advocate, amicus curiae, is absent. The State is also not represented.

(3) I have gone through the judgment under appeal and also the statements of the witnesses.

(4) It was the prosecution case that the three appellants Along with their co-accused, Lakhvinder Singh and Manohar Singh, were apprehended by a police patrol party at about 1.15 a.m. on 2nd September, 1983. The police had received an information that some dacoits were going to assemble near railway gate No. 2 of Onkar Nagar in order to commit a dacoity in a house in Onkar Nagar/TriNagar, Delhi. On search of their persons, the appellant.Yog Raj was found in possession of a country made pistol. It was loaded with one cartridge. He was also in possession of a live cartridge which was secreted in his pocket. Appellant Davinder Singh was found in possession of a dagger and an iron rod. Appellant Avtar Singh was found in possession of a spring-actuated knife (Button-operated). Their co-accused, namely, Manohar Singh who, it seems, 'has not filed any appeal against his conviction and sentence, was also Found in possession of a country-made pistol and three cartridges. The other co-accused Lakhvinder Singh was also found in possession of a button-operate knife. Lakhvinder Singh. also.has.-not filed any appear. , ....

(5) In support of its case the prosecution 'examined seven' witnesses', namely, Head Constable Uddal Singh.,(PW.1) Inspector Yashvir Singh (PW2); H. C. Om Parkash (Public Witness 3); A. S. I. Mange Ram' (Public Witness 4); A. S. I. Kanshi Ram (Public Witness 5); S. I. Niranjn Singh (Public Witness 6) and H. C. Harswarup (PW 7). '

(6) P. W. Uddal Singh proved the recording of the first information report on receipt of memos. Public Witness .1/A to Public Witness . 1/D from Sub-Inspector Niranjn Singh. These memos were sent to police station Lawrence Road, where this witness was posted as duty officer at the relevant time. Head Constable Harswarup (Public Witness 7) proved the deposit of the case property in the police station. The remaining five witnesses were members of the police party. .

(7) Public Witness . 2 Inspector Yashvir Singh who was the Station House Officer of Police Station Lawrence Road, deposed that he had received secret information that some persons were going to assemble for the purpose of committing a dacoity near the above-said railway gate. On receipt of that information he organized a raiding party. He got issued arms and ammunition, to the members of the police party. He stated that he received the information at police post Shanti Nagar while he was there on patrol duty at about 12 mid-night. He came back to the police station and left the jeep there. After organising the raiding party, reached the spot at about 12.50 a.m. and after taking up positions waited for the arrival of the dacoits. The accused reached there and assembled near a heap of wood close to the railway gate. He further stated that 'I over-heard one of them had uttered that they had sufficient arms and ammunition and that it was the proper time in the night and that they would commit dacoity somewhere in Onkar Nagar in Trinagar area. When those five persons tried to leave that place for the above purpose I challenged all of them and told them that they have been encircled by the police and if they tried to run away they would be killed. On my challenge all those persons suddenly started running away from that spot.' He further stated that the accused were apprehended by various members of the raiding party and, as noticed above, on their personal search arms and ammunition were recovered from their possession. Public Witness . 3 Om Parkash Head Constable deposed that he also over-heard the conversation of the accused when they had assembled

near the heap of wood. It was to the effect that they had sufficient arms and ammunition and that it was proper time of the night to commit dacoity either in Trinagar or in Onkar Nagar. It was after that conversation that the Station House Officer (Public Witness 2) gave a warning to the accused that they had been encircled and if they tried to run away they would be killed. A. S. 1. Mange Ram (Public Witness 4) corroborated the other witnesses regarding the formation of the raiding party, its arrival at the spot and that the members of that party had directions of the Station House Officer to take up positions encircling the spot. He also stated that he had over-heard the talk of the accused regarding their being in possession of sufficient arms and ammunition and that they ought to commit dacoity in a house in Onkar Nagar. A. S. I. Kanshi Ram (Public Witness 5) who was a member of the raiding party also stated that he heard the aforesaid talk between the accused. To the same effect is the version given by Sub-Inspector Niranjjan Singh (Public Witness 6).

(8) All the witnesses were able to correctly identify the accused in the Court. That each one of the accused was in possession of an arm, has been deposed to by all the witnesses.

(9) The first question which arises for consideration is whether the appellants herein can be said to have committed offences under Section 399 and 402 of the Indian Penal Code. Sections 399 and 402 read as under:-

'399. 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. 402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for 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.'

In the present case, as is clear from the resume of facts given above, the five accused including the three appellants had assembled near the railway gate in question on 2nd September, 1983, at 1.15 a.m. They were in possession of unlicensed fire arms and ammunition, It is apparent that those persons had assembled for the purpose of committing dacoity. All the witnesses have stated

that they had over-heard the talk amongst the accused regarding the intention to commit a dacoity. The ingredients of Section 399, however, in my view are not proved. It is a requirement of that section that the accused should have done some act to get ready for committing dacoity. In this case they were arrested at the point of assembly. I hold that offence under Section 399 Indian Penal Code is not made out. The guilt of the appellants, however, under Section 402 of the Indian Penal Code is established. The charges under the Arms Act are also established.

(10) While setting aside the conviction and sentence of the appellants under Section 399, Indian Penal Code, I uphold their conviction and sentence under Section 402 of the Indian Penal Code. I also uphold their conviction and sentence under Section 27/54/59 of the Arms Act. The sentence of two years' rigorous imprisonment imposed upon the appellants under Section 399, Indian Penal Code, is set aside but the sentence of two years' rigorous imprisonment under Section 402 of the Indian Penal Code awarded to the appellants is upheld. The sentence awarded under Section 27/54/59 of the Arms Act is also upheld.

(11) The result is that the appeals are allowed to the extent indicated above.

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