

**Kali Charan Vs. State**

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**Court :** Delhi

**Decided On :** Jul-24-1984

**Reported in :** 1984(2)Crimes392; 1984RLR535

**Judge :** D.R. Khanna, J.

**Acts :** [Arms Act, 1959](#) - Sections 27

**Appeal No. :** Criminal Appeal No. 66 of 1982

**Appellant :** Kali Charan

**Respondent :** State

**Advocate for Pet/Ap. :** Avinash Ahlawat and; G.S. Sharma, Advs

**Judgement :**

**D.R. Khanna, J.**

(1) This appeal has been moved by Kali Charan, Bachhu, Jagan Nath and Suraj Bali against their conviction under section 399/402 Indian Penal Code . Each one of them was further convicted u/s 27 of the Arms Act. For the first offence they were awarded four years, R.I, and a fine of Rs. 500.00. No punishment by way of imprisonment in case the fine was not paid, was specified. Each of them was also sentenced to two years R.I. for the offence under the Arms Act.

(2) Briefly stated the prosecution case was that a police party headed by Raj Pal Mehta, Inspector was on patrol duty on the evening of 19.9.79 in the area of Beriwalla Bagh. Most of them were in a jeep, while one head constable Darshan Lal and Chuni Lal, A.S.I. were on a two-wheeler scooter. There they received an information from two other S.I.'s namely, Ved Prakash and Sarvjeet Singh to the effect that some persons had assembled at a mazar near Upadhyaya hospital, Hari Nagar, and they were planning to commit dacoity. Raj Pal Inspector then deputed Chander Bhan, A.S.I. and Ved Prakash S.I. to verify the information. They returned and confirmed that information was correct. The police party then proceeded to the mazar and divided itself in three groups. They approached the same from three sides. The fourth side of the mazar was protected in the sense that there was water logging there. As they reached the mazar, they found 5 persons including the 3 appellants there. They were then talking which showed that they were planning to commit a dacoity. The police party then apprehended four of the persons there, while the 5th whose name was later learnt as Lotan, escaped from the spot. From Kali Charan and Jagan Nath each, one pistol and two cartridges were recovered. Suraj Bali was found to be in possession of a buttoned knife. Hari, the 4th person who was apprehended, absconded during the trial, and, was, therefore, declared a proclaimed offender. He has still not been arrested.

(3) The prosecution evidence consisted of police officials who had formed part of that raiding party. They have testified to the manner in which the patrolling was being done in the area and information about some person planning to commit dacoity was received. They further stated that they proceeded to the spot and apprehended 4 of the persons present there, while the fifth escaped.

(4) The evidence which could have established that the persons assembled there were planning to commit dacoity could have been the talk which these persons were allegedly having. Surprisingly there is no evidence about the same on record. None of the witnesses examined has stated as to what that talk was, and how far it was deduced there from that they were planning to commit dacoity. The mere presence of some persons with arms at a place could not necessarily lead to the inference that they had designs to commit dacoity anywhere. At the most they

could be charged for being in possession of arms. It could be their other conduct or talk which could bring out what their intentions were. Unfortunately on this aspect the prosecution evidence is entirely silent. It cannot be, therefore, said that prosecution has succeeded in establishing that the persons apprehended at the spot had any plans of committing dacoity.

(5) Only one of the witnesses, namely Chander Bhan, S.I. (P.W. 5) has in a vague manner mentioned of the persons talking about the commission of dacoity. It is not even made clear if they were talking of any dacoity committed in the past or that they were intending to do so that night. This vague statement does not lead to any inference of the intention of the accused to commit dacoity.

(6) Even otherwise it would appear highly improbable that the accused persons would see three police parties approaching and surrounding them, and they would still talk in their presence of their plan to commit dacoity.

(7) With this state of the evidence on record, I am unable to sustain the conviction of the three appellants u/s 399/402 Indian Penal Code . The appeal to that extent is allowed.

(8) I next advert to the conviction under the Arms Act. Both Kali Charan and Jagan Nath were found to be in possession of a pistol and two cartridges each, while Suraj Bali had a knife. The evidence in this regard has been throughout consistent and all the witnesses testified to the possession of these arms with them. The accused in their statements u/s 313 Cr, P.C. have taken the simple stand that they were apprehended from their houses. No circumstance has been brought out to show that the police was out to implicate them falsely so far as the recovery of arms was concerned. Their conviction, therefore, under the Arms Act is maintained. In fact, Jagan Nath was tried separately under the Arms Act and he was convicted. Kali Charan has already been in detention all this period. He has thus already undergone the sentence. As regards Suraj Bali, a knife had been recovered. He is at present on bail. It is not shown that he is a previous convict. He is in the circumstances, allowed the benefit of probation and required to furnish a bond for Rs. 2,000.00 for good behavior for a period of six months to the satisfaction of the trial court. On his failure to furnish such bond, he shall undergo

R.I. for six months.

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