

Vipul and ors. Vs. State of U.P. (Now State of Uttarakhand)

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Court : Uttaranchal

Decided On : Jul-09-2010

Judge : Prafulla C. Pant, J.

Appellant : Vipul and ors.

Respondent : State of U.P. (Now State of Uttarakhand)

Disposition : Appeal allowed

Judgement :

Prafulla C. Pant, J.

1. These two appeals are directed against the same judgment and order dated 22.08.1996, passed by III Addl. Sessions Judge, Nainital, in Sessions trial No. 82 of 1991, Sessions Trial No. 82-A of 1991, Sessions Trial No. 77 of 1991, Sessions Trial No. 78 of 1991, Sessions Trial No. 79 of 1991, Sessions Trial No. 80 of 1991, and Sessions Trial No. 81 of 1991, whereby accused/appellants, namely Vinay, Nikhil, Vipul, Sadhu and Mahesh have been convicted under Section 399, 402 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and under Section 25 of the Arms Act. Each one of the convicts has been sentenced to rigorous imprisonment for a period of four years under Section 399 of I.P.C., and directed to pay fine of Rs. 500/-, rigorous imprisonment for a period of three years under Section 402 of I.P.C., and directed to pay fine of Rs. 200/-. Each one of the convicts Vinay and Nikhil has been further sentenced to rigorous imprisonment for

a period of one year under Section 25 of Arms Act, and directed to pay fine of Rs. 200/-. Each one of the convicts Vipul, Sadhu and Mahesh has been sentenced to rigorous imprisonment for a period of six months under Section 4/25 of the Arms Act, and directed to pay fine of Rs. 100/-.

2. Heard learned Amicus Curiae & learned Counsel for the appellants and learned Counsel for the State, and perused the lower court record.

3. Prosecution story, in brief, is that on 05.09.1989, P.W. 1 Sub Inspector Jasram Singh got a secret information that the dacoits of Vinay Bangali gang are going to commit dacoity in Avas Vikas Colony, Rudrapur (now part of District Udham Singh Nagar). On this information, P.W. 1 Jasram Singh along with Constables Suraj Pal, Narain Dutt and other police personnel, armed with necessary weapons, proceeded towards Avas Vikas Colony. At about 00:30 hours (midnight), six persons were seen coming, who were talking among themselves that they were going to commit dacoity in that night. The police party challenged the miscreants and caught five of them. One succeeded in escaping from there. The arrested persons are accused/appellants Vinay, Nikhil, Vipul, Sadhu and Mahesh. A search of their person was made in which country made pistols were found in possession of accused Vinay and Nikhil, and knives were found in the possession of accused Vipul, Sadhu and Mahesh. The miscreants had no license to keep the unlicensed arms. Necessary recovery memo was prepared by the police, and a first information report was registered at police station Kichha, at about 04:30 A.M., on 06.09.1989. Crime No. 613 of 1989 was registered against all the five appellants, in respect of offences punishable under Section 399 and 402 of I.P.C. Separate Crime No. 614 of 1989 against accused Vinay, Crime No. 615 of 1989 against accused Nikhil (both under Section 25 of Arms Act); Crime No. 616 of 1989 against accused Sadhu, Crime No. 617 of 1989 against accused Vipul and Crime No. 618 of 1989 against Mahesh (all the three in respect of offence punishable under Section 4/25 of Arms Act) were registered. The investigation was conducted by Sub Inspector Ifthkhar Hussain (P.W. 3), who, after investigation, submitted charge sheets against the accused/appellants.

4. The Magistrate, on receipt of the charge sheets, after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., appears to have committed all the six cases to the court of Sessions, for trial. Learned Asstt. Sessions Judge, Nainital, on 04.06.1991, framed charge in respect of offences punishable under Section 399 and 402 of I.P.C. against all the five accused, namely Vinay, Nikhil, Vipul, Sadhu and Mahesh. They pleaded not guilty and claimed to be tried. Separate charges were framed by the learned Asstt. Sessions Judge in respect of offences punishable under Section 25 of Arms Act and 4/25 of Arms Act against the five accused. In respect of other charges also, the accused pleaded not guilty, and claimed to be tried. On this, prosecution got examined P.W. 1 Sub Inspector Jasram Singh, P.W. 2 Head Constable Ram Singh, and P.W. 3 Sub Inspector Ifthkhar Hussain (Investigating Officer). The oral and documentary evidence was put to the accused under Section 313 of Cr.P.C., in reply to which they alleged the same to be false. However, no evidence in defence was adduced. After hearing the parties, the trial court found all the five accused guilty not only in respect of charge of offence punishable under Section 399 and 402 of I.P.C., but also in respect of 25 Arms Act (as against accused Vinay and Nikhil), and that of one punishable under Section 4/25 of Arms Act (as against accused Vipul, Mahesh and Sadhu). They were heard on sentence, and each one of the convicts was sentenced by the trial court to rigorous imprisonment for a period of four years and directed to pay fine of Rs. 500/- under Section 399 of I.P.C.; rigorous imprisonment for a period of three years and directed to pay fine of Rs. 200/-, in respect of offence punishable under Section 402 of I.P.C.; rigorous imprisonment for a period of one year and fine of Rs. 200/- (as against accused Vinay and Nikhil) under Section 25 of Arms Act; and rigorous imprisonment for a period of six months and fine of Rs. 100/- (as against accused Vipul, Sadhu and Mahesh). The defaulter convicts were directed to undergo further three months simple imprisonment for default in payment of fine of Rs. 500/-, simple imprisonment for a period of two months, in default of payment of fine of Rs. 200/-, and simple imprisonment for a period of one month, in default of payment of fine of Rs. 100/-.

5. Aggrieved by said judgment and order dated 22.08.1996, accused/appellants Vinay and Sadhu preferred Criminal Appeal No. 1752 of 1996 (new No. 1385 of

2001) before the Allahabad High Court on 23.09.1996. The other three accused/appellants preferred appeal from Central Jail, Bareilly, which was registered as Criminal Appeal No. 950 of 1997 (new No. 1384 of 2001). Both the appeals are transferred to this Court under Section 35 of the U.P. Reorganization Act, 2000, (Central Act No. 29 of 2000), for their disposal.

6. Learned Amicus Curiae and learned Counsel for the appellants argued before this Court that the prosecution story narrated by P.W. 1 Sub Inspector Jasram Singh is not supported by any public witness. It is further contended that what to say of the public witnesses, even the other police witnesses, namely Dhoom Singh, Ram Swaroop, Rishipal Singh and Ram Veer Singh before whom recoveries are said to have been made from the appellants were not got examined before the trial court, on behalf of the prosecution. It is further argued that the trial court has committed error of law in recording conviction against the appellants in respect of offences punishable under Section 399, 402 of I.P.C., and under Section 25 and 4/25 of the Arms Act, on the sole testimony of P.W. 1 Jasram Singh.

7. Learned Counsel for the State failed to explain the circumstances under which no one except P.W. 2 Ram Singh from the police party could be produced before the trial court to support the prosecution story narrated by P.W. 1 Sub Inspector Jasram Singh, particularly, when there was no public witness. In the facts and circumstances of the case, this Court is of the view that the trial court has erred in law in believing that the charge against the appellants are proved against the accused beyond reasonable doubt.

8. For the reasons as discussed above, both the appeals deserve to be allowed. Accordingly, the same are allowed. The impugned judgment and order dated 22.08.1996, passed by III Addl. Sessions Judge, Nainital, in S.T. No. 82 of 1991, S.T. No. 82-A of 1991, S.T. No. 77 of 1991, S.T. No. 78 of 1991, S.T. No. 79 of 1991, S.T. No. 80 of 1991 and S.T. No. 81 of 1991, is hereby set aside. All the accused/appellants, namely Vinay, Mahesh, Nikhil, Vipul and Sadhu are hereby acquitted of the charge framed against them in respect of offences punishable under Section 399, 402 of I.P.C., and one punishable under Section 25 and 4/25

of the Arms Act. Two of the accused/appellants Vinay and Sadhu are on bail. They need not to surrender. Other accused/appellants, if in jail are directed to be set at liberty, if not required in connection with any other crime. Lower court record be sent back.

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