

Allahabad High Court
Ruri vs State on 1 March, 2021
Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 19.11.2020

Delivered on 01.03.2021

CRIMINAL APPEAL No. - 161 of 1982

RuriAccus
Vs.
State of U.P.

For Appellant : Sri Vivek Prasad Mathur, Advocate
For Respondent/State : Sri Amit Kumar Singh, A.G.A.

Connected With

CRIMINAL APPEAL No. - 156 of 1982

1. Kishore (Since Died)
2. Ranjit (Since Died)
3. JagdishAccused-App
Vs.
State of U.P.Respo

For Appellant : Ms. Archana Singh, Amicus Curiae

For Respondent/State : Sri Amit Kumar Singh, A.G.A.

Hon'ble Raj Beer Singh, J.

1. Both these appeals have been preferred against the common judgement and order dated 16.01.1982 passed by learned IInd Additional Sessions Judge, Bulandshahar in S.T. Nos. 782 of 1980, 321 of 1981, 322 of 1981, 323 of 1981 and 324 of 1981, under Sections 399, 402 of Indian Penal Code (hereinafter referred to as 'IPC') and Section 25 of Arms Act, police station Pahasu, district Bulandshahar, whereby accused-appellants namely, Ruri, Kishore, Ranjit and Jagdish have been convicted under Sections 399, 402 IPC and Section 25 of Arms Act and they have been sentenced to undergo four years rigorous imprisonment under Section 399 IPC, three years rigorous imprisonment under Section 402 IPC and one year rigorous imprisonment under Section 25 of Arms Act. All the sentences were directed to run concurrently.

2. During pendency of these two appeals, accused-appellant No. 1 and 2 namely, Kishore and Ranjit in criminal appeal no. 156 of 1982 have passed away and thus the appeal No. 156 of 1982 in respect of said accused-appellant Kishore and Ranjit has been abated by order dated 12.07.2016 passed in criminal appeal no. 156 of 1982.

3. According to prosecution version, on 23.06.1979 a police party comprising of PW-1 S.I. Devichand, PW-2 constable Sardar Singh, PW-3 S.O. Suraj Pal Singh and some other police officials have left the police station Pahasu, district Bulandshahar at around 09.15 PM for patrolling in the area of police station. After visiting village Pitampur, Sarangpur and Nagla Hari Singh, they were proceeding towards village Lal Nair and when they reached near Dharamshala Hargyan in the jungle of village Turkipura, they heard some voice from inside the said Dharamshala and on suspicion that there may be some anti-social elements, S.I. Surajpal divided the police party into two groups and after that they saw that five persons were sitting and smoking in the veranda of said Dharamshala and the police officials heard their conversation and that one of them was saying that their companion Pahalwan has not come so far. On this, other miscreant said that house of Chhanga Khatik is situated in one side of village Turkipura and they can easily commit dacoity there. At the same time, police party challenged them and four miscreants were apprehended at the spot, whereas one of the miscreant succeeded in fleeing away from there. The identity of the miscreants, who were apprehended at the spot, was revealed that Ruri, Kishore, Ranjit and Jagdish and one country made pistol of 12 bore along with five cartridges was recovered from Kishore, one country made pistol of 12 bore along with four cartridges was recovered from Ranjit, one country made pistol along with three cartridges was recovered from Ruri and one country made pistol along with three cartridges was recovered from Jagdish. The recovered weapons were sealed at the spot and taken into possession vide recovery memo Exhibit Ka-2 to Exhibit Ka-5. Some beedis and matchbox, lying at the spot, were also seized vide seizure memo Exhibit Ka-6. Two torches were also seized vide seizure memo Exhibit Ka-10 and Exhibit Ka-11. Accused persons were brought to the police station and a case was got registered against them on 24.06.1979 at 03.15 AM under Sections 399, 402 IPC and

Section 25 of Arms Act.

4. The case was investigated by PW-4 S.I. Hukam Singh. Site plan of spot was prepared and statements of witnesses were recorded and after completion of investigation, all the accused-appellants were charge-sheeted under Sections 399, 402 IPC and Section 25 of Arms Act.

5. In support of its case, prosecution has examined four witnesses. After evidence, accused-appellants were examined under Section 313 Cr.P.C., wherein they have denied evidence and claimed that they were falsely implicated. However, no evidence was led in defence.

6. After hearing and analysing evidence on record, accused-appellants were convicted by the trial court under Sections 399, 402 IPC and Section 25 of Arms Act vide impugned judgment and sentenced as stated in paragraph no. 1 of this judgment.

7. Being aggrieved by the order of conviction, accused-appellant Ruri has preferred criminal appeal No. 161 of 1982 and accused-appellants Kishore, Ranjit and Jagdish have preferred criminal appeal no. 156 of 1982 before this Court.

8. Heard Sri Vivek Prasad Mathur, learned counsel for accused-appellant Ruri in criminal appeal no. 161 of 1982 and Ms. Archana Singh, learned Amicus Curiae for surviving accused-appellant Jagdish in criminal appeal no. 156 of 1982 and Sri Amit Kumar Singh, learned A.G.A. for the State.

9. In evidence, PW-1 S.I. Devichandra has inter-alia stated that in month of June 1979 he was posted as sub-Inspector at police station Pahasu. On 23.06.1979 he along with Station officer Surajpal Singh other police officials left police station for patrolling and after visiting villages Pitampur, Nagla Hari Singh while going to village Tukipura, they reached near Hargayan dharamshala. There they felt some commotion and smoking from the said dharmshala. The station officer divided the police party in two groups and after that they reached at the said dharmshala and by concealing themselves by the side of wall, they heard the conversation of five persons, who were sitting in verandah of dharamshala and that one of them was saying that let us wait for Pahalwan and on this another stated that in village Turkipuri, the house of Changa Khatik is outside of village and that they can easily commit a dacoity there and that now they must not waste time and must proceed. At the same time, the police party challenged them and thereafter four of the miscreants, including the appellants, were apprehended at the spot while one succeeded in fleeing away. On their search, one country made pistol of 12 bore was recovered from each of the accused-appellant. Some live cartridges were also recovered from them.

10. PW-2 Constable Sardar Singh and PW-3 SO Surajpal Singh have also reiterated same version and deposed about apprehension of accused-appellants and recovery country made pistols and cartridges from them in the similar manner as stated by PW-1.

11. PW-4 SI Hukm Singh has conducted investigation.

12. In this case accused-appellants have been convicted under Section 399/402 of IPC and Section 25 of Arms Act. For better understanding, the provisions of Sections 399 and 402 IPC are reproduced herein as under:

"399. Whoever makes any preparation for committing dacoity, shall be punished with 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."

Thus, in order to prove the charge under section 402 IPC, it is necessary for the prosecution to prove that five or more persons have assembled with the intention to commit dacoity, whereas for proving the offence under section 399 IPC, it is necessary for the prosecution to prove that some additional steps have been taken in the course of preparation to commit dacoity.

13. In the instant case, it may stated that as per prosecution version the police officials have no previous information regarding any miscreant at alleged dharamshala and when they reached near dharamshala they felt presence of some persons in the dharamshala and by concealing themselves by the side of wall they heard conversation of accused persons, who were sitting in verandah of dharamshala and that one of them was saying that let us wait for Pahalwan and on this another stated that in village Turkipuri, the house of Changa Khatik is outside of village and that they can easily commit a dacoity there and that now they must not waste time and must proceed. As per prosecution version there were 8 police officials in the police party. It appears highly unreliable and improbable that such number of police officials after reaching at the dharamshala, and by concealing by the side wall of alleged dharamshala, might have seen the alleged five persons and even heard their alleged conversation but said miscreants could not feel their presence. Further, it does not appears natural that the alleged miscreants would have been talking in such loud voice about committing dacoity that it could be heard by members of police party, who were outside of the dharamshala. It appears thoroughly improbable that police officials could have heard the conversation of said miscreants, who were sitting inside the dharamshala or that the said miscreants would have been talking in such loud voice that now they must go for committing dacoity.

14. Further as per prosecution version one of the miscreant has succeeded in running away from the spot. It appears from record that there were about 8-9 police officials in the police party but it has not been clarified that despite there being sufficient number of police officials present at the spot, how one of the miscreant managed to escape from dharamshala. It is a question, which the prosecution has failed to give answer and that neither any step has been taken by the police to apprehend the said miscreant nor the police constables, who chased the said accused were examined so as to establish the charge under section 402 i.e. assembly of five persons to commit dacoity. Even during investigation, identity of said miscreant could not be established. There is nothing to show that why the accused persons, who were apprehended at the spot, were not intro-gated about the identity of said miscreant. Considering entire facts this possibility can not be ruled out that the story regarding fleeing way of one of the miscreant was introduced with intention to bring the number of miscreants five as this figure was necessary to apply section 402 IPC.

15. It may also be seen that prosecution version is that when the police party heard conversation of alleged miscreants, one of them was saying that let them wait for their companion Pahalwan and other stated that as the house of Changa khatik is outside of village, they must go for committing dacoity and at the same time they apprehended the accused persons. There is nothing to show that except alleged bald talking, the miscreants have taken any further step for the purpose of committing dacoity. Even there is no such version that the miscreants have started going for that purpose. Here it would be pertinent to mention that in the case of Shridhar Koeri Vs. State of Bihar, 2001 (43) ACC 5, Hon'ble Apex Court has held that the mere fact that the accused was arrested on the spot and some articles including fire arms were recovered from his possession would not be sufficient to prove the charge that he had assembled for making preparation for commission of dacoity.

16. Another point is that alleged country made pistols and cartridges, recovered from accused-appellants, were not sent to FSL for examination. Thus, there is no evidence that alleged country made pistols, shown recovered from accused-appellants, were in working order and the cartridges were alive. In case of State of Punjab Vs. Jagga Singh, AIR 1998 SC 3113, Hon'ble Supreme Court observed as under:

"Though the evidence of PW 1, HC Baldev Singh and PW 3, Basant Singh establishes that the respondent was found in possession of one 12 bore DBBL gun and found live cartridges, there is no satisfactory evidence to show that the said gun and the cartridges were sent for examination by the Central Forensic Scientific Laboratory. There is no report from the Forensic Scientific Laboratory nor any other evidence to prove that the said gun was in a working condition or that the said cartridges were live cartridges..... Therefore, in absence of any evidence to show that the respondent was found in possession of one .12 bore DBBL gun in a working condition and four live cartridges, the respondent cannot be convicted."

Thus, the instant case is also affected on the ground that alleged country made pistols and cartridges recovered from accused-appellants have not been sent to FSL and there is no such expert report or any other evidence that the said pistols were in working order.

17. At this juncture it may be observed that prosecution version is that the miscreants have uttered that now they must go for committing dacoity and as they ready to go from the dharamshala, the police officials apprehended the four appellants. There is absolutely no evidence that any of the appellant has offered any resistance. In the case of State of UP Vs. Punni, 2008 Cr.L.J 1028 (SC), the dacoits were arrested without any resistance or struggle and contents in the FIR that police had received information from an informer was not supported by the sub-Inspector and the Hon'ble Apex court held that the accused was entitled for acquittal. In the instant case too there is nothing to show that alleged miscreants have offered any resistance.

18. It would also be relevant to mention that in first information report there was no such version that whether the police party has left the police station in any vehicle or by on foot, however, PW 1 has stated that they were on foot and it is the case of prosecution that the police party has left the police station at 09.15 PM and thereafter they visited three villages and that at around 11.15 PM they

reached at the said dharamshala. As per first information report the distance of spot from police station has been shown three miles. It does not appear reliable that within a period of two hours they on foot visited three different villages and thereafter at 11.15 PM they reached at the alleged dharamshala. Further, the alleged departure entry, by which the said police party has left police station for patrolling, has not been proved.

19. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread, which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. [Vide Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808; State of Rajasthan V. Raja Ram, (2003) 8 SCC 180; Chandrappa & Ors V State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan V. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain & Ors. V. State of Assam and Anr., (2015) 11 SCC 242]. In the instant case considering entire evidence it appears that prosecution version lacks genuineness and authenticity. The prosecution version appears unnatural as it is quite improbable that the said police officials could have heard any such conversation of appellants that they were saying that they would commit dacoity. Even otherwise mere alleged conversation hardly fulfils the necessary ingredients of offence under section 399 and 402 IPC. In attending facts and circumstances of the case it can also not be ruled out that storey that one of the miscreant has run away from spot might have been introduced to bring out the figure five so that the case may brought within the ambit of offence punishable under section 402 IPC. Further there is no evidence that alleged recovered pistols were in working order. Considering entire facts and evidence, prosecution version appears doubtful and thus, all the accused-appellants are entitled for benefit of doubt.

20. In view of above, the conviction and sentence of accused-appellants Ruri and Jagdish under section 399, 402 IPC and section 25 Arms Act, recorded by trial court, is set aside and they are acquitted of the charges levelled against them. The appellants are on bail and thus, no further order is required.

21. Appeal is accordingly, allowed.

22. This court appreciates the assistance rendered by Ms Archana Singh, learned Amicus Curiae and it is directed that she will be entitled for getting Rs 5000/ from State Government as remuneration.

23. Office to transmit the record of trial Court as well as copy of the judgement to the Court below.

Dated: 01.03.2021 Anand (Raj Beer Singh, J)