
(2004) 05 MP CK 0009

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 805 of 2002

Arjun Yadav and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2005) 1 MPLJ 270

Hon'ble Judges : S.L. Jain, J

Bench : Single Bench

Advocate : Mohd. Ali with Vijay K. Shukla No. 2, for the Appellant; Dinesh Joshi, Panel Lawyer for State, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Appellants Arjun and Mahesh stand convicted for an offence punishable u/s 395, Indian Penal Code and sentenced to R.I. for 5 years with fine of Rs. 1000/- each by the impugned judgment and order dated 6-5-2002, passed by Additional Sessions Judge, Khurai, in Sessions Trial No. 133/2001.

The prosecution case in brief is that in the intervening night of 12/13-9-2000, complainants Deepak Jaiswal (PW-2) and Mevalal (PW-4) were travelling by Ahmedabad-Gorakhpur Express Train for their respective destination. The train moved from Bina Station at about 12.08 A.M. When the train was rolling between village Karoda and Mohasa, certain miscreants pulled the chain to stop the train and looted the suitcase and other articles of Deepak Jaiswal and Mevalal on the point of revolver. Mahesh Singh was travelling in the same train in another compartment. His articles were also looted by the miscreants. After the incident of dacoity, the train moved from the spot and stopped at Lalitpur Station where Deepak Jaiswal and Mevalal informed the police about the incident. Thereafter, when the train reached Jhansi, a written report Ex. P-1 was lodged at GRP,

Jhansi. As the incident took place within the jurisdiction of GRP, Bina, the matter was transferred to it.

Appellants and seven other accused persons were arrested. In pursuance of the information given by the appellant Arjun currency notes of Rs. 800/-, a white shirt and one attache were recovered. At the instance of appellant Mahesh, one pant and currency notes of Rs. 800/- were recovered. The recovered articles were identified by complainant Deepak Jaiswal and Mevalal. They also identified the accused persons. One country made pistol which is alleged to have been used in commission of the offence was also recovered at the instance of appellant Mahesh.

Charges for the offences punishable under sections 395 and 397, Indian Penal Code and also u/s 27 of the Arms Act were framed against the accused persons. They abjured their guilt and pleaded their innocence.

On the basis of the above prosecution case, the trial Court came to the conclusion that the prosecution has established its case for the offence punishable u/s 395, Indian Penal Code against the appellant and accordingly by the impugned judgment and order convicted and sentenced them as indicated above.

Learned trial judge also came to the conclusion that the prosecution failed to establish its case against the acquitted accused persons.

Aggrieved by the aforesaid conviction and sentences the appellants have filed this appeal.

I have heard Shri. Mohd. Ali, with Shri Vijay K. Shukla, learned counsel for the appellant No. 2 and Shri Dinesh Joshi, learned Panel Lawyer for the State. None appeared for appellant No. 1 to argue the case, therefore, in view of the judgment rendered in Bani Singh and others Vs. State of U.P., , the case was closed for orders.

I have carefully gone through the record, read the memo of appeal, ground raised therein and perused the evidence available on record.

Deepak Jaiswal (PW-2) has stated that on the relevant date he boarded Ahmedabad-Gorakhpur Express Train for Gwalior. At about 12 O'clock at night, when the train moved from Bina Railwaystation, three miscreants picked up his luggage. He informed them that there is no valuable in the luggage and it only contains shoe and papers. One of the miscreants told his colleague to shoot him and the miscreants took away his luggage. According to this witness one of the miscreants was armed with countrymade pistol and two of them were armed with sticks.

Mevalal (PW-4) has stated that he boarded Ahmedabad-Gorakhpur Express train for Lucknow. The train left Bina Station at about 12 O'clock in the night. After sometime the train was stopped by pulling the chain. Two miscreants came near

his berth, snatched his suitcase and alighted from the train. In other compartment also the incident of robbery took place. He informed the police at Lalitpur and Jhansi regarding the incident.

From the evidence of Deepak Jaiswal, it is clear that three miscreants looted his property. From the evidence of Mevalal also it is clear that two persons entered his compartment and looted his valuables. The train was stopped by pulling the chain.

As the incident of loot was also committed in other compartments of the same train, it was one single incident of robbery and as five or more persons participated in the robbery it was an incident of dacoity.

This brings us to the crucial question as to whether appellant participated in the alleged dacoity. Deepak Jaiswal (PW-2) has stated that at Sagar Jail he identified appellant Mahesh as one of the miscreants in the identification parade as per Ex. P-2. He also identified appellant Arjun as one of the miscreants in the identification parade held at Sagar Jail. Mevalal (PW-4) has also stated that he identified appellant Mahesh in the identification parade at Lalitpur Jail as per Ex. P-4.

D.R. Udeth, Naib Tehsildar/Executive Magistrate, Sagar has stated that identification parade was held by him at Sagar Jail for identification of Arjun, Mahesh, Kalia and Pillu. Twenty four persons with similar features were mixed. Mevalal identified all the four persons. The identification memo was prepared. From the evidence of this witness it is clear that both the appellants were identified as miscreants by Deepak Jaiswal and Mevalal. Both these appellants were also identified by the aforesaid witnesses during the trial. At the time of incident appellants were seen by the witnesses and the witnesses had sufficient time to see them, therefore, their identification in the court cannot be said to be doubtful.

B.R. Singh (PW-10) has stated that at the instance of Arjun currency notes worth Rs. 800/-, a white shirt and one VJP attache were recovered as per Ex. P-10. Similarly, at the instance of appellant Mahesh currency notes worth Rs. 800/- and a blue pant were recovered as per Ex. P-3. Deepak Jaiswal (PW-2) has stated that an attache, article A, pants articles B and C, shirt, article E, and bed sheet, article F, were stolen from his possession and the same were identified by him in the identification parade. Mevalal (PW-4) has also stated that he identified his white shirt, article H, which was stolen from his possession during the incident in identification parade as per Ex. P-3. From the evidence of Executive Magistrate, Deepak Jaiswal and Mevalal, it is clearly established that the looted articles were correctly identified at Tehsil office Bina.

I do not find any fault in the finding recorded by the trial Court that stolen articles were recovered at the instance of appellants and the same were identified as stolen articles. Thus, the appellants have been identified during the identification parade and also in the court during the trial, stolen articles were

also recovered from their possession, therefore, their conviction u/s 395, Indian Penal Code cannot be faulted with.

Learned counsel for the appellant No. 2 submitted that the appellant is in jail since the date of his arrest i.e., 26-1-2001, therefore, reduction of sentence of imprisonment of appellant No. 2 to the period already undergone by him, would meet the ends of justice.

Dacoity particularly in a running train is a serious crime. A liberal attitude cannot be taken in regard to such offences. It will send a wrong message to the society. In such cases deterrent sentence is called for. Undue sympathy cannot be shown to the offenders convicted u/s 395, Indian Penal Code. Sentence of R.I. for five years imposed by the trial Court is already towards leniency and in the circumstances, I am of the view that the conviction, recorded deserves no alteration and consequently, there is no scope for reduction of the sentence.

Maintaining the conviction and sentence, I dismiss this appeal.