

**(2009) 04 MP CK 0046**

**In the Madhya Pradesh High Court**

Betalal @ Beta Singh, Chhotu Urf Ashok Singh, Suresh Singh  
Urf Baba and Reshmi Urf Rashmi Urf Lala

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision :** 28-04-2009

**Acts Referred:**

Arms Act, 1959 — Section 25(1)(B)

Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 — Section 13A

**Citation :** (2009) 04 MP CK 0046

**Hon'ble Judges :** Rakesh Saxena, J

**Bench :** Single Bench

**Judgement**

Rakesh Saxena, J.—Both the aforementioned appeals arise out of a common judgment of conviction and sentence passed by the First Additional Sessions Judge, Satna, in Sessions Trial No. 291/2005, therefore, they are being disposed of by this common judgment.

2. All the aforesaid appellants have been convicted u/s 25(1) (B) of the Arms Act read with Section 13-A and 11/13 of the Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 (For brevity hereinafter referred to as Dacoity Act) and sentenced to rigorous imprisonment for three years with fine of Rs. 100/-.

3. Appellants were prosecuted for the offences under Sections 148, 399, 400 and 402 of the Indian Penal Code, Section 25(1)(B) of the Arms Act r/w Section 11/13 and 13-A of the Dacoity Act. Trial Court finding the evidence insufficient for bringing home the charges under Sections 148, 399, 400 and 402 of the Indian Penal Code acquitted the appellants of those charges, however, held them guilty u/s 25(1)(B) of the Arms Act read with Section 11/13 and 13-A of the Dacoity Act.

4. In short the facts of the case are that on 11.9.2005 R.P. Mishra, Officer-in-Charge of Police Station, Majhgawan, received information from the informer that

accused persons have assembled in the forest of Deolok for abducting Motilal and they were also making preparation to commit dacoity. After recording the said information in the Rojnamcha, along with police force and some independent witnesses, R.P. Mishra proceeded for the spot. When they located the accused persons in the forest they stealthily surrounded them and heard their conversation. According to prosecution, they were talking about abducting Motilal Jaiswal and committing dacoity in his house. On the alarm raised by the police force, accused persons tried to run away. Two of the miscreants ran away, however, four of them were nabbed at the spot. From their possession guns and live cartridges were seized. After preparing the seizure memorandums and spot map etc., a Dehati Nalishi was recorded at the spot. On examination of the guns and cartridges, they were found to be in working condition. After obtaining sanction from the District Magistrate, charge sheet was filed and the case was put up for trial.

5. All the accused persons abjured their guilt and pleaded false implication.

6. Trial Court mainly relying on the evidence of PW-2 Jai Singh, Head Constable, PW-3 Munnalal, Constable, PW-4 Ramlal Verma, Head Constable, PW-8 Dilip Singh, Constable and PW-9 R.P. Mishra, Sub Inspector, held the accused persons guilty and convicted and sentenced them as mentioned above. Since the prosecution evidence was not found sufficient to prove the offences u/s 399, 400 and 402 of the Indian Penal Code, they were acquitted of those charges.

7. Learned Counsel for the appellants submitted that the independent witnesses viz. Pitambar Garg (PW-5) and Vinay Kumar Pandey (PW-6) did not support the prosecution case; that the case rested solely on the evidence of police officials and that the trial Court did not find evidence of the aforesaid witnesses reliable in respect of offences under Sections 399, 400 and 402 of the Indian Penal Code, therefore, conviction of the accused persons u/s 25(1)(B) of the Arms Act read with Section 11/13 and 13-A of the Dacoity Act was illegal. They submitted that learned trial Court committed error in holding the accused persons guilty of the offence u/s 11/13 of the Dacoity Act. Merely because the offence u/s 25(1)(B) of the Arms Act was committed within the "dacoity and kidnapping affected area", the accused were not liable for the offence u/s 11/13 of the Dacoity Act. Lastly, they submitted that except appellant No. 3 Reshmi @ Rashmi @ Lala of Criminal Appeal No. 826/07, all the other accused have already served out their sentences of imprisonment. Reshmi has also remained in custody for a period of two years and three months. They prayed that the appellants deserve to be acquitted. Per contra, learned Counsel for the State justified the judgment of the trial Court by adopting the reasonings of the learned trial Judge.

8. I have carefully considered the submissions made by the learned Counsel for both the sides and perused the impugned judgment and evidence on record.

9. Sub Inspector Rajendra Prasad Mishra (PW-9), who was Station Officer, Police Station, Majhgawan, categorically stated that on 11.9.2005 at about 8.05 a.m.

he received information from an informer that a gang of Betalal was hiding in the forest of Deolok and the dacoits had assembled and were making preparation for committing dacoity and abduction. After recording the information in General Diary and sending the said information to higher officers, he collected the police force comprising of Constable Jai Singh, Munnalal, Dilip Singh and Sanjay Tiwari etc. and independent witnesses Pitambar Gond and Vinay Kumar proceeded for the spot. They found dacoits sitting beneath a Banyan tree. They were planning to commit dacoity. When they were cautioned to surrender, two of them escaped in the dense forest. However, four persons were nabbed. They disclosed their names to be Beta Singh Gond, Chhotu @ Ashok Singh Gond, Suresh @ Baba Gond and Reshmi @ Rashmi Kol. They also disclosed the names of the persons who had escaped as Baredi Kol and Raja Kol. Arms and ammunitions were seized from their possession. From the possession of accused Betalal a 12 bore gun and 14 live cartridges and 4 empty cartridges were seized vide seizure memo Ex. P/4, a 12 bore gun and 16 live cartridges were seized from the possession of Chhotu vide seizure Ex. P/5, a 315 bore gun and 10 live cartridges were seized from the possession of accused Reshmi @ Rashmi vide seizure memo Ex. P/6, similar 315 bore gun and 12 live cartridges were seized from the possession of accused Baba Gond vide seizure memo Ex. P/7. Accused persons were arrested. After recording Dehati Nalishi, first information (Ex. P/18) was registered. Seized arms were sent for examination in sealed condition. He had obtained sanction from the District Magistrate for the prosecution and filed charge sheet. Despite long crossexamination, nothing could be elicited out to discredit the veracity and truthfulness of this witness. His evidence stood corroborated from the evidence of PW-2 Jai Singh Baghel, Head Constable and PW-4 Ramlal Verma, Head Constable, who too categorically stated that they had accompanied Inspector R.P. Mishra and had found accused persons in possession of the guns and cartridges.

10. PW-1 Premlal Kushwaha, the Arms Clerk of district Satna proved the sanction (Ex. P/1), which was accorded by the District Magistrate, Satna, Nagendra Prasad Mishra.

11. After closely scrutinizing the evidence of aforesaid witnesses, I am of the view that the trial Court rightly acquitted the accused persons of the charge u/s 399, 400 and 402 of the Indian Penal Code. The story of the prosecution that the witnesses overheard the conversation taking place between the accused persons about the plan of committing dacoity and abduction, does not appear true. It is improbable that for 5-6 hours the accused persons would remain talking about the commission of dacoity. However, the evidence of the aforesaid witnesses about the recovery and seizure of the arms and ammunition from the possession of accused persons appears reliable and trustworthy. Merely because the independent witnesses did not support the prosecution case it does not create any dent in the creditworthiness of the police witnesses in the absence of any circumstances indicating any concoction or ill will on their part. Accordingly, finding of conviction of the accused persons u/s 25(1)(B) of the Arms Act recorded by the trial Court is affirmed.

12. As far as the question of applicability of provisions of Section 11/13 and 13-A of the Dacoity Act is concerned, in my opinion, trial Court committed error in holding them applicable in the facts and circumstances of the case. "Specified Offences" have been defined in Section 2(f) of the "Dacoity Act" as under:

(f) "specified offence" means-

(i) an offence specified in the schedule committee in relation to an area declared u/s 3 being an offence forming part or arising out of/or connected with the commission of dacoity or kidnapping;

(ii) an offence for which punishment has been provided u/s 9, 11 and 12 of this Act;

(iii) an offence punishable u/s 212, 216, 216-A, 311, 347, 392, 393, 394, 395, 396, 397, 398, 399, 402 and 412 of the Indian Penal Code, 1860 (XLV of 1860) committed in relation to an area declared u/s 3;

and includes abatement or attempt to commit any of the offences specified in Sub-clauses (i), (ii) and (iii).

Bare perusal of the aforesaid provision indicates that the offence u/s 25(1)(B) of the Arms Act by itself cannot be held to be a specified offence unless it is specified in the schedule annexed to the Act and unless it is committed in relation to an area declared as "dacoity and kidnapping affected area" u/s 3 of the Act and forms part or arises out of/or is connected with the commission of dacoity or kidnapping. Since the prosecution failed to prove the charges u/s 399, 400 and 402 of the Indian Penal Code and there was no evidence on record to show that the possession of the aforesaid arms was connected with the commission of dacoity or kidnapping, it could not be held to be the specified offence making the provisions u/s 11 and 13 of the Dacoity Act applicable. Section 13-A of the Dacoity Act is also not applicable because it has not been proved by the prosecution that the seized arms and ammunitions were prohibited arms and ammunitions as provided u/s 2(h) and (i) of the Arms Act.

13. For the above reasons, I am of the view that the trial Court committed error in convicting the accused persons u/s 11/13 and 13-A of the Dacoity Act. Accordingly, conviction of the accused/appellants u/s 11/13 of the Dacoity Act is set aside.

14. In the result, both the appeals are partly allowed. Conviction of all the appellants under Sections 11,13 and 13-A of the "Dacoity Act" is set aside. Conviction of all the appellants u/s 25(1)(B) of the Arms Act is affirmed. However, the sentence of appellant Reshmi @ Rashmi is reduced to the period of sentence already undergone by him. His sentence of fine is also set aside. He is on bail. His bail bond and surety bond are discharged. Sentences of other appellants are affirmed.

15. Copy of this judgment be kept in the record of Criminal Appeal No. 826/2007.