

(2011) 12 KAR CK 0155

In the Karnataka High Court

Case No : Criminal Appeal No. 1750/ 2003 Connected With Criminal Appeal No. 374 of 2004

Bhandari Rajesh @ Rajesh

APPELLANT

Vs

The State of Karnataka
 Anwarali @ Rahamath Ali @
Saleem Vs State

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 342, 397, 457

Citation : (2011) 12 KAR CK 0155

Hon'ble Judges : Subhash E Adi, J

Bench : Single Bench

Advocate : C.H. Jadhav, in Criminal Appeal No. 1750/ 2003 and Sri. I.S. Pramod Chandra, in Criminal Appeal No. 374/ 2004, for the Appellant; G.M. Srinivasa Reddy, HCGP in Criminal Appeal No. 1750/ 2003 and in Criminal Appeal No. 374/2004, for the Respondent

Final Decision : Dismissed

Judgement

Subhash E Adi

1. These two appeals are against the judgment of conviction in S.C. No. 41/2001, dated 04.11.2003, on the file of Sessions Judge, Udupi.
2. Criminal Appeal No. 1750/2003 is by the accused No. 3 and Criminal Appeal No. 374/2004 is by the accused No. 1.
3. Accused Nos. 1 to 3 were tried for the offences punishable under Sections 342, 397 and 457 r/w Section 34 of IPC.
4. The case of the prosecution in brief was that, the accused Nos. 1 to 3 and one Nasseruddin Rahamath Ali, absconding accused were in Udupi town on 27.04.1999 with a common intention of committing dacoity. They had stayed in a Hotel Karavali and hatched & plan. On the early morning, at about 3.00 a.m. i.e., night of 28.04.1999/29.04.1999, accused Nos. 1, 2 and the absconding accused

holding deadly weapon forcibly trespassed into the house of PW1-Sheshagiri Kamath, situated at Karkala Town in Udupi District. They threatened PW1, his wife and children and robbed gold and silver ornaments worth Rs. 2,50,000/- and cash of about Rs. 2,00,000/-. They also took the Scooter belonging to PW1 bearing registration No. KA 20/J-3431. Accused No.3 had also accompanied accused Nos.1 and 2 and all the four accused committed the alleged offence.

5. PW1-Sheshagiri Kamath went to Karkala Town Police Station at about 7.30 a.m. on 29.04.1999 and gave his oral statement based on which, PW17 registered the case in Crime No. 46/1999 and he sent F.I.R-Ex. P32 to the jurisdictional magistrate, PW18-Circle Inspector of Police conducted investigation and filed a chargesheet.

6. On committai, the trial Court though initially framed charges for the offences punishable u/s 457, 342 and 397 r/w Section 34 of IPC against the accused. Nos. 1 and 2 and u/s 414 of IPC against accused Nos. 3 and 4. However, charges were altered and accused Nos. 1 to 4 were charged with the offence punishable under Sections 457, 342 and 397 r/w Section 149 of IPC. All the accused pleaded not guilty and claimed to be tried. Accordingly they were tried.

7. Prosecution in order to prove the guilt of the accused, examined PW1 to PW18 and marked Ex. P1 to Ex. P41 and produced MO1 to MO30. On the defence side two witnesses were examined as DW1 and DW2 and the portion of the statement of PW3, PW4, PW5 and PW8 was marked as Exs. D1 to D13.

8. The trial Court on appreciation of the entire evidence on record held that, the accused Nos. 1 to 3 with a common intention to rob the house of PW1 have trespassed into the house of PW1 by using deadly weapons, threatened the inmates and have committed robbery. Accordingly, accused Nos. 1 to 3 were convicted for the offences punishable under Sections 342 and 397 r/w Section 34 of IPC. It is against the said judgment of conviction, these two appeals are filed.

9. Heard Sri. C.H. Jadhav, learned Counsel for the accused. No. 3 and I.S. Promod Chandra, learned Counsel for the accused No. 1.

10. PW1, PW3 to PW5-the inmates of the house have consistently have stated that the accused No. 1, 2 and 4 trespassed into the house, they were holding sword, dagger and revolver. Accused Nos. 1, 2 and 4 forcibly broke open the door and trespassed into the house and tied the hands of PW1, his wife, his son and his daughter with a rope, confined them in a room by threatening with the sword, dagger and the revolver. Accused Nos. 1, 2 and 4 took the cash of Rs. 2,00,000/-and gold and silver ornaments worth Rs 2,50,000/-, With a great difficulty PW1 reached the Karkala Police Station in the morning of 29.04.1999, at about 7.30 a.m. and gave his statement. All these witnesses have consistently stated as to the overt acts of each of the accused. These witnesses have also identified the accused Nos.1 to 3 and ornament recovered from the accused.

11. PW16- Krishna, who was working in Vijaya Wines near Karkala bus stand, he

has stated that he had seen the accused No. 3 even before the alleged incident. He has also stated that accused No.3 and accused Nos. 1, 2 and 4 had come to the wine shop and they had ordered for two bottles of Hiwa whisky and they drank both the bottles in the wine shop, PW16 was called for Test Identification Parade and has identified accused Nos. 1, 2 and 3 as the persons, who had come to wine shop.

12. PW2-Prashanth was cashier in Hotel Karavali during 1998-2000. He has stated that these three accused stayed in their hotel on 27.04.1999. however, has stated they were five in number. He has further stated that he had allotted Room Nos. 211 and 212 for the said five persons. He identified the accused No.3, whose name has been entered in the registrar, which is produced at Ex. P6. He has also stated that accused No. 3 was speaking in Kannada and other four persons were speaking in Hindi He was also called for Test Identification Parade and he has identified accused No.1 to 3.

1.3 PW10-Madhava was working as a room boy in the Karavali Hotel during the year 1999 and he has stated that he had seen accused Nos. 1 to 3 as they had occupied room in their hotel on 27.04.1999. He has also stated that, the accused vacated the rooms in the afternoon on 28.04.1999. This witness was also called for Test Identification Parade, he has identified all these accused.

14. Accused have examined DW1-Mohammed Jahangir. DW1 was working as Inspector of Police, Kanchanbagh Police Station, from 22.04.1999 upto 10.07.1999, He was investigating the Crime No.36/99. In this regard, he had arrested accused Nos.1 and 2 on 18.06.99. In a custodial interrogation, accused Nos.1 and 2 reveal that accused No.3 was also involved in Crima No.36/99 accordingly on the same day be arrested the accused No.3 also. During interrogation accused Nos.1 to 3 reveal that they had committed dacoity in Karkala and have concealed the property robbed in Karkala.

15. PW18-Vishwanth Pandit, Investigation Officer, in his evidence has stated that he got information of the arrest of accused Nos.1 to 3. He took the bodywarrant and secured accused No. 1 to 3 from Hyderabad on the basis of the voluntary statement of the accused. From accused Has. 1 and 2 gold neckless, gold Mangalsuthra and silver articles were seized under a Mahazar Exs. 22 and 23 and from accused No. 3 beg/suit case was seized. PW1, PW3 to PW5 have identified the articles seized from accused Nos. 1 and 2 and accused No. 3, as the robbed articles belonging to them.

16. There is nothing to discredit the evidence of PW1, PW3 to PW5 as regard to the overt acts by accused Nos. 1, 2 and 4 identifying the accused and also identifying the seized articles. Though these witnesses have been cross-examined, but nothing has been elicited. This evidence is supported by the evidence of PW2 and PW10, who have stated that accused Nos. 1 to 3 and other had occupied two rooms in their hotel and had stayed from 27.04.1999 to 28.04.1999, and in the afternoon, they vacated the rooms. Even on the defence

side DW1 who has been examined, he has stated that he had arrested accused Nos. 1 and 2 in connection with Crime No. 36/ 99 committed within the jurisdiction of their Police Station and in connection with the said crime, accused No. 3 was also arrested on voluntary disclosure by accused Nos. 1 and 2 during the custodial interrogation, DW1 has stated that the accused Nos. 1 and 2 are involved in several other daceity cases. PW1 has stated that the accused No.3 was known to them as he was working in their house. Accused No.3 has also been identified by PW16 as known person.

17. No doubt, the presence of accused No. 3 inside the house, is not stated by PW1, PW3 to PW5 however, the evidence of PW1, PW3 to PW5 and evidence of PW2 and PW10 disclosed that the accused No. 3 was in the company of accused Nos.1 and 2 and another a day before the incident. Evidence of PW16 shows that accused Nos.1 to 3 were together and they consumed liquor. This evidence shows that one day prior to the incident, all the accused were present together and thereafter, they left the hotel in the afternoon of 28.04.1999, the incident had occurred on 28/29.04.1999. The evidence of DW1-the Inspector of Police at Kanchanbagh Police Station, Hyderabad disclose that not only accused. Nos. 1 to 3 were together but they were also involved in another crime. This is corroborated with the recovery of gold and silver ornaments robbed from the house of PW1 from the possession of accused Nos.1 and 2 and a suit case/bag from the possession of accused No.3. All these articles have been identified by PW1, PW3 to PW5. In a Test Identification Parade, PW2, PW10 and PW16 have also identified accused Nos. 1 to 3 as the persons who had stayed in the hotel and had consumed liquor. The circumstantial evidence, recovery and the arrest of accused Nos. 2 and 3 in Hyderabad in connection with another Crime clinchingly establishes that accused Nos.1 to 3 had common intention and had hatched a plan on day before the incident in a hotel and executed the same on the very night i.e., night of 28/29.04.1999.

18. No doubt, Sri. C.H. Jadhav, learned Counsel for accused No.3, submitted that PW1, PW3 to PW5, they do not state the presence of accused No.3, accused No. 3 was not holding any weapon. Hence, the prosecution case against the accused No.3 for the offence punishable u/s 397 of IPC is not established and also submitted that the recovery is only a suit case. However, there is no reason to disbelieve the evidence that, the accused No. 3 was in the company of accused Nos. 1 and 2 and another and they met each other in a hotel and stayed in that hotel previous day and they are also consumed liquor. This is also further corroborated with the arrest of accused Nos. 1 and 2 and further arrest of accused No. 3 by DW1 in another crime in Hyderabad. This evidence clearly proved that the accused Nos.1, 2 and 3 had a common intention and they were involved in committing the crime as they were involved in another crime in Hyderabad also. The prosecution has proved the charge beyond reasonable doubt punishable u/s 392 r/w Section 34 of IPC.

19. Common intention u/s 34 of IPC does not require that the prosecution to

prove that each of the accused participated in the crime, if they had common intention and in furtherance of the common intention if commit the crime, that proves the common intention.

20. Trial Court on proper appreciation of the entire evidence has found that the accused Nos. 1 to 3 with a common intention committed a crime, I do not find there is any justifiable reason to interfere with the judgment of conviction. Accordingly, the appeals are liable to be dismissed. Hence, I pass the following order

ORDER

- i) Criminal appeal No. 1750/2003 filed by accused No. 3 and Criminal appeal No. 374/2004 filed by the accused No. 1, fails and dismissed.
- ii) Bail bond stands cancelled.
- iii) Accused No.3 to surrender before the trial Court.
- iv) In case, the accused No. 3 fails to surrender before the trial Court, the trial Court to take steps to secure the presence of the accused and commit to the prison to serve the remaining sentence.