
(2010) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 976 of 1995

Neelkamal, Kartik and Gorang

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2010) 09 MP CK 0042

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—The Additional Sessions Judge, Panna has passed impugned judgment dated 13.07.1995, in ST No. 85/92 by which Appellants/accused persons have been convicted under Sections 395 and 397 of IPC and sentenced them to undergo RI for 7 years with fine of Rs. 500/- each, in default further RI for 6 months.

2. Being aggrieved, Appellants/accused have preferred this appeal u/s 374(2) of the Code of Criminal Procedure along with other co-accused Rakhal, S/o Kartik Mistri and Neelu @ Nirmal, S/o Surendra Vishwas but both of them died during pendency of this appeal, therefore, appeal in relation to them stands abated.

3. The prosecution case, in short, is that in the intervening night of 28-29/6/1992, complainant Gopal Singh (PW-3) along with his wife Awadhrani (PW-15), daughter Sumitra bai (PW-16), son Guman Singh (PW-4) and his son-in-law Ganesh Singh (PW-14) were sleeping in courtyard of his house in village, Vikrampur.

4. At about 2" O'clock in night more than five miscreants entered in his house. They were having country made pistol, Gun, torch, hand grained and spear. They compelled Gopal Singh on gun point to inform about the valuables but could not

seek anything.

5. They caught hold of Guman Singh (PW-4) and Ganesh Singh (PW-14), tied their hands and assaulted them. When Jahar Singh (PW-7) attacked on miscreants then one of the miscreant exploded hand grained and other one fired by country made pistol thereby Jahar Singh injured and fell down. Accused Subhash (since deceased) was one of them. They looted one Lota, one thali (Plate) and purse of the complainant containing only Rs. 50/- and further exploded hand grained and fled away.

6. According to complainant, he identified accused persons in the light of Lalten inside the house and in the light of bulb, blowing outside the house. On listening hue and cry, Arjun Singh (PW-5) and Lokpal (PW-6) arrived at place of incidence. They also saw accused persons while they fled away.

7. Next day on 29.6.1992 at 6:15, complainant Gopal Singh (PW-3) lodged first information report (Ex.P-17) in Kotwali, Panna. Injured Jahar Singh and Ganesh Singh were sent for medical examination. During investigation, spot map was prepared. Iron pieces of cartridge of 12 bore, sutli of hand grained were seized from the spot. A steel lota, one air gun was seized vide seizure memo (Ex.P-10) at the instance of Neelkamal (A-1). A ten rupees note, country made pistol along with four cartridge and two hand grenade were seized vide seizure memo (Ex. P-13) at the instance of Kartik (A-2). A ten rupees note, chain of bicycle was seized vide Ex. P-14 at the instance of Gaurang (A-3). Some other materials were seized from the other accused persons who had died during trial and pendency of this appeal.

8. Seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar. Assistant Chemical examiner opined, vide Ex. P-27 that material seized from the place of incident, bearing explosive substance like chloride sulfate, Potassium and Arsenic. Seized country made pistols were found in workable condition.

9. On completion of investigation, Appellants/accused were charge-sheeted. They abjured their guilt and pleaded that they were falsely implicated. They examined Jagdish Mistri (DW-1) as defence witness.

10. On appraisal of evidence on record, learned Additional Sessions Judge convicted and sentenced the Appellants/accused as mentioned herein above.

11. Learned Counsel for the Appellants submitted that there was no source of light at the place of incidence, trial Court committed error in believing the eye witnesses regarding identification of Appellants/accused. He further contended that seizure of articles are also not proved beyond reasonable doubts therefore, offence of dacoity can not be said to be proved against the Appellants and they are entitled to be acquitted.

12. On the other hand, learned Govt. Advocate justified and supported the finding of the trial Court.

13. Complainant, Gopal Singh (PW-3) deposed that in the night, his son Guman Singh (PW-4), Son in law, Ganesh Singh (PW-14) and Jahar Singh (PW-7) were sleeping. At about 2" O" clock five miscreants entered in his house and one other was standing out of his house. Two miscreants caught hold of his son Guman Singh and son in law Ganesh Singh and other assaulted them.

14. He categorically deposed that a lalten was blowing and he identified the accused Rakhal who pointed the country made pistol on his chest. Accused Nirmal caught hold of his son Guman Singh. Hand grained was exploded by accused Nirmal and country made pistol fired by Appellant/accused Neelkamal.

15. He further deposed that Appellant Kartik caught hold his son Jahar Singh and Appellant Gorang was standing outside the house. Miscreants looted one thali (plate), one matka and fled away. He lodged the report (Ex.P-17) in police station Kotwali, Panna.

16. In cross-examination he admitted that he failed to identify Appellant Gorang (A-3) during test identification parade. Further admitted that currency notes produced before the Court are not belonging to him.

17. Injured witnesses Guman Singh (PW-4), Ganesh Singh (PW-14) and Jahar Singh (PW-7) deposed that at the time of incident, face of accused persons were open and Lalten was blowing in parchhi therefore they were able to saw the face of accused persons. They further deposed that Guman Singh and Ganesh Singh were caught hold by miscreants and their hands were tied. They were beaten by miscreants. According to them, one miscreant fired by country made pistol and other one exploded hand grained thereby Jahar Singh (PW-7) was injured.

18. Dr. Vijay Parmar (PW-1) corroborated the version of Jahar Singh (PW-7) who found gun shot injury on his back and other part of body and lacerated wound on left cheek. His MLC report is Ex. P-1.

19. Dr. Sharad Dwivedi (PW-17), corroborated the version of Guman Singh and Ganesh Singh by saying that he found a contusion on left side of chest of Ganesh Singh. His MLC report is Ex. P-22. He further deposed that he found a contusion on left hand of Guman Singh and abrasion on right shoulder and left scapular. He prepared MLC report Ex. P-23.

20. These two witnesses are inmates of house and they were injured, therefore, their presence can not be doubted.

21. Awadhrani (PW-15), wife of complainant Gopal Singh, also corroborated the version of complainant. Sumitra bai (PW-16) deposed that she was at her matrimonial house and she also saw that the incident took place in the night.

22. Arjun Singh (PW-5) and Lokpal (PW-6) are the witness who claims that on hearing the hue and cry they reached to the place of incident and they saw that accused persons were ran away from the house of Gopal Singh (complainant) and they saw them in the light of bulb which was blowing near the house door of

Gopal Singh. Both witnesses are resided in Mohalla of complainant Gopal Singh, therefore, their presence on listening the hue and cry at the place of incident appears to be natural. In these circumstances, fact of source of light, at the place of incident amply proved by above mentioned witnesses.

23. Digamber Singh (PW-8), Nayab Tahsildar, who conducted test identification parade deposed that Appellant Neelkamal and Gorang were identified by complainant Gopal Singh (PW-3). Appellant Kartik, Nirmal (deceased) and Rakhal (deceased) were identified by Arjun Singh (PW-5) and Lokpal (PW-6). Rajaram (PW-9) further corroborated the testimony of Digamber Singh (PW-8). Complainant Gopal Singh in his statement deposed that he did not identify the Appellant/accused Gorang. In these circumstances, statement of Digamber Singh (PW-8) regarding Gorang became doubtful. But Gopal Singh identified Neelkamal (A-1) who fired the country made pistol which was duly corroborated by Digamber Singh (PW-8). Appellant Kartik was identified by Arjun Singh (PW-5) and Lokpal (PW-6) and corroborated by Digamber Singh (PW-8). In these circumstances, identification of Appellants are well established by prosecution witnesses.

24. S. Panweliwala (PW-2), Investigating Officer, deposed that he seized a steel lota, one air gun vide seizure memo (Ex.P-10) at the instance of Appellant Neelkamal from Vikrampur in the presence of panch witnesses Jeet Singh (PW-12) and Gambhir Singh (PW-20). S. Panweliwala (PW-2) further deposed that he seized a ten rupees note, country made pistol along with four cartridge, two hand grained at the instance of Kartik (A-2) vide seizure memo (Ex.P-13) though Jeet Singh turned hostile but witness Gambhir Singh (PW-20) corroborated the version of S. Panweliwala (PW-2), Investigating officer.

25. Seized articles were identified by complainant Gopal Singh (PW-3). Currency notes could not be identified by complainant and complainant himself admitted that currency notes produced before the Court are not belonging to him. In these circumstances, steel lota which was seized from the possession of Neelkamal was the property of complainant and Neelkamal was unable to explain that how he got this lota. Despite these circumstances, it is settled position of law that persons committing dacoity are guilty, even though they are unsuccessful in removing any Booty. Therefore, Appellants can be held guilty of committing Dacoity, if it is established their attempt to commit robbery or dacoity.

26. Appellant Neelkamal (A-1) and Kartik (A-2) are duly identified by eye witnesses in the identification parade and it is also established that Neelkamal fired country made pistol and Kartik exploded hand grained and caused the grievous hurt to witness Jahar Singh (PW-7). Therefore, it is established by prosecution that Appellants along with co-accused committed the dacoity by using the deadly weapons like country made pistol and hand grained and caused grievous hurt to Jahar Singh.

27. Thus, prosecution successfully established the offence under Sections 395

and 397 of IPC against the appellant Neelkamal (A-1) and Kartik (A-2). In these circumstances, trial court did not commit any error in holding them guilty of above mentioned offence therefore conviction of these Appellants are affirmed.

28. Considering the nature of offence, sentence awarded to the Appellant No. 1 Neelkamal and 2 Kartik is minimum prescribed sentence therefore, order of sentence is also affirmed.

29. But, prosecution failed to prove the offence under Sections 395 and 397 of IPC against the Appellant Gorang, therefore, he is entitled to be acquitted and hereby he is acquitted of the charges levelled against him.

30. In the result appeal of Appellant No. 3 Gorang is allowed and appeal of Appellant No. 1 Neelkamal (A-1) and 2 Kartik (A-2) is dismissed.

31. The Appellant No. 1 Neelkamal (A-1) and 2 Kartik (A-2) are on bail. Their bail bonds and security bonds stand cancelled and they are directed to surrender before CJM, Panna to serve out remaining part of their sentences.