
(2008) 05 UK CK 0026

In the Uttarakhand High Court

Case No : Criminal Appeal No. 609 of 2001 (Old No. 1494 of 1989)

Rajendra Singh Alias Bugla

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 207, 209, 313, 374(2)

Penal Code, 1860 (IPC) — Section 392, 399, 402

Citation : (2008) NCC 863

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : Lokendra Dobhal, for the Appellant; M.A. Khan, learned Brief Holder, for the Respondent

Judgement

Hon''ble Dharam Veer, J.—This appeal preferred u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) is directed against the judgment and order dated 28th October 1988 passed by Addl. Sessions judge, Dehradun in Sessions Trial no. 3-A/1987, whereby the learned Addl. Sessions Judge has convicted the accused persons Ramesh, Bhullan, Satnam @ Satta, Deepak@ Dani and the accused/appellant Rajendra Singh @ Bugla for the offence punishable u/s 399, 402 of The Indian Penal Code, 1860 (hereinafter referred to as the I.P.C.) and sentenced them to undergo rigorous imprisonment for a period of 241/2 months'' u/s 399 I.P.C. and to undergo rigorous imprisonment for a period of 241/2 months'' u/s 402 I.P.C. The accused persons Bhullan, Ramesh and the accused/appellant Rajendra Singh were further convicted for the offence punishable u/s 25 Arms Act and sentenced each of them to undergo rigorous imprisonment for a period of one year. It is directed that all the sentences shall run concurrently. I have heard Sri Lokendra Dobhal, learned counsel for the accused/appellant and Sri M.A. Khan, learned Brief Holder for the State.

2. The prosecution case, in brief, is that on 14.10.1986 S.I. P.S. Mehra, S.I. S.N.

Sharma and S.I. B.R. Toliya alongwith the Head Constables Chandra Dhar Prasad, Virendra Singh and Constables Balwant Singh, Bhagwan Singh and Satya Prakash started from Police Station at 5:30 p.m. in search of accused and the case property relating to Crime No. 513/ 1986 u/s 392 I.P.C. At about 11:30 p.m. all the police party reached Balliwala crossing. S.I. N.K. Bisht and S.I. Yogendra Pal Singh and Constable Prem Singh met them there. The two Constables were armed with LATHIES and all the Sub Inspectors were armed with revolvers and Head Constables were armed with guns. An informer told them that the gang of Ramesh resident of Ajabpur Danda will assemble in the Khandar of Pili Kothi situated in Mohit Nagar, Naya Purwan Kanwali. He also told that the gang will be armed and will commit dacoity in the house of Om Prakash Garg. S.I. in-charge P.S. Mehra sent Constables Balwant Singh & Bhagwat Singh with arms and ammunitions to guard the house of Om Prakash Garg and to caution him. S.I. S.N. Sharma brought Shyam Singh and S. Ram Singh r/o village Pitambar Pur, Police Station Kotwali, Dehradun as public witnesses. The Policemen and the witnesses took search of each-other to make sure that none of them; had any illicit articles. The entire force was divided into three parties, headed by S.I. P.S. Mehra, S.I. N.K. Bisht and S.I. Yogendra Pal Singh respectively. S.I. P.S. Mehra gave necessary directions to the three parties. His party took position to the north of the Pili Kothi, the party headed by N.K. Bisht took cover to the south of Pili Kothi and the party headed by S.I. Yogendra Pal Singh took cover to the west of Pili Kothi. He directed that no one shall smoke or talk or do anything to make the dacoits suspicious and nobody shall fire without his direction. They took cover behind the bushes near the Pili Kothi. About half an hour later three persons were seen in the moonlight coming from the side of General Mahadeo Singh Road. They went into the Khandar of Pili Kothi. About 15-20 minutes later two more persons came from the side of Wadia Institute and sent in. They started talking among themselves and after about 15 minutes one of them was heard saying that Suresh has not come as yet and the time has come for committing dacoity. Another person was heard saying that the five of them are sufficient and they have knives and other arms and ammunitions and they should proceed to commit dacoity. S.I. P.S. Mehra was convinced that it is a gang of dacoits and has assembled to commit dacoity. He flashed the torch light on the dacoits and challenged them to surrender themselves and their arms. Immediately all the three parties surrounded to the five persons and arrested them. The Policemen asked the names and addresses of the accused person and took their personal search. One country made revolver with five live cartridges, .22 bore and Rs. 1.50 were recovered from the possession of accused/appellant Rajendra Singh. One unlicensed S.B.L. gun, pellets and gun powder and three live caps and a ten rupee note were recovered from the possession of co-accused Ramesh. One country made pistol .315 bore and three live cartridges, one Biri bundle, a match box and a five rupee note were recovered from the possession of co-accused Bhullan. A Khukri, Biri Bundle and seven rupees note were recovered from the possession of co-accused Satnam and one knife measuring about 8-9 inches was recovered from the possession of co-accused

Deepak. The articles recovered from the possession of each of the accused persons were sealed separately and sample seals were prepared. The arrested persons were made Bapardha. A recovery and arrest memo was prepared at the spot and copies of the same were delivered to the accused persons. Memo of recovery and arrest is Ext. Ka-6. The accused were arrested at about 1:30 a.m. on 15.10.1986. The accused persons were brought to Police Station, Kotwali Dehradun and the First Information Report, on the basis of the recovery memo, was lodged on the same day at 5:55 a.m. The Chik First Information Report is Ext. Ka-7 and an entry in this regard is made in the G.D., a copy of which is Ext. Ka-8. Entry in the G.D. was made on 14.10.1986, by which the Police have started from the Police Station on 14.10.1986 at 5:30 p.m., copy of G.D. is Ext. Ka-9.

3. Investigation of the case is entrusted to PW-6 S.I. Jagdish Singh, who during the course of investigation has recorded the statement of the witnesses and prepared the site plans i.e. Ext. Ka-14, Ka-15, Ka-16 and Ka-17. He has also obtained sanction from the District Magistrate, Dehradun of prosecution of accused/appellant for the offence punishable u/s 25 of the Arms Act, the sanction is Ext. Ka-21 on the record. After completing the investigation, the Investigating Officer has submitted charge sheet against the accused/appellant alongwith the co-accused u/s 399, 402 I.P.C. in case crime no. 600/ 1986 that charge sheet is Ext. K-10 on the record. The Investigating Officer has also submitted charge sheet against the accused/appellant u/s 25 Arms Act in case crime no. 603/ 1986, that charge sheet is Ext. Ka-13 on the record.

4. Learned Chief Judicial Magistrate, Dehradun on receipt of the charge sheet, after giving necessary copies to the accused as required u/s 207 Cr.P.C., committed the case to the Court of Sessions for trial on 05.01.1987 u/s 209 Cr.P.C.

5. On 09.03.1987, the learned Addl. Sessions judge, Dehradun after hearing the parties framed the charge of offence punishable u/s 399/402 I.P.C. against the accused Ramesh, Bhullan, Satnam @ Satta, Deepak @ Dani and the against the present accused /appellant Rajendra Singh @ Bugla. The charge was read over and explained to the accused persons who pleaded not guilty and claimed to be tried. The accused/ appellant was further charged for the offence punishable u/s 25 Arms Act. The charge was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution has examined PW-1 S.I. Sri Niwas Sharma, PW-2 S.I. P.S. Mehra, PW-3 Head Constable Ajab Singh, PW-4 Constable Balwant Singh, PW-5 Ram Singh and PW-6 S.I. Jagdish Singh - I.O.

7. The oral and documentary evidence was put to the accused in the form of questions u/s 313 Cr.P.C. who, in reply, denied the allegations made against him and has stated that he has been falsely implicated in the case. The accused did not produce any evidence in his defence.

8. After appreciating all the evidence available on record and hearing the learned counsel for the parties, the learned Sessions Judge convicted the accused persons Ramesh, Bhullan, Satnam @ Satta, Deepak @ Dani and the accused/appellant Rajendra Singh @ Bugla for the offence punishable u/s 399, 402 I.P.C. and sentenced them to undergo rigorous imprisonment for a period of 24 1/2 months" u/s 399 I.P.C. and to undergo rigorous imprisonment for a period of 24 months" u/s 402 I.P.C. The accused persons Bhullan, Ramesh and the accused/appellant Rajendra Singh were further convicted for the offence punishable u/s 25 Arms Act and sentenced each of them to undergo rigorous imprisonment for a period of one year. It is directed that all the sentences shall run concurrently. Aggrieved with the conviction and sentence awarded to him, the accused/ appellant has preferred this appeal.

9. The prosecution to prove its case has examined PW-1 S.I. Sri Niwas Sharma and PW-2 S.I. Pooran Singh Mehra. These are the two significant witnesses who have proved the whole of the prosecution case, including the arrest of the accused persons and recovery of the weapons/ articles from the possession of the accused persons, on the date, time and place as alleged by the prosecution in the arrest and recovery memo Ext. Ka-6. To avoid repetition, evidence of one of these witnesses is being discussed as the other has categorically repeated the testimony of the first one. In order to prove its case, the prosecution has examined PW-1 S.I. Sri Niwas Sharma, who has stated that on 14/15.10.1986 he was posted at Basant Vihar outpost. He was in search of the accused persons relating to case crime nos. 573/86 or 513/1986 u/s 392 I.P.C. alongwith S.I. K.S. Mehra, in-charge of outpost, S.I. R.S. Toliya, Head Constables Chakradhar and Virendra, Constables Narendra, Satya Prakash, Balwant and Bhagwat. They were armed with the Govt. ammunition. On 14.10.1986 at 11:30 p.m., they reached at Babli nala Chowk, where S.I. N.K. Bisht, S.I. Yogendra Pal Singh and Constable Prem Singh were met them who had armed with Govt. revolver and cartridges. The Constables have Torches and LATHIES. An informer told them that the gang of Ramesh resident of Ajabpur Danda will assemble in the Khandar of Pili Kothi and will commit dacoity in the house of Om Prakash. The Constables Balwant Singh & Bhagwat Singh with arms and ammunitions were sent to guard the house of Om Prakash Garg. He was sent for search of public witness and found two persons, namely Ram Singh and Shyam Singh at Kanwali Road who were returning after seeing Ramleela. The public witnesses were informed about the aim. The entire force was divided into three parties. He himself, including S.I. P.S. Mehra, Constable Satya Prakash and Shyam Singh were the members of first party. In-charge Chowki S.I. N.K. Bisht, including S.I. R.S. Toliya, Constable Narendra, Head Constable Virendra Singh and public witness were in the second party. In the third party, there were the in-charge S.I. Yogendra Pal Singh, Head Constable Chakradhar and Constable Prem Singh. S.I. Pooran Singh was the leader of his party. It was directed that no one shall cough or smoke and nobody shall fire without his direction, His party took position on the northern direction. The party headed by S.I. N.K. Bisht, took position towards the south direction of

the Khandar and the party headed by Sri Y.P. Singh took position to western direction of the Khandar. AH were ambushed in the bushes near the Khandar. It was the time 4-5 minutes before 1:00 a.m., three persons were seen in the moonlight coming from the side of General Mahadeo Singh Road. They went into the Khandar of Pili Kothi. About 10-5 minutes later two more persons came from the side of Wadia Institute and went in. They started talking among themselves and one of them was heard saying that Suresh has not come as yet and the time has come for committing dacoity. Another person was heard saying that they are sufficient, they have arms and ammunition and they should proceed to commit dacoity. All their team heard all talks of the dacoits and they were convinced that it is a gang of dacoits and has assembled to commit dacoity in the house of Om Prakash. Thereafter, S.I. P.S. Mehra had flashed the torch light on the dacoits and challenged them to surrender themselves saying that they have been surrounded by the Police. All the dacoits had in commotion. Immediately all the three parties surrounded to the five persons and arrested them on 14/15.10.1986 at 1:30 a.m. The Policemen asked the names and addresses of the accused persons and took their personal search. One unlicensed S.B.B.L. gun, pellets and gun powder and three live caps and a ten rupee note were recovered from the possession of co-accused Ramesh. The articles were opened in the Court and were marked as Ext.-1 to Ext.-7. One country made pistol.315 bore and three live cartridges, one Biri bundle, a match box and a five rupee note were recovered from the possession of co-accused Bhullan. The articles were opened in the Court and were marked as Ext.-8 to Ext.-13. A Khukri, Biri Bundle, match box and two rupees note were recovered from the possession of co-accused Satnam @ Santa. The articles were opened in the Court and were marked as Ext. 14 to Ext.-16. One knife was recovered from the possession of co-accused Deepak @ Dani. The articles were opened in the Court and were marked as Ext.-17. One country made revolver with five live cartridges,.22 bore and Rs. 1.50 were recovered from the possession of accused/appellant Rajendra Singh. The articles were opened in the Court and were marked as Ext.-18 and Ext.-19. The articles recovered from the possession of each of the accused persons were sealed separately and sample seals were prepared and he put his signatures on it. The arrested persons were made "Bapardha". A recovery and arrest memo was prepared at the spot in the torches light and copies of the same were delivered to the accused persons. Memo of recovery and arrest is Ext. Ka-6. The accused persons were brought to Police Station, Kotwali Dehradun and the First Information Report, on the basis of the recovery memo, was lodged on 15.10.1986 at 5:55 a.m. The Chick First Information Report is Ext. Ka-7 and an entry in this regard is made in the G.D., a copy of which is Ext. Ka-8. Entry in the G.D. was made on 14.10.1986, by which the Police have started from the Police Station on 14.10.1986 at 5:30 p.m., copy of G.D. is Ext. Ka-9.

10. The evidence of PW-1 S.I. Sri Niwas Sharma is fully corroborated on all the material points and facts as has come in the evidence of eye witnesses PW-2 S.I. P.S. Mehra, leader of the police party who captured the accused persons. He has

also repeated the same story in his statement as described in the evidence of PW-1 Sri Niwas Sharma as also the same mentioned in the recovery memo Ext. Ka-6.

11. PW-3 is Head Constable Ajab Singh, who has stated that on 15.10.1986 he was posted at Police Station Kotwali. The Chik Report Ext. Ka-7 was prepared by him and an entry was made in the G.D. a carbon copy of which is Ext. Ka-8. He is acquainted with the handwriting of S.I. Jagdish Singh and he proved that the Charge Sheets Ext. Ka-10 to Ka-13 have been prepared by S.I. Jagdish Singh. The site plans Ext. Ka-14, Ext. Ka-15, Ext. Ka-16 and Ext. Ka-17 were also prepared by S.I. Jagdish Singh.

12. PW-4 is Constable-77 Balwant Singh, who has stated that on 14.10.1986 he was posted at the outpost Basant Vihar. At about 5:30 p.m. on that day he had gone with S.I. in-charge P.S. Mehra. The time of departure was entered in the G.D. and entry in this regard was made in Ext. Ka-9. The G.D. entry of his return at the Police Station on 15.10.1986 in the morning has been proved by him which is Ext. Ka-18 on the record.

13. P.W-5 is Ram Singh, an independent eye witness, who has stated that the incident was of about one and quarter of two years" back. He and Shyamu were returning after seeing Ramleela. At about 11:00 p.m. the Sub Inspector met who told them to accompany him. When they reached at Babli Nala Chowk, they met with 8-10 Constables/S.Is. He was told that they had to reach at the Khandar at Naya Purbha to catch hold of the thieves. They took search of each other. Nothing illegal was found. Three parties were constituted. One party was deputed towards the north, second party was deputed towards the south and third party was deputed towards western direction of the Khandar. It was directed that no one shall smoke and shall not talk. And they ambushed. After about one hour three persons came towards the General Mahadeo Singh Road and entered into the Khandar. There is a factory towards the Mahadeo's Road. Two persons came from inside and they also entered into Khandar. After about 15 minutes one of person had told that time had reached, their associate Suresh had yet not reached. Another person had told that it is over time we have enough ammunitions. At the same time Sri Puran Singh Mehra had focused his Torch and told that all of you had been surrounded by the Police and you will not survive. All the accused persons had in commotion. Other Torches were focused. All the accused were apprehended at 12:30 to 1:00 a.m. after surrounding them. The Sub Inspector had asked them their names and addresses. He identified the accused persons in the Court. On being searched revolvers, knives, khukari, Bundles of bidies, match boxes and some rupees were recovered. Recovery memo Ext. Ka-6 was prepared at the spot. He put his signatures on the recovery memo. The recovered articles were sealed separately. Copy of the recovery memo was given to the accused persons. The accused persons were kept as Baparda. The FARD was prepared in the light of the Torches. Thereafter, he and Shyam Singh had returned to home. This witness is an independent public

witness and he has categorically supported the prosecution version in his evidence.

14. PW-6 is Jagdish Singh is the Investigating Officer of the case, he deposed that during the course of investigation he recorded the statement of the witnesses and prepared the site plan of the place of occurrence. The site plans are Ext. Ka-14 to Ext. Ka-17. He also proved the sanctions for prosecution of the accused/appellant Rajendra Singh, which is Ext. Ka-21. After completing the investigation, he submitted charge sheets against the accused persons. These charge sheets are Ext. Ka-10 to Ext. Ka-13.

15. The oral and documentary evidence in question form was put to the accused/appellant u/s 313 Cr.P.C. who has denied the allegations made against him and has stated that he has been falsely implicated in the case. The accused/appellant did not produce any evidence in his defence.

16. Thus, from the evidence discussed above, the prosecution has successfully proved beyond reasonable doubt that on 14/15.10.1986 at about 1:30 a.m. at the Khandar, Pili Kothi in village eastern Kanwali, Police Station Kotwali, District Dehradun the appellant/accused Rajendra Singh alongwith the co-accused Ramesh, Bhullan, Satnam @ Satta and Deepak @ Dani assembled for committing dacoity and the accused/appellant was one of the five persons assembled for the purpose of committing dacoity. Further at the time of commission of crime, the accused/appellant Rajendra Singh found in possession of one country made revolver containing 5 cartridges.22 bore for which he had no licence. In this way the accused/ appellant had committed offence u/s 399, 402 I.P.C. and one punishable u/s 25 of the Arms Act and the learned Addl. Sessions judge has rightly found him guilty for the said offence.

17. Learned Counsel for the accused /appellant Sri Lokendra Dobhal, has argued that so far the part of conviction is concerned, he is not challenging this part. But he submitted that the sentence awarded to the accused/appellant is in the higher side and excessive. It is submitted that about a period of 22 years" have been passed; the accused has suffered a lot while participating in the proceedings; the accused has now become old and is living with his family. In these circumstances, learned counsel for the accused/appellant has submitted that the accused may be released for the period for which he had already undergone. He submitted that the accused/appellant remained confined in jail since 16.10.1986 to 13.01.1987 and again from 28.10.1988 to 27.10.1989 in connection with the aforesaid crime. Learned Brief Holder for the State Sri M.A. Khan has also conceded this fact and has filed a FAX copy confirming that the accused Rajendra Singh @ Bugla remained in jail for the above said period.

18. Considering this fact that the accused/appellant remained in jail for a period of 1 year, 2 months" and 27 days" and specifically considering that about a period of 22 years" have passed since the incident had taken place; the accused/appellant has become old and is living peacefully with his family, it is expedient

in the interest of justice that the sentence awarded to the accused/appellant be reduced to the period already undergone.

19. Accordingly, the appeal is partly allowed. The conviction of the accused/appellant for the offence punishable u/s 399, 402 I.P.C. and that of offence punishable u/s 25 Arms Act is hereby affirmed, but the sentence awarded to the accused/appellant for the offence punishable u/s 399 I.P.C. for a period of 24 V4 months" and for the offence punishable u/s 402 I.P.C. for a period of 241/2 months" and that of offence punishable u/s 25 Arms Act for a period of one year, is hereby set-aside instead it is reduced to the period already undergone as mentioned above. The accused/appellant is on bail. He needs not to surrender. His sureties are discharged. Let a copy of this judgment, along with the record of the Court below, be sent back to the Trial Court.