

(1995) 03 AHC CK 0012
In the Allahabad High Court
Case No : Criminal A. No. 2662 of 1979

Ram Jatan and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 399, 402

Citation : (1995) CriLJ 3904

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

Bench : Single Bench

Advocate : R.K. Shangloo, T. Rathore, Ram Babu Sharma and H.K. Sharma, for the Appellant; A.G.A., for the Respondent

Judgement

S.C. Jain, J.—In this appeal judgment and order dated 6-9-1979 passed by the VII Addl. Sessions Judge, Bulandshahr in Sessions Trial No. 83 of 1979 have been challenged by all the four appellants, namely, Ram Jatan, Shabbir, Islam and Jai Pal.

2. All these four appellants were convicted under Sections 399/402, I.P.C. and SECTION 25, Arms Act and were sentenced to undergo rigorous imprisonment for five years u/s 399, I.P.C., three years u/s 402, I.P.C. and two years u/s 25, Arms Act. All the sentences were made to run concurrently.

3. As per the prosecution version on 4-11-1978 at about 3.15 a.m. the Police Officers of Police Station Sikandarabad headed by Sri Nar Singh Pal Singh, the Station Officer, were on patrol duty and when they reached near Bumba of village Bilsuri a secret information was received that some persons of the gang of Charan Singh Gujar had assembled in the mosque of OChanderu with illegal arms and ammunitions and they would commit robbery. On the said information at about 4.15 a.m. the police party surrounded that mosque and. after listening the talks of those persons they challenged them and ultimately the police party apprehended the four accused appellants. On their search one S.B.B.L. gun (Ex.

1) and four live cartridges (Exs. 2 to 5) were recovered from possession of Ram Jatan vide memo Ex. ka 1, one country-made pistol (Ex. 6) and two live cartridges (Exs. 7 and 8) were recovered from the possession of Shabbir vide memo Ex. ka 2, one country-made pistol (Ex. 9) and two live cartridges (Exs. 10 and 11) were recovered from possession of Islam vide memo Ex. ka 3, while one lathi (Ex. 12) and one torch (Ex. 13) were recovered from the possession of Jaipal vide memo Ex. ka 4. Except lathi and torch all the articles recovered were got sealed separately.

4. The investigation of the case was handed over by the Station Officer of Police Station, Sikandarabad to Sri Gopi Chand, Sub-Inspector, PW 3, who investigated the case and filed charge-sheet against all the four appellants after obtaining necessary sanction from the District Magistrate for prosecution u/s 25, Arms Act.

5. The main thrust of arguments of the learned counsel for the appellants is that non-inclusion of public witnesses in the raiding party is a serious matter and when the public witnesses could be made available they should have been joined in the raiding party. Their non-joining makes the case of the prosecution doubtful. According to him it is very unsafe to base the conviction on the statement of police officers. The public witnesses who could join the raiding party were not joined in the raiding party. Sufficient time was available to the police party and the village was very near from where public witnesses could be made available.

6. The next submission made by the learned counsel for the appellants is that in this case the investigation was entrusted to Sri Gopi Chand, Sub-Inspector, who was subordinate to Sri Nar Singh Pal Singh, Station Officer of Police Station, Sikandarabad. This Investigating Officer, Sri Gopi Chand, PW 3, was subordinate to Sri Nar Singh Pal Singh. In this regard the learned counsel for the appellants drew my attention towards a decision of "Raghubir v. State of U.P." reported in 1995 UP Cri R 57, in support of his contention. In the said case his Lordship, Mr. Justice G.S.N. Tripathi, has observed that a subordinate officer cannot do justice to the case and being a subordinate he was not in a position to come to an independent findings. Such an investigation can be termed as tainted and no reliance can be placed upon it and investigation regarding acts of senior officer should not be done by junior.

7. The last submission made by the learned counsel for the appellants is that there is no report of expert that the arms and ammunitions allegedly recovered from possession of these appellants were in a fit position to be used. Only the sanction order alleged to have been given by the District Magistrate, Sri R. C. Jain, has been proved by a third person who had seen the District Magistrate signing and writing. Even the District Magistrate, who has accorded sanction, has not come forward to say that while according sanction he had applied his mind and those arms and ammunitions were fit for use.

8. In such circumstances the learned counsel submits that relying upon the sole

testimony of police officers the judgment and order passed by the learned trial Court is not sustainable in law.

9. Learned counsel for the State counters the arguments of the learned counsel for the appellants and State that the sanction accorded by the District Magistrate has been duly proved by a person, who had seen the District Magistrate signing and writing and the District Magistrate does not grant sanction unless and until he is satisfied that the arms and ammunitions are fit for the use.

10. The next submission of the learned State Counsel is that non-inclusion of a public witness in the raiding party is not fatal to the case of the prosecution and conviction can also be based on the sole testimony of the police officers if their statement is reliable. According to him there is no suggestion on behalf of the accused persons that those police officers were inimical to them and there was a motive to implicate them falsely.

11. As far as the legal proposition is concerned, no doubt, conviction can be based on the sole testimony of the police officers if they are reliable and worthy of credence. In some cases it might be possible that the police officers are not in a position to secure the presence of public witnesses and in these circumstances there is no alternative for the police officers to conduct raid without joining public witnesses. In this case information was allegedly received at about 3.15 a.m. and they had the time up to 4.30 a.m. with them. It was early hours of the morning and that the village was very near from that place and the witnesses from public could have been made available to the raiding party. The learned Addl. Sessions Judge has himself admitted in para 26 of his judgment that if some efforts were made some persons could have been available but the time would have been wasted in it and it was quite possible that the gang would have gone unapprehended. This is not a reason for non-inclusion of public witnesses while conducting raid in such type of offence. When the time was available with the police party and public witnesses would have been available from nearby village, the very fact that the police party did not make efforts to join any public witness in the raiding party shows that the police party did not have any intention to join any public witness in the raiding party. This is a serious lapse on the part of police and in such circumstances at least efforts should have been made to join the witnesses from public. Non-joining of any public witness in the raiding party makes the case of the prosecution a doubtful one.

12. Now coming to the other limb of arguments that investigation was entrusted to a subordinate officer, Sri Gopi Chand, Sub-Inspector. It has been laid down by Hon'ble Judge of this Court in the case of Raghbir v. State of U.P. (supra) that if the investigation of the case has been entrusted to a subordinate officer by the station officer of the said police station, the investigation in such a case cannot be fair. Being a subordinate he is not in a position to come to an independent finding and such an investigation can be treated as tainted and no reliance can be placed upon it. According to his Lordship investigation regarding acts of senior officer should not be done by junior officer. This is another glaring mistake and

lacuna in the prosecution case which makes this case a doubtful one.

13. Admittedly there is no evidence of any expert that the fire-arms allegedly recovered from possession of the accused persons were tested in a laboratory and were found fit for use. Even the Investigating Officer has not said anything about it. Mere proving of the sanction by a third person is not sufficient and this is another glaring factor in this case which makes the case of the prosecution doubtful.

14. Keeping in view these glaring factors in this case I find that the conviction of the appellants based on the sole testimony of the police officers is un-called for and is not sustainable in the eye of law. In view of the circumstances explained, I give the benefit of doubt to all the four appellants and accept the appeal, set aside the judgment and order dated 6-9-1979 passed by VII Addl. Sessions Judge, Bulandshahr in Sessions Trial No. 83 of 1979, and acquit all the four appellants, namely, Ram Jatan, Shabbir, Islam and Jaipal of the charges levelled against them in this case by giving them the benefit of doubt. They are stated to be in jail and will be released forthwith, if not wanted in any other case.

15. As the appellants have not claimed the weapons allegedly recovered from their possessions, i.e., the material exhibits, the same will be disposed of after expiry of the period of appeal in accordance with law.