
(2002) 08 BOM CK 0115
In the Bombay High Court
Case No : Criminal Appeal No. 553 of 1999

Sadashiv @ Shiva Antappa Pujari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

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

Citation : (2003) 2 ALD(Cri) 142 : (2003) CriLJ 3661

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : None, for the Appellant; Shringarpure, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Heard, Shri Shringarpure, A.P.P. for the prosecution. The appellant is hereby assailing correctness, propriety and legality of the order of conviction and sentence passed against him, in Sessions Case No. 160 of 1996, wherein the appellant has been convicted for the offence punishable under provision of Sections 399 and 402 of Indian Penal Code. The appellant has been sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs. 1000/-, in default to undergo rigorous imprisonment for one month in context with provisions of Section 399 of Indian Penal Code. He has been sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 500/-, in default to undergo rigorous imprisonment for fifteen days for the offence punishable u/s 402 of Indian Penal Code.

2. The prosecution case, in brief is that on 16/10/1995, at 3.30 p.m. the Station House Officer, P.S.I. Gavaonkar, attached to R.K. Kidvai police station, received secret information that some seven unknown persons armed with dangerous weapons have assembled at Comrade, G.L. Patil, Municipal Corporation Market, Acharya Gonde Road, Seweree, Mumbai for committing dacoity at Lokmanya Jewelers shop, situated in the near vicinity. After receiving said information, the

police staff of the said police station went to the said spot, they divided themselves in two groups, and P.W.1 Gaonkar went ahead near those persons. He Heard the said persons giving instructions as to how they should behave at the time of said dacoity. He gave a signal to other persons and all members of the raiding party caught 4 of them. However 3 out of them managed to run away. Panch witnesses were called. The person, of apprehended persons searched. They found a country made revolver in possession of one Irshad, a chopper in possession of the present appellant and some other weapons in possession of other accused. After investigation, the appellant was put to trial with other associates and after trial the learned trial Judge, passed the order of conviction and sentence mentioned above.

3. The prosecution evidence shows a great deal of variance in respect of the evidence about irshad giving instructions to other members as to how the said dacoity is to be effected. Had there been truth in the prosecution evidence, the evidence of other prosecution witnesses would have been consistent with the evidence of P.W. No.1, who claims that he heard the said person giving instructions to those persons. Apart from that, the evidence adduced by the prosecution in this case touching the case of this appellant is so unnatural that it cannot be accepted for basing a conviction, because it is alleged by the prosecution that this appellant was possessing a chopper, which was seized from him under panchanama. There is absolutely no mention of it in the statement of P.W.1. The F.I.R. has been lodged by him two hours after reaching the police station, for which the prosecution was unable to give any satisfactory explanation. Had there been a chopper in possession of the present appellant, it would have been certainly mentioned by him in F.I.R. But that has not been done and there is no acceptable explanation coming from the prosecution. The possession of the chopper is the only evidence against the appellant so far as the said crime is concerned.

4. The possession of chopper, knife, an axe, a dagger, spear by itself would not be sufficient to come to a conclusion that the persons possessing such weapons had assembled for the purpose of committing dacoity. They could have been assembled for assaulting somebody else at the most. If proper explanation is offered for possession of such day to day use articles, and if there is no convincing evidence to show that such persons had assembled for the purpose of committing robbery or dacoity, they cannot be punished for the charge in context with other offences spelled out such persons cannot be punished under Sections 399, 402 of I.P.C. They would be guilty if guilt is proved but for some other offences connected with the evidence adduced by the prosecution against them. If the charge for committing the offence punishable u/s 399 of I.P.C. or Section 402 of I.P.C. is to be held as proved, some more evidence is needed and that should be also natural evidence. The attitude of proving such charge by putting some one or two sentences in their mouth alone has to be deprecated because involvement of innocent persons who are not possessing deadly weapons, by use of such sentences cannot be ruled out. Some persons of acquaintance of each

other may assemble and out of them some may possess knives, axes, in villages or near jungles. They may possess such articles for the purpose of saving themselves from the attacks from wild animals. If they offer proper explanation, they cannot be roped in, for the charge of offences indicated by the provisions of Section 399, 402 of I.P.C.

5. It is to be kept in mind that villagers after completing their agricultural work or after grazing the cattle return homes and while doing so meet others and follow the path in groups. Those persons are very likely to possess such articles which are generally used by the villagers for their safety or for doing necessary activities in jungle connected with agriculture or grazing the cattle by cutting the branches of trees. The possession of such weapons by themselves would not be sufficient to come to a conclusion that they are the members of the gang of dacoits or they have assembled for the purpose of committing the dacoity. For proving such charge some credible and specific evidence is necessary otherwise innocent villagers are very likely to suffer.

6. In cities also some persons doing the labour work are also expected to carry some weapons. A butcher may carry the chopper. A wood cutter may also carry an axe. Some persons may also carry innocently knives but by that only one should not come to a conclusion that assembly of such persons is for the purpose of making the preparation for committing the robbery or dacoity or they happen to be the members of the gang of the dacoits or the persons committing the dacoities and robberies. The convincing evidence to that effect has to be adduced by the prosecution, it may be circumstantial evidence also.

7. The learned trial Judge has lost sight of the important aspect of the matter and therefore, he landed in error of passing the order of conviction and sentence against this appellant. The said judgment and order of conviction and sentence being improper, incorrect and illegal, needs to be set aside. Therefore, this appeal is allowed. The order of conviction and sentence passed against the appellant is set aside and he stands acquitted. He be set free, if not required for any enquiry, investigation, proceeding or trial. He be also not released, if he happens to be a convict undergoing sentence for some other offence.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristadar of this Court.