

(2009) 05 CAL CK 0061
In the Calcutta High Court
Case No : C.R.A. No. 746 of 2006

Sk. Alauddin alias Ala and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Arms Act, 1959 — Section 25(1B)(a), 27, 35
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 34, 392, 393, 397

Citation : (2009) CriLJ 3138 : (2010) 1 Crimes 488 : (2010) 6 RCR(Criminal) 438

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : R.S. Chatterjee and U.S. Chatterjee, for the Appellant; Debabrata Roy, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, J.

The Judgment of the Court was as follows:

1. The three appellants, namely Sk. Alauddin @ Ala, Sk. Nasim and Asraful Mallick @ Laltu preferred this appeal against the judgment and order dated 26.09.2006 passed by the learned Additional Sessions Judge, Fast Track Court No. III at Rampurhat in the District of Birbhum whereby the three appellants were sentenced to suffer R.I. for 7 years each with a fine of Rs. 5,000/- each in default to suffer further R.I. for 6 months each on account of the offence u/s 393 read with Section 34 I.P.C.

2. Mr. Uday Sankar Chatterjee appears for the appellant Sk. Alauddin @ Ala, but it appears that Memo of Appeal was filed by three appellants jointly. Though none appears for the other two appellants, submissions of Mr. Uday Sankar Chatterjee covers all the three appellants because all the three appellants stand

on the same footing and there was not a single submission or argument that can only isolate Sk. Alauddin @ Ala from the other two appellants. Accordingly, appearance of Mr. Uday Sankar Chatterjee covers all the three appellants.

3. Mr. P. K. Das who was then Branch Manager of UCO Bank at Lohapur Branch in the District of Birbhum lodged an FIR with the O.C. Nalhati P.S. on 8th of February, 2006 at 18-.25 hours alleging the following incident:-

Four young men aged between 20-30 years entered into the bank at about 14-20 hrs. on 8th February, 2006 when the Branch Manager was assisting the works in the counter. Immediately on their entry inside the bank he enquired of them for the purpose of their visit. One of them took out a revolver and pointed at him and asked him to open the door of the cash safe. Without being unnerved he pushed the alarm bell and it worked result. They became anxious of their safety and tried to flee away. Hearing the alarm the local people nabbed three of the four persons, one escaped. The mob started beating the dacoits and brought them back inside the premises of the bank and they were the same persons who entered into the bank for looting and one of them had robbed one customer of his belongings. Another miscreant threatened the cashier with a dragger asking him to hand over his money but the attempt failed with the sound of the alarm bell. Nalhati P.S. was informed of and within an hour the police reached the bank. The members of the mob immediately entered into the bank with the police and deposited one revolver, cartridges, dragger, one big knife and one metal made spray machine which were said to have been recovered from the dacoits by the members of the mob.

4. Police registered Nalhati P.S. Case No. 19 of 2006 dated 08.02.2006 under Sections 392/397 of the I.P.C. and under Sections 25 (1B)(a)/27/35 of the Arms Act and after investigation submitted charge-sheet against them under the aforesaid sections of the law. The learned Judge framed charges under Sections 392/397 I.P.C. against three appellants and upon examination of eight prosecution witnesses and that of the appellants u/s 313 Cr.PC recorded conviction against all of them u/s 393 read with Section 34 I.P.C. and awarded sentence as above.

5. A brief survey of evidence of the prosecution witnesses is necessary to appreciate the merit of the appeal.

6. PW-1, Pronoy Kumar Das, the Branch Manager of the Bank who lodged the FIR says as follows:-

"The incident took place on 8th February, 2006 around 14.20 noon. At that time I was at the counter of our Bank. At that time 4 persons in civil dress entered our Bank and threatened us with showing of a revolver and asked us to open the cash safe. All the miscreants were in the age of group 20-30 years. Our cashier babu was in the cash counter. All the four miscreants dragged our cashier out. At that time I get scope to press the alarm bell of the Bank and accordingly I pressed the same. The siren of our Bank started blowing when I pressed the

alarm bell. At that time, all the four miscreants became puzzled and tried to flee away and fled away. Hearing the sound of the siren, mob gathered outside the Bank and they were able to catch hold of three miscreants and one miscreant managed to escape. Thereafter, the people started beating the three miscreants and brought the three miscreants to the Bank. Local people recovered a nylon bag containing an instrument like pipe gun along with three cartridges, a big dragger a spring knife, a key of motor cycle from the miscreants. Thereafter, I telephoned to P.S. Thereafter police came to our bank within an hour."

7. He says that then police seized steel made instrument like pipe gun, three cartridges, a big knife, a small spring knife and a key after preparation of seizure list (Exbt. 2). He identified the three appellants as persons who entered into the bank with arms to commit dacoity. In his cross-examination he gives the topography of the bank and the surrounding area. At the relevant time there were two cash counters and the seat of the Assistant Manager is behind the token issue counter and there were three bank employees" and post of Assistant Manager was vacant. In cross-examination he says that at the moment he was in a token issue counter and appearance of the miscreants created a suspicion in his mind. The miscreants had weapons in their hand. In cross-examination he further says that at that very moment he did not press the switch of the siren and did not inform the police and ten minutes thereafter he pressed the switch of the siren. He further says in his cross-examination "it is a fact that when mob caught hold of three miscreants and brought to the bank I informed the police of the matter over telephone". There were 7/8 customers in the bank.

8. PW-2, Sambhu Nath Mondal, a clerk of the bank was then in the cash counter. His evidence is as follows:-

"At that time 4 persons in civil dress entered our Bank and they were in the age group of 20-30 years. Our Manager babu asked them what their business was. At that time they took out 2 pipe guns, a big knife and spring knife from their wearing apparel and showed those instrument to us. They also asked our Manager babu to open the door of a cash room. One of the miscreants attempted to take the money and at that time, our Manager pressed the warning bell of the siren. Hearing the sound of the siren and our cry, the miscreants tried to flee away. Mob caught 3 miscreants and one miscreant managed to escape. The mob started beating the 3 miscreants. Thereafter people brought the 3 miscreants to our Bank. A nylon bag was in the possession of the miscreants wherein 2 pipe guns, a vojali, a spring knife and a key were kept. Our Manager babu informed Nalhati P.S. of the matter. Police came to our Bank after 40 minutes."

9. In cross-examination he says that the members of the public caught hold of three miscreants but cannot say at what exact place the public caught hold of them. In his cross-examination he says "it is a fact that I saw the miscreants at our bank premises when the miscreants were brought to the bank premises and thereafter I am seeing the miscreants at the Court room". At one place of his cross-examination he says the articles were seized by police as produced by

Manager. Again he says in his cross-examination which is as follows:- -

"At the time of incident I was in the cash counter. It was number 1 counter. The miscreants took our Manager babu to my cash counter. Our Manager babu pressed the switch of the siren at the volt."

10. PW-3, Ajoy Kumar Let, a Group-D staff of the bank says as follows:-

"At the time of incident I was on duty. 4 unknown persons entered our Bank. They have pistol, bhojoli, pipe gun etc. in their hands. One person kept a pistol at the neck of our Manager and asked him to open the vault of the Bank. Our Manager then went to take out the key of the vault and at that very moment, he got scope to press the switch of the siren and accordingly he pressed the switch of the siren. When the siren started blowing, all the accused persons started to flee away. Thereafter 3 miscreants were caught red handed by the public, near the Bank premises. Thereafter public started beating the miscreants. Thereafter public brought the 3 miscreants to the Bank premises. There after, public recovered one pipe gun, one revolver, a big knife, a spring knife, a key and 3 cartridges from the possession of the miscreants. Thereafter public brought the miscreants and the incriminating articles to the Manager of the Bank."

11. PW-4, Adinath Datta is not an eye-witness to the incident. Having heard the sound of blowing of siren he came to the bank premises and found that the three persons had been caught hold of by the members of the public and were being beaten.

12. PW-5, Md. Kararajjaman is a witness who came to the bank premises after having heard the incident of dacoity. He is a witness to the seizure of the weapons.

13. PW-6, Najrul Islam similarly is a post occurrence witness who is a witness to a formal seizure of the weapons.

14. PW-7, Biswanath Sarkar was a peon attached to the office of the B.D.O of Nalhati-II Block who came to the bank for withdrawal of money. He says as follows:-

"The 4 miscreants showed offensive weapons to the Manager of the Bank for the purpose of committing dacoity. The 4 miscreants detained me in a room and snatched my mobile phone. The model No. of my Mobile Telephone is Nokia -1108 bearing Telephone No. 9434718535. The Bank Manager pressed the switch of the siren and the siren started blowing. Thereafter all the 4 miscreants tried to flee away but 3 miscreants were caught red handed on the ground below the Bank and one miscreant managed to escape. Thereafter public started beating the 3 miscreants. Public brought the 3 miscreants to the Bank premises. Thereafter, I got down from the Bank when public brought the miscreant to the Bank premises. My mobile telephone has not been recovered till today. The miscreants who snatched my mobile phone managed to escape."

15. PW-8, Rajashree Datta is the I.O. of the case. Having come to the bank premises on receipt of the telephonic message which was diarized vide Entry No. 356 dated 8th of February, 2006 he found three persons lying injured and the members of the public were in agitating mood. There, he received a complaint from PW-1 and sent the same to the police station through one A.S.I. of Police and started investigation of the case and at the bank itself he effected seizure of a pipe gun, another pipe gun made up of iron, three live cartridges, a bhojali made of iron, a spring knife, a key made of steel and a green coloured bag under a seizure list in presence of the witnesses (Exbt.2). All these seized articles were produced at the time of trial which were marked Material Exhibits. This witness was cross-examined at considerable length but nothing fruitful could come out in favour of the defence.

16. The appellants were examined u/s 313 Cr.PC and all relevant evidences were put to them. They simply pleaded their innocence.

17. Having thus gained control of evidence of the witnesses let us proceed to have a critical appreciation thereof. Evidence of PW-1, PW-2, PW-3 and PW-7 if read together would reveal the following:-

It was around 2-20 p.m. when the bank's business transaction was going on and 7/9 customers were in the bank of whom PW-7 is one of them. PW-1 was in the token issue counter when four miscreants being armed with weapons entered into the bank and the miscreants dragged the cashier out and threatened him at the point of revolver. When the miscreants dragged out cashier PW-1 got a scope to press the alarm bell. The siren started blowing and then the miscreants managed to flee way. With no time having been lost the members of the public gathered outside the bank and caught hold of three miscreants and one fled away. The three miscreants were subsequently beaten by the members of the public. as a result of which when PW-8 came to the bank he removed them to the hospital for medical treatment. Now, the members of the local people recovered a nylon bag containing the aforesaid instruments description of which has been given by PW-8 who was the I.O. of the case. These instruments were made over to the Branch Manager and when the police came the Branch Manager produced the same to the police for the purpose of effecting seizure. The police came at the spot and there PW-1 wrote out an ejahar which was made over to PW-8 who sent the same to the police station at Nalhati through one A.S.I. of Police for registration of a case. It appears from evidence of PW-7 that his mobile phone was robbed of by the miscreants. In the context of the aforesaid evidence which has remained unshaken although in cross-examination the irresistible conclusion would be that four miscreants entered into the bank with weapons with a view to looting the cash of the bank and for the purpose of looting they dragged out the cashier but could not loot the cash because of the Branch Manager having pressed the alarm bell that drew the attention of the local people who immediately came out and could be able to apprehend the three of the four miscreants and recovered from them the weapons which they had

brought into the bank for the purpose of looting, and produced the same before PW-1. Mr. Uday Sankar Chatterjee, learned Advocate appearing for the appellants submitted that the miscreants were not caught hold of inside the bank by the bank officials but were brought to the bank by some local people and it cannot be said that if at all any incident had really taken place it was the same miscreants who really had entered into the bank as alleged by the prosecution witnesses. The second argument of Mr. Chatterjee is that from the possession of the appellants no weapons were at all recovered and what was recovered by PW-8 was only from the possession of PW-1 and therefore it cannot be said that the appellants had entered into the bank for the purpose of looting bank's cash. Thirdly, it is argued that when the Branch Manager says in his evidence that 10 minutes after arrival of the miscreants in the bank he pressed the alarm bell it was improbable that the members of the public would be able to catch hold of the three miscreants and bring back them to the bank. Now, all these arguments are really misplaced. Evidence of witness has to be taken in its totality. In Examination-in-Chief PW-1 has said that at the moment the miscreants dragged out cashier he got the scope to press the alarm bell and as soon as the siren of the bell started blowing the miscreants became puzzled and meanwhile the people came out and could be able to catch hold of three miscreants just outside the bank. This is not improbable. The cross-examination of PW-1 that 10 minutes after arrival of the accused persons he pressed the switch of the siren does not lead us anywhere and it does not indicate that before blowing the siren the miscreants had fled away or that it was impossible on the part of the people to rush to the bank premises after hearing the bell of the alarm. It is again preposterous to argue that the persons who were caught hold of by the members of the public just outside the bank premises are not the same persons who allegedly entered into the bank. PW-1 has said in his evidence that the three appellants are the persons whom he saw in the bank as miscreants and this piece of evidence could not be shaken at all. It is the defence case that some dishonest people have financial transaction with the bank and PW-1 has falsely implicated the three appellants in connivance with some dishonest cow businessmen. This is an absurd and improbable defence. It is not in evidence that alleged dishonest businessmen had enmity with the three appellants and they in collusion with the Branch Manager implicated the appellants falsely. PW-2 identified the appellants as the persons who came to the bank to commit dacoity. So also is the evidence of PW-3. Now, PW-2 says in his cross-examination that he cannot say at what exact place the members of the public caught hold of the miscreants. It is not possible for PW-2 to say, as he was inside of the bank as an employee, as to at what exact point or place the members of the public caught hold of the miscreants. The I.O. recovered the weapons as per seizure list from the Branch Manager but that does not mean that no recovery was effected from the appellants. It is silly to argue that the Branch Manager with whom there was no enmity, no acquaintance with the appellants produced the weapons before the police with a false story that they were seized by the members of the public from the possession of the appellants. Now, there is another seizure list which is Exbt.

4 relating to seizure of one motorcycle. Now this motorcycle was seized by the police in front of the UCO Bank in presence of PW-5, and another Najrul Islam. Of course, seizure of the motorcycle could not be connected with the appellants but that does not disprove the prosecution case. Yet, there is another seizure list (Exbt.3) which is a seizure of one money receipt of "Star Automobiles" and one challan of the said "Star Automobiles" in the name of one Sk. Attar Ali in respect of a vehicle. Now this seizure was made from the first floor of the counter of the bank as was produced by PW-4. PW-4's evidence is that having come to the bank he found a money receipt and a challan lying on the floor of the bank and showed the same to the police and police seized the same under a seizure list. True it is, the said money receipt or the challan could not be related to the appellants but that is of no consequence. Having gone through the evidence of the witnesses I do not find that the learned trial Court committed any illegality in convicting the appellants u/s 393 read with Section 34 I.P.C.

18. The appeal fails and is dismissed.

19. A copy of the judgment and order shall be sent to the Superintendent of the Correctional Home where the appellants are now lodged.

L.C.A. and a copy of this judgment shall be sent to the learned trial Court for information and necessary action.