

(1959) 12 AHC CK 0003
In the Allahabad High Court
Case No : Govt. A. No. 973 of 1958

State	Vs	APPELLANT
Om Prakash and Others		RESPONDENT

Date of Decision : 14-12-1959

Acts Referred:

Arms Act, 1959 — Section 29
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 391, 395, 399, 402

Citation : (1960) 30 AWR 219

Hon'ble Judges : Takru, J;Srivastava, J

Bench : Division Bench

Advocate : B.N Katju, Asstt. G.A, for the Appellant; P.C. Chaturvedi and R. Mitra, for the Respondent

Final Decision : Allowed

Judgement

Srivastava, J.—These are connected appeals arising out of the same case and must, therefore, be disposed of by a common judgment.

2. Nine persons, Om Prakash, Attar Singh, Mahabir Singh, Dhara Singh, Mam Chand, Karimuddin, Sirya, Ham Chand and ala were tried by the Temporary Sessions Judge of Muzaffarnagar for the offences punishable under Sections 402 and 399 IPC. Out of them Om Prakash, Attar Singh, Mam Chand, Mahabir Singh, Karimuddin and Jhara Singh also stood charged u/s 19(f) of the Indian Arms Act. The learned Sessions Judge acquitted all the nine persons of the offences under Sections 399 and 402 IPC. He, however, found Om Prakash, Attar Singh, Mahabir Singh, Dhara Singh, Karimuddin and Mam Chand guilty u/s 19(f) of the India Arms Act and sentenced each of them for that offence to under rigorous Imprisonment for one year.

3. Criminal Appeal Nos. 329, 330, 3132 and 400 of 1958 have been filed by Mahabir Singh, Attar. Singh, Om Prakash and Mam Chand and Dhara Singh respectively against their convictions and sentences u/s 19(f) of the Indian Arms

Act. Government Appeal No. 973 of 1358 has been filed against these five Appellants and two of the remaining acquitted persons viz. Karimuddin and Sirya against their acquittal for the offences under Sections 399 and 402 IPC. No appeal has been filed against the acquittal of the remaining for acquitted persons Ham Chand and Lala.

4. The prosecution case in brief was that on 10-2-57 an informer gave information to Clause Om Prakash Saxena of Muzaffarnagar that eight or ten dacoits were expected assemble at about noon in the Dharamshala in front of the Railway. Station Shamli, that they will be carrying foreign as well as country made arms and ammunition and that their object was to go to Baraut and then to commit dacoity at the house of Shanker Brahman of village Gurana, P.S. Baraut, Distt. Muzaffarnagar. On receiving this information Sri Saxena immediately contacted the Station Officers of P.S. Shamli and Baraut on the phone. He told the former that he was proceeding to Shamli and the latter that as a dacoity was likely to be committed at the house of Shanker Brahman of Gurana of his Circle he should, be on the alert. Sri Saxena then took with himself Sri Jogendra Singh, Sub-inspector and an armed guard and proceeded by police bus to Shamli lie reached Shamir Police Station and was arranging for a raid when Ramdiya the manager of the Dharamshala situated near the railway station of Shamli Arrived and informed him the at first five person had arrived at his Dharamshala and even a room and then four or have other persons laid come and that he suspected that all those persons were bad characters and were armed. His report was-recorded and he was directed to go back to the Dharamshala and wait far the police party. From the police station Shamli Sri Saxena took with him self Sri Har Kishore Bhatnagar and Balbir Singh Sub-inspector and a number of constables. Sri Saxena and Jogendra Singh were in plain clothes at the time and had some luggage with them. The intention was to go to the Dharamshala posing to be ordinary passengers. The party first reached Subhash Chowk and from there took Chanchal Singh and Dalshan Singh two respectable members of the public with themselves. Their persons were searched and they searched the persons of the police party. Two Rickshaws were engaged. Sri Saxena and Chanchal Singh sat on one, Jogendra Singh and Darshan Singh sat on the other.

5. The other members of the party were directed to divide themselves in groups and post themselves around the Dharamshala in such a way that no person could get out of the Dharamshala without being arrested. On reaching the Dharamshala Sri Saxena contacted Rain Diya and he pointed out to him the room in which the suspected persons had assembled. Sri Saxena went to, that room and put his luggage neat it. He along with Chanchal Singh, Jogendra Singh and Darshan Singh began to walk about the place trying to over-hear the talk that was taking place inside the room. A part of the, talk was over heard. One of the persons in the room said that the only licence holder of village Gurana was likely to be out. One person also said that Tilka who had promised to come with a gun had not arrived. Another person however stated that it did not matter as they

had sufficient arms. It was men said that the train time was near and that they should purchase tickets. All the nine persons, who were tried subsequently, were there in the room at that time. After it had been specific that they should proceed to the railway station for purchasing the tickets all those persons came out of the room. On coming out they noticed some of the police men who were posted near the gate. All the nine persons then started running. Six of them viz. Dhara Singh, Om Prakash, Attar Singh, Mahabir Singh, Mam Chand and Karimuddin were arrested on the spot. The remaining three succeeded in escaping. They were followed by-some of the constables but could not be caught. The persons of the six men who were arrested on the spot were searched. Om Prakash was found carrying four live cartridges one saw, one wrench, one screw driver, two chhainis and a hammer, all in a guny bag. Attar Singh had fourteen live cartridges, one torch and one towel in a jhola. Mam Chand had a pistol, five live cartridges and some money. Mahabir Singh also had a Pistol, six live cartridges and some money. Karimuddin too had pistol and seven live cartridges. Dhara Singh had a revolver, three live cartridges, a match box, biri bundle and some money. The recovery lists were prepared in respect of these articles and all these articles were duly sealed. Sri Har Kishore Bhatnagar was entrusted with the investigation of the case. The remaining three persons were subsequently arrested and were put up for identification. They were identified by some of the witnesses. After completing the investigation Sri Jogendra Singh challaned all the nine persons and they were in due course committed to the court of. Session to stand their trial for the offences already mentioned.

9. The learned Sessions Judge on a consideration of the entire evidence produced came to the conclusion.

1. That Sri Om Prakash Saxena had received information from an informer that certain persons were to assemble in the Dharamshala at Shamli with arms for the purpose of committing dacoity.

2. That Ram Diya had noticed the arrival of those persons and on getting suspicious about them had lodged a report at the Shamli Police station.

3. That a raid was arranged and in a room of the Dharamshala nine persons were found assembled.

4. That the seven Respondents came out of the room and tried to run away on seeing the police but six of them were arrested on the spot and Sirya was arrested subsequently.

5. That the cases which had been put forward by these Respondents in their defence were not correct.

6. That the articles which were alleged to have been-recovered by the police from the seven Respondents at the time of their arrest had in fact been recovered.

7. As unlicenced arms and ammunitions had been recovered from the possession

of Om, Prakash, Attar Singh, Mahabir Singh, Dhara Singh, Karimuddin and Mam Chand after their arrest the learned Sessions Judge convicted them u/s 19(f) of the Indian Arms Act. He, however, acquitted all the seven Respondents of the offences under Sections 399 and 402 IPC because

- (a) the informer had not been produced,
- (b) the evidence that a portion of the talk of the persons assembled in the room of the Dharamshala was heard was not reliable.
- (c) Shanker Brahman at whose house the dacoity was, according to the prosecution, going to be committed was a poor man and the case that a dacoity was going to be committed at his house was improbable.
- (d) There was anything to show that any overt-act which could amount to preparation of dacoity had been done by the seven Respondents and
- (e) The Respondents had been found assembled in broad day light in a room of the Dharamshala.

8. The learned Sessions Judge was of opinion that in view of the Circumstances enumerated above it could not be inferred that the Respondents had collected for the purpose of committing dacoity or that they had made preparations to commit dacoity. He referred in support of his view to the case of Ghissu Khan v. State 1956 AWR 212 and thought that the case of State v. Janardan 1951 ALJ 466, was distinguishable.

9. In the four appeals "that have been filed on behalf of Mahabir Singh, Attar Singh, Om Prakash, Mam Chand and Dhara Singh the only contention pressed is that the conviction of these persons u/s 19(f) of the Indian Arms Act cannot be upheld because the prosecution for that offence had been launched without obtaining the necessary sanction from the District Magistrate, Muzaffarnagar.

10. In the appeal on behalf of the State it is urged that the view of the learned Sessions Judge that no case under Sections 399 and 402 IPC had been made out was erroneous and that on the facts and Circumstances which the prosecution had succeeded in establishing in the case the Respondents ought to have been convicted under Sections 399 and 402 IPC.

11. So far as theft four appeals on behalf on the persons who have been convicted u/s 19(f) of the Indian Arms Act are concerned the learned Counsel for the State has conceded that no sanction as required by Section 29 of the Indian Arms Act had been obtained from the District Magistrate, Muzaffarnagar before these persons were prosecuted for the offence u/s 19(f) of the Act. In view of the decision of this Court in Mehar Chand v. State 1959 AWR 356 since overruled in 1960 AWR 37, such a sanation was necessary and in the absence of it the conviction for the offence u/s 19(f) of the Indian. Arms Act stood vitiated. The point taken in these appeal, therefore, appears to be clearly well founded and on account, of it these appeals are entitled to succeed.

12. In connection with the appeal, by the State it was urged by Sri B.N. Katju who appeared to support the appeal that the learned Sessions Judge was not justified in his view that it was necessary to produce the informer or that the conversation that was taking place inside the room of the Dharamshala could be over-heard. It was not necessary for the prosecuted five that any other overt act had been committed, by the Respondents. The finding that no dacoity could be contemplated at the house of Shanker Brahman of Gurana was recorded without any admissible evidence. The learned Sessions Judge has not given due weight to all the Circumstances which on his own finding had been established by the prosecution. From the Circumstances established which had not been satisfactorily explained it could reasonably be inferred that the Respondents had assembled for the purpose of committing a dacoity and had made preparations for the same. They should therefore, have been convicted both. u/s 399 and Section 402 IPC.

13. On facts, therefore, the prosecution appears to have established the following Circumstances against the Respondents.

1. They belonged to different places, had no apparent connection with each other but were found assembled together in a room of the Dharamshala near the railway, station Shamli.

2. Karimuddin was a person who was under the police surveillance and was considered to be a badmash.

3. Four of the Respondents were carrying, unlicensed fire arms along with live cartridges and one had live cartridges.

4. One of the Respondents Om Prakash had an iron saw for cutting iron, two iron chisels and a hammer, a screw driver and an iron when all tools which could be utilised, for breaking open locks and boxes. He also had five live 12 bore cartridges.

5. All these Respondents on coming out of the room of the Dharamshala tried to run away as soon as they noticed the presence of the police but six of them were caught.

6. Information had been conveyed to the police that these persons would collect at the, Dharamshala with foreign and country made arms for the purpose of proceeding to Baraut for committing a dacoity at Gurana. The information was found to be correct at least to the extent that the persons were found in the Dharamshala and that they had country made as well as foreign made arms and ammunition. It was also proved, that Shanker Singh Jat a licenced holder of Gurana was to go out of the village on that day with his gun.

7. The time at which they left the room, in the Dharamshala was just before the time, when the train for Barret was to leave Shamli.

8. The Respondents offered no satisfactory explanation either for their being

found assembled together in a room of the Dharamshala or about their possession of the incriminating articles that were found to be in their possession. On the contrary they set up cases which were untrue.

14. For the purpose of Section 402 IPC what to be proved by the prosecution is:

1. That five or more person had assembled.
2. That they had assembled for the purpose of committing dacoity.
3. That the accused was one of the persons who had so assembled.

15. The essential requirements of Section 399 IPC are (1) that the accused persons had done some preparations and

(2) that the preparation was for committing, dacoity. That the purpose of the assembly or of the preparation was the commission of dacoity, is, therefore, an essential ingredient to be proved by the prosecution. In rare cases it may be possible to adduce direct evidence of this purpose. Those, are cases in which the evidence of an approver or of some reliable person who can depose about what has been said or done by the accused person is available to show the purpose of their activities. In most cases, however, it will obviously not be possible for the prosecution to produce any such direct evidence. In such cases the purpose can only be inferred from the facts and Circumstances established. Whether an inference about the purpose will be justified or not will naturally depend upon the facts and Circumstances of each case. Such facts and circumstances can never be identical in two cases. The fact that an inference was drawn or was not drawn in the Circumstances of a particular case cannot be considered to be a safe guide for deciding, whether a similar inference should be drawn or should not be drawn in any other case. Each case must be considered on its own merits and in each case the court must apply its mind to the various Circumstances proved and the probabilities of the case and then decide whether the necessary inference is to be drawn or not. The proposition that in an appropriate case on certain Circumstances being established an inference that the purpose of the assembly or preparation was to commit dacoity can be, drawn has not been disputed before us and it is, therefore, unnecessary to Cite authorities in support of it. What we have to decide, therefore, is whether hi the Circumstances established in the present case which we have mentioned already we wilt be justified in inferring that the Respondents had assembled in the Dharamsbala for the purpose of and after making preparations for committing dacoity.

16. We are not unmindful of the fact that we are dealing with an appeal against an acquittal and that the presumption of innocence, which was there in favour of the Respondents has in this case been strengthened by the fact that they have secured an acquittal from the learned Sessions Judge. We are also fully aware that it has been laid-down again and again by the Privy Council and the Supreme Court that orders of acquittal should not be interfered without compelling reasons.

17. After giving our best consideration to the matter and to the arguments which have been addressed to us on behalf of the State as well as the Respondents we find that in the present case the learned Sessions Judge has not given, to some of the Circumstances that were established in this case the importance which they deserved and has on the other hand attached undue importance to some considerations which were not very material. This has vitiated his entire approach and has led him to a wrong conclusion. He also appears to have been incorrect in his view that the case was similar to that of Ghissu Khan v. State 1956 AWR 212 and was to be specific in a similar manner.

18. The learned Judge appears to have ignored altogether the fact that the Respondents belonged to different places, were not connected with each other but were found together in a room of the Dharamshala and that they had with themselves everything which is ordinarily needed for the purpose of committing dacoity. They had pistols, revolver and gun. They had the requisite number of cartridges. They had a torch and one of them was actually carrying implements which could be used for breaking open locks, doors and safes. This last mentioned fact has not been referred to by the learned Judge at all in the portion of his judgment in which he has considered the question whether it could be inferred from the Circumstances that the Respondents had collected for the purpose of or after having made preparations to commit a dacoity. These were, in our opinion most important circumstances of a seriously incriminating nature and on the absence of any adequate explanation in respect of them considered along with the other Circumstances which were, established we think there was no escape from the conclusion that the Respondents had after making necessary preparations assembled for that purpose and for no other.

19. The learned Sessions Judge was obviously mistaken in his view that some particular overt-act was necessary foreshowing the purpose. In this country the offence of dacoity is considered to be so serious that barring mere contemplation when, the idea of committing the offence is only in the mind every subsequent stage has been made punishable. Punishment has been provided for assembling for the purpose of committing a dacoity (Section 402) as well as for making preparations to do the same (Section 399). If the persons concerned go one step further and attempt to commit the offences or if they actually commit it they can be punished u/s 395 (vide Section 391). No overt act in addition to preparation need therefore, have been proved. The preparation itself was apparent because the Respondents had come from the various places to which they belonged and after providing themselves with all the things necessary for committing the offence, had collected together at the Dharmshala and were actually proceeding towards the railway station in order to go to the place where the contemplated dacoity was to take place. What further overt act could the prosecution be expected to prove?

20. The disclosing of the name of the informer or of his production in court was not at all necessary and the prosecution could not be made to suffer for that

omission. Nor was there any material on which the learned Sessions Judge could rest his conclusion that Shanker Brahman was not a person at whose house a dacoity could have been committed. The fact that the Respondents had collected in a public place like Dharamshala or in the broad day light could also not be of much help to them. They had collected not in open place but in a room of the Dharamshala which they had obtained from the manager. The time at which they had collected was the time just before the train was to leave for Baraut.

21. As we have said already, each case has to be specific on its own facts. The, Circumstances, in which the presumption about the purpose of the assembly or preparation can be drawn in favour of the prosecution cannot obviously be categorized exhaustively. In the case of Ghissu Khan v. State 1956 AWR 212, also on which the learned Sessions Judge has apparently based his judgment it was emphasised that each case, will depend upon its own Circumstances. The only facts established in that case were that a number of persons were found collected together in the compartment of a train, some of whom were in possession of fire-Argos. It was held that those facts were for sufficient to lead to the inference that they had collected there having made preparations to commit dacoity. In the earlier case of State v. J nardan 1951 ALJ 466 the Circumstances proved were held to be sufficient to lead to the inference. In a later case State of U.P. Vs. Randhir Sri Chand and Others, also it was held that the Circumstances established in that case snowed unambiguously that within all human probability the persons concerned had embarked on in enterprise of dacoity and after preparing themselves for the crime had assembled for committing it There are in the last mentioned case some observations relating to burden of proof and the effect, of Section 106 of the Evidence Act which may in some appropriate case have to be reconsidered but on the facts proved in that case the conclusion at which the learned Judges arrived was if we may say so with respect perfectly justified. To prevent errors like the one committed by the learned Sessions Judge in this case we would like to emphasise and repeat the warning given in that case against the danger of following precedents without appropriate appreciation of the facts on which they were based.

22. Learned Counsel for the Respondents urged that before his clients could be convicted under Sections 399 and 402 IPC the prosecution ought to have established some nexus between their assembly, at the Dharamshala and the dacoity at the house of Shanker Brahman of Gurana. If the learned Counsel meant to contend that besides proving that the Respondents had after making preparation assembled for the purpose of committing dacoity the prosecution should also have proved where the dacoity was to be committed and that it was a place worth committing dacoity, we have no hesitation in rejecting the contention put forward. What is required to be proved under Sections 399 and 402 is that the assembly arid the preparations were for a dacoity and not that they were made for a particular dacoity, After the assembly and the preparation the persons concerned may even give up the idea of committing dacoity. They may at that stage contemplate to commit a dacoity at one place and may

actually commit dacoity at an entirely different place. The place where a dacoity is to be committed is selected on the basis of the information which the dacoits possess and the estimate which they make of what they will get at the place. It is by no means necessary that their information should be correct or that their estimate must be justified. Their idea of the status of the persons to be attacked may be greatly exaggerated. Their may be case in which they may succeed in getting more than they expected. All these considerations appear to be irrelevant and immaterial. If the prosecution establishes that the purpose of the assembly is to commit dacoity or that the preparations have been, made for dacoity that is enough for securing a conviction under Sections 399 and 402 IPC whether the purpose succeeds or fails or whether for any reason the persons concerned do not even attempt to achieve the purpose is entirely besides the point.

23. We have, therefore, come to the conclusion that in the present case the prosecution had succeeded in bringing on record materials from which an irresistible inference can be drawn, that the Respondents had after making preparations for committing dacoity assembled in a room of the Dharamshala on their way to the place where they were gain to commit the dacoity. The Respondents could not, therefore, escape liability for the offences punishable under Sections 399 and 402 IPC. They should have been convicted for both these offences. For each of these offence each of the Respondents must be sentenced to three and half years rigorous imprisonment. The two sentences of each of the Respondents must in the Circumstances of the present case run concurrently.

24. In the result, appeals No. 329, 330, 332 and 400 of 1958 are allowed. The conviction and sentence of the Appellants in these appeals u/s 19(f) of the Indian Arms Act are set aside Govt. Appeal No. 373 of 1958 is allowed. The acquittal of the seven Respondents in that appeal in respect of the offence under Sections 399 and 402 IPC is set aside and each of the Respondents is convicted for both the offences. Each is sentenced for each of the two offence to three and half years rigorous imprisonment. Both the sentences of each of the Respondents shall run concurrently. All the seven Respondents are on bail. They must surrender and serve out their sentences.