

BIRBAL B. CHOUHAN & ANR. ETC. ETC.

v.

STATE OF CHHATTISGARH ETC. ETC.
(Criminal Appeal Nos. 2025-2028 of 2011)

NOVEMBER 14, 2011

[DR. B.S. CHAUHAN AND T.S. THAKUR, JJ.]

PENAL CODE, 1860:

ss. 399 and 402 – Accused-appellants found guilty of assembling and preparing for committing dacoity – Conviction and sentence of 5 years RI imposed by trial court, affirmed by High Court – Held: The orders under challenge do not suffer from any legal infirmity nor do they suffer from any perversity in appreciation of evidence on record – However, in the facts and circumstances of the case, the sentence is reduced to 3 years RI under both the counts – Sentence/Sentencing.

The appellants along with six others were prosecuted for commission of offences punishable u/s 399 and 402 IPC. The prosecution case was that on 10.2.1992, when PW1 along with his friend was going on a motorbike late in the evening, they saw 8-10 persons holding sticks, who tried to stop and then chased the duo. However, they escaped and went straight to the police station and reported the incident. PW 5, the Sup-Inspector of Police, recorded the report and informed the Kotwali. The appellants and others were apprehended along with arms, eatables and liquor. Some of the miscreants escaped. The trial court convicted the appellants and two others of the offences charged and sentenced each of them to under rigorous imprisonment for five years under each of the two counts. The other four accused were acquitted on benefit of doubt. The High

A Court declined to interfere. Aggrieved, the convicts approached the Supreme Court. Two of them did not surrender and their special leave petitions were dismissed.

B Disposing of the appeals, the Court

C HELD: 1.1 The High Court in appeal reappraised the evidence adduced by the prosecution and the defence and affirmed the findings recorded by the trial court holding that the appellants who were residents of different villages had gathered with lethal arms at an unearthly hour in a desolate place under a tree with no explanation for their conduct whatsoever much less an acceptable one. The High Court was of the view that the evidence adduced by the prosecution was cogent and acceptable leaving no room for interference with the order of conviction and sentence recorded by the trial court. [Para 5] [154-F-G]

D 1.2 No error of fact or law has been pointed out in the orders passed by the courts below. Even otherwise, the orders under challenge do not suffer from any legal infirmity nor do they suffer from any perversity in the appreciation of evidence adduced by the parties. In that view, therefore, the courts below were justified in recording an order of conviction against the appellants. E However, in the facts and circumstance of the case, the sentence imposed upon the appellants is somewhat harsh and needs to be suitably reduced. Accordingly, the sentence of 5 years RI awarded by the trial court as affirmed by the High Court, is reduced to rigorous imprisonment for a period of three years only on both counts. [Para 7] [155-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2025-2028 of 2011.

H From the Judgment & Order dated 09.07.2010 of the High

Court of Chhattisgarh, Bilaspur in Criminal Appeal Nos. 603, 634, 881, 1172, 1173 & 1174 of 1993. A

Garvesh Kabra, Nikita Kabra, Pooja Kabra, Abhishek Jaju for the Appellant.

The Judgment of the Court was delivered by B

T.S. THAKUR, J. 1. The appellants in these appeals were tried by the Second Additional Session Judge, Raipur for offences punishable under Sections 399 and 402 of the Indian Penal Code, 1860 in Sessions Trial No.103/92, convicted and sentenced to undergo rigorous imprisonment for a period of five years on both counts. Criminal Appeals No.603/1993, 634/1993, 881/1993, 1172/1993, 1173/1993 and 1174/1993 filed by the appellants having been dismissed by the High Court of Chhattisgarh, Bilaspur by its order dated 9th July, 2010, the present appeals have been filed to assail the correctness of the said judgment and order. C D

2. Briefly stated, the prosecution case against the appellants was that on 10th February, 1992, (PW1) Lokesh Agarwal was travelling from Pusaur to Raigarh on a motorbike with his friend Rashid late in the evening when he saw eight to ten persons at Kota Tarai near airport holding sticks in their hands. They tried to stop and then chase the duo who fled from the spot and went straight to Raigarh Police to report about the incident. Sub-Inspector A.K. Khan (PW5) recorded the report and informed Stations Incharge at Kotwali Raigarh and Pusaur with a request to them to reach the spot. The police constituted four smaller groups to approach the place where the appellants were said to be sitting under a tree with lethal weapons in their hands. The appellants were surrounded and asked to surrender whereupon they tried to escape from the spot but the police party apprehended the appellants along with the arms they were carrying besides eatables and liquor. Some of those assembled on the spot, made their escape good under the cover of darkness. E F G H

A 3. On completion of investigation into the case a charge
sheet was filed against eleven persons for offences punishable
under Sections 399 and 402 IPC. The jurisdictional Magistrate
soon thereafter committed the appellants to stand trial before
the Sessions Judge, Raigarh, who made over the case to the
B Second Additional Sessions Judge, Raigarh.

C 4. Before the trial Court, the prosecution examined nine
witnesses while five witnesses were examined in defence. The
prosecution also relied upon the seizure of weapons like a
Sword, Daggers, a betel axe and sticks from the appellants
including a torch, bottle of liquor, some eatables and a candle.
The trial Court eventually found the appellants guilty of the
offences with which they were charged and sentenced them to
undergo imprisonment for five years on each count as already
mentioned above. Four of the accused persons namely,
D Jageshwar, Shani Rawat, Palu Ram and Hiravan @ Ahiravan
were, however, given the benefit of doubt and acquitted by the
trial Court. The trial Court held that the accused persons had
gathered at a desolate place, at the dead of night tried to stop
Lokesh Agarwal (PW1) and being armed with lethal weapons
E were preparing to commit offences which act was punishable
under Sections 399 and 402 of the IPC.

F 5. The High Court in appeal reappraised the evidence
adduced by the prosecution and defence and affirmed the
findings recorded by the trial Court holding that the appellants
before the High Court who were residents of different villages
had gathered with lethal arms at an unearthly hour in a desolate
place under a tree with no explanation for their conduct
whatsoever much less an acceptable one. The High Court was
of the view that the evidence adduced by the prosecution was
G cogent and acceptable leaving no room for interference with
the order of conviction and sentence recorded by the Trial Court.
The present appeals assail the correctness of the above
judgment of the High Court as noticed earlier.

H 6. Along with the Special Leave Petitions the appellants

made a prayer for exemption from surrender by them which was declined by the Judge-in-Chamber by order dated 8th November, 2011. Eight of the convicts then surrendered while Paharia @ Goverdhan and Goverdhan Khasia, petitioners in SLP No.21927 and 21929 did not. Special Leave Petitions filed by the said two convicts were, therefore, dismissed by an order of this Court dated 10th February, 2011.

7. We have heard learned counsel for the parties for the remaining eight appellants and perused the orders under challenge. Learned counsel for the appellants has not been able to point out any error of fact or law in the order passed by the Courts below. Even otherwise the orders under challenge do not suffer from any legal infirmity nor do they suffer from any perversity in the appreciation of evidence adduced by the parties. In that view, therefore, we have no hesitation in holding that the Courts below were justified in recording an order of conviction against the appellants. We, however, feel that in the facts and circumstance of the case the sentence imposed upon the appellants is somewhat harsh and needs to be suitably reduced. We accordingly modify the sentence recorded by the trial Court as affirmed by the High Court to the extent that instead of five years the appellants shall stand sentenced to undergo rigorous imprisonment for a period of three years only on both counts. Sentences awarded shall run concurrently.

8. Appeals are disposed of with the above modification.

R.P.

Appeals disposed of.