

## Dwarka And Anr. vs State on 8 August, 1953

**Equivalent citations: 1954CRILJ188, AIR 1954 ALLAHABAD 106**

### JUDGMENT

Agarwala, J.

1. Eight persons Dwarka, Bhuiya Dia, Inderpal, Ram Gopal, Mahadin, Gharibe, Chhanga and Sarju have appealed against their conviction under Section 402, I. P. C. and a sentence of two years' rigorous imprisonment. Of these Inderpal, Ram Gopal, Sarju, chhanga and Dwarka were further convicted under Section 19(f), Arms Act and sentenced to rigorous imprisonment for one year and they have appealed against their conviction under that section as well. The charge under Section 19 (f), Arms Act was tried by a jury, which returned a verdict of guilty.

2. The prosecution case was that Mohammad Alam, Sub-inspector, belonging to the Investigation squad of the C.I.D., Lucknow, had gone in the morning of 7-10-1951, to Mohanlalganj for Investigation of a case under Section 457, I. P. C. At about 6 p.m. he received information that some bad characters had assembled near the railway station. Immediately he went up along with a police party consisting of three Sub-Inspectors, 4 constables and three or four other people of the town. The railway station is at a distance of about two furlongs from the police station and in between the two, about a furlong and a half from the police station, there is an old dilapidated building called the 'Bardasht Khana'. As the party approached the Bardasht Khana, they heard whispering sound. The police party surrounded the place and challenged the inmates.

About 18 or 20 persons came out and fled in various directions. Eight of them were, however, arrested by the police party and these were the appellants. From the possession of Ram Gopal one country made pistol and some cartridges were recovered and from the possession of Inderpal also a country made pistol and some cartridges were recovered. From the possession of Sarju, Chhanga and Dwarka some cartridges were recovered. The police prosecuted the appellants on the allegation that they had collected at that place with the Intention of committing a dacoity.

3. The appellants denied the commission of the offences and gave various places as the place of their arrest, but admitted that all of them were arrested in the afternoon of the same day.

4. In proof of the prosecution case five persons were produced : Babu, Narain and Sarda Bux Singh, Sub-Inspector Mohammad Alam and Sub-Inspector Mohammad Faruq.

5. I have heard learned Counsel in support of their appeals and gone through the record. It was urged that besides the two Sub-Inspectors, the other three witnesses were not at all independent witnesses. They were, as one could call them, 'police witnesses', because they had been previously convicted of some offence. Babu had been bound over under Section 110, Cr. P. C. Some

discrepancies in the statements of these witnesses were also pointed out to me. It was further alleged that the first information report was not produced in this case.

To my mind none of these arguments has any validity in the present case. The arrest was made by a police party, because of a confidential information received by them that some bad characters had assembled. This was not an information of the commission of an offence and, therefore, it was not necessary that it should have been recorded under Section 154, Criminal P. C. When the persons were arrested and were found to be in possession of fire-arms, the case made out against them was one under Section 402, Penal Code. When the Information was received in the first instance, it was merely a case under Section 109, Cr. P. C. In such a contingency the first information report was written out by the Sub-Inspector on his return after arresting them. This was tendered by the prosecution in evidence but it was not brought on the record because it was considered inadmissible.

6. It was said that independent witnesses should have been taken by the police for the search of the persons of the appellants and that the witnesses Babu, Narain and Sarda Bux not being independent, the search was invalid. So far as the search of the person of an accused is concerned, the law does not require that it should be made in the presence of any witness. Where the search of a place has to be made the law requires that it should be made in the presence of two respectable witnesses of the locality vide Section 103, Criminal P. C. Even though the law does not require a search of the person of an accused to be made in the presence of respectable witnesses, para. 154 of the Police Regulations does require that when the search of an arrested person under Section 51, Criminal P. C. is made, it should be made in the presence of two witnesses unconnected with the police, whenever such witnesses are available.

The search in the present case was made in the presence of Babu, Narain and Sarda Bux. They are unconnected with the police in the sense that they are not the servants of the police and, therefore, technically the requirements of para. 154 of the Police Regulations were fulfilled. But it should be commented that witnesses like Babu, Narain and Sarda Bux do not inspire confidence and it would have been advisable to take respectable witnesses about whose independence no suspicion could be raised. It is in the interest of fair trial and the fair name of the police itself that searches should be made in the presence of respectable and independent witnesses. It is regrettable that this was not done in the present case.

However, this factor alone does not render the search legally invalid or unreliable. Sub-Inspector Mohammad Alam and Sub-Inspector Mohammad Faruq are police officials of status. There has been no suggestion that they entertained any animus against the appellants. It is admitted that all the appellants were arrested in the evening of 7-10-1951, No reason whatsoever has been suggested why these high officials should take into their head to arrest all these persons at about the same time. I have no reason whatever to disbelieve the sworn testimony of Sub-Inspector Mohammad Alam and Sub-Inspector Mohammad Faruq. Even if I were to discard the statements of Babu, Narain and Sarda Bux, I would be prepared to base my judgment upon the sworn testimony of Sub-Inspector Mohammad Alam and Sub-Inspector Mohammad Faruq.

7. It was urged that the testimony of police officials without corroboration by independent witnesses is not worthy of belief. I do not subscribe to this view. There is no presumption that police officials are liars. Unless the circumstances of the case throw a doubt on the veracity of their statements, there is no reason whatsoever why their testimony should not be treated in the same manner as the testimony of any other witness.

8. Upon the evidence on the record, I am convinced that the appellants were all arrested in the manner stated by the prosecution and that the fire-arms said to have been recovered from their possession were in fact so recovered from them. The conviction of the appellants under Section 402, I. P. C. was, therefore, warranted and of those who were convicted under Section 19 (f), Arms Act was similarly justified.

9. As regards the sentence, it has been urged that the sentences already undergone should be held to be enough. The appellants have been in jail, it would appear, since 30-8-1952, the date of the judgment of the Court below, that is to say for nearly about a year. I consider that with the exception of Ram Gopal and Inderpal, who were found in possession of pistols, the sentences may safely be reduced to the sentences already undergone. I order accordingly. Dwarka, Bhuiya Din, Mahadin, Qharibe, Chhanga and Sarju will, therefore, be set at liberty, unless required in connection with some other case. The appeal of Ram Gopal and Inderpal is, however, dismissed.