

State vs Ghissu Khan And Ors. on 20 December, 1955

Equivalent citations: AIR1956ALL464, 1956CRILJ956, AIR 1956 ALLAHABAD 464, 1956 ALL. L. J. 853

JUDGMENT

Mehrotra J.

1. Ghissu, Mohar Singh, Janak Singh, Ranicharan, Pemraj and Baburam were tried by the learned Additional Sessions Judge of Budaun under Section 399, I. P. C. In the alternative they all but Mohar Singh were further charged under Section 402, I. P. C. Baburam, Ghissu Khan and Janak were further charged under Section 19/20 (f), Arms Act and accused Mohar Singh was further charged under Section 19(f), Arms Act.

The learned Additional Sessions Judge acquitted all the accused under Section 399 or 402, I. P. C. He, however, convicted Janak Singh, Ghissu Khan and Baburam under Section 19/20 (f) of the Arms Act and sentenced them to three years' R. I. 2 1/2 years' R. I. and 2 years' R. I. respectively. The three accused who have been convicted under Section 19/20 (f), Arms Act have filed an appeal to this Court against their convictions which is numbered Criminal Appeal No. 754 of 1952. The State has filed an appeal against Ghissu Khan, Janak Singh, Ramcharan, Pemraj and Baburam against their acquittal.

2. The prosecution case is that on 16-10-1951, one Phullan Shah who is a prosecuting witness was going from his village Jagat to his father-in-law's place in village Chandernagar Kharer. In the way at about 11 a.m. he met the accused Baburam, Ghissu and Mohar Singh (who has been acquitted by the Sessions Judge and there is no appeal against him) in a grove in village Budhwai. Phullan Shah inquired from them as to where they were going.

The accused Baburam thereupon told him that next day they were going to commit a dacoity at the house of one Piarelal in village Shanti Nagla close to railway station Kachla Ghat: Thereupon, Baburam asked the witness Phullan Shah if he would also accompany them. Phullan Shah then inquired from him about the time of their departure and was told that all would leave by 2-30 p.m. train from Budaun for Kachla Ghat. Phullan Shah then left them and promised that he would join them at Budaun railway station.

Next day he returned from his father-in-law's place and informed the Circle Inspector, Mohammad Ismail Khan, at Budaun about the talk which he had with Baburam. The Circle Inspector produced Phullan Shah before Sri Singhal, the Deputy Superintendent of Police. They then came to Sher Ali Khan who was then in charge Superintendent of Police. Phullan Shah narrated the whole talk, which he had with Baburam, to the Superintendent of Police. He was then directed to proceed by train with the gang and was told that the police party would meet him at Kachla Ghat Railway Station.

When the train would reach the station he would be waving his hand from outside the window pointing out the compartment in which the dacoits would be travelling. Phullan Shah complied with the instructions and joined them at the appointed station as arranged before. The police party consisting of the in charge Superintendent of Police, the Deputy Superintendent of Police, the Circle Inspector and some ten or 15 constables left in a truck and a pick up.

On reaching Kachla, the Circle Inspector called Raghunandan Prasad, Nawab Singh and Narottam Singh witnesses and then all proceeded to the railway station. The Station Master was informed and was asked to detain the train.

When the train reached Kachla Ghat at 3-30 p.m., Phullan Shah, as arranged, waived his hand & the compartment was then surrounded by the police and, on being pointed out by Phullan Shah, all the five opposite parties in the Government Appeal were arrested. They were taken down to the platform & in the presence of Nawab Singh, Raghunandan Prasad, Narottam Singh, Station Master, the Deputy Superintendent of Police and in charge Superintendent of Police their persons were searched.

Inside the folds of Janak Singh's dhoti a tamancha containing live cartridges was recovered. In the pocket of Baburam were found three live cartridges tied in a piece of cloth and in the folds of Ghissu Khan's dhoti was thrust and, concealed one spearhead. Nothing incriminating was found with the other two accused. The Circle Inspector left for the police station in the truck with the accused and recovered properties and the other police party went the other way in the pick up for sight seeing on the banks of the river Ganga.

When the truck reached near the grove of Baghunandan Prasad at a distance of about one furlong from the railway station Kachla Ghat at 4-30 p.m. a person was noticed sitting there in suspicious circumstances. The truck was stopped and the man was challenged. He made an attempt to escape but was chased and arrested by the constables. This man was accused Mohar Singh. He had a jhola with him and inside that jhola were found an unlicensed tamancha, two live cartridges and one angochha.

The Circle Inspector then arrived at the police station Ujhani with the arrested persons and the property in the evening of 17-10-1951 and wrote down the first information report. As there was no station officer the Circle Inspector himself started the investigation. He recorded the statements of Sher Ali Khan and Sri singhal on 17-10-1951. He then went to the railway station and prepared the site plan. On these facts the accused were prosecuted and tried by the Additional Sessions Judge.

3. All the accused denied the charges and pleaded not guilty. The four accused Ghissu, Janak Singh, Baburam and Pemraj admitted that they were arrested in the train at Kachla Ghat on the date and at the time alleged by the prosecution. They, however, denied any recovery of arms and ammunition from their person and maintained that they were in different bogies and were never pointed out by Phullan Shah. They have, in their defence, said that they were proceeding to different places.

The Sessions Judge, however, came to the conclusion that the rest of the five accused got down from the compartment together and the recovery of the firearms and the spear has been amply proved by the testimony of the police witnesses. He has further held that the prosecution has only been able to establish that these five persons were arrested in a railway compartment together and two of them had in their possession firearms and one had a spear but the mere fact that the five persons were arrested together and three of them were armed with unlicensed weapons does not necessarily lead to the inference that they had collected their having made preparations to commit dacoity. Section 399, I. P. C. provides:

"Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine."

Section 402 which has been made a distinct offence provides:

"Whoever, at any time after the passing of this Act shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine,"

The assemblage for the purpose of committing a dacoity has been made a distinct and separate offence from that having made preparations to commit dacoity and consequently the Sessions Judge has rightly held that the mere fact that a number of persons were found collected together some of whom were in possession of firearms does not by itself lead to the inference that that they had collected there having made preparations to commit dacoity.

4. As regards the offence under Section 402, I. P. C. the Sessions Judge has held that the mere arrest of a number of persons together does not necessarily lead to the inference that they had collected for committing dacoity. The Sessions Judge has not accepted the testimony of Phullan Shah who was the informer of the police.

5. The State counsel has very strenuously urged that on the findings arrived at by the Sessions Judge an offence under S. 399, I. P. C. has been made out against the appellants. He has further contended that, on the information being given by Phullan Shah, the opposite parties were arrested in the railway compartment. The fact that they were found together in the railway compartment, as informed by Phullan Shah, is ample corroboration of the testimony of Phullan Shah and consequently his statement should not have been rejected by the Sessions Judge.

Reliance was placed on the case of -- 'Queen Empress v. Bholu', 23 All 124 (A). The facts of that case were that the appellants in that case were arrested at 11 p.m. in the night of 23-5-1900. They were all heavily armed with guns and swords and these guns and swords were concealed under their clothes; none of them had any licence to carry arms and under these circumstances, as the appellants had failed to give any explanation, this Court held that they were rightly convicted under Section 399.

It will, however, appear from the perusal of this case that the further fact of which this Court took judicial notice was that at that period the district of Agra was notorious as the scene of frequent and recent dacoities. The Bench, after considering the conduct of the accused and the fact that the accused persons were not far away from their homes, came to the conclusion that they had collected there having made preparations to commit dacoity. Each case will depend upon its own circumstance.

6. In the present case the only evidence against the appellants was that they were arrested together by the police and three of them were in possession of unlicensed weapons. The fact that they were proceeding to commit dacoity is proved by the testimony of Phullan Shah alone. Phullan Shah has stated that Baburam met him when he was going to his father-in-law's place and on inquiry by him Baburam told him straightway that they had decided to commit dacoity next day and asked his help. On that Phullan Shah assured him that he would join the party at Budaun Station.

The story that Phullan Shah was informed of the proposed dacoity by Baburam has rightly been rejected by the Sessions Judge. In the cross-examination Phullan Shah stated that in one dacoity he had gone with Baburam but the dacoity did not take place as the inmates of the house woke up. There was no particular friendship between Baburam and Phullan Shah and it does not stand to reason that Baburam, without taking Phullan Shah into confidence earlier only when they meet each other in the way, will disclose the entire plan of the proposed dacoity.

Apart from this, at the time when Baburam disclosed these facts to Phullan Shah other appellants were not present and consequently Phullan Shah's statement cannot prove the fact that the other opposite parties had also been a party to the conspiracy with Baburam to commit dacoity next day.

7. Reliance also was placed on the case of --'State v. Janardan', 1951 All LJ 466 (B). There the accused persons had assembled on the night of their arrest in a grove some furlongs away from a village and firearms, cartridges, electric torch and iron screw drivers were recovered from their possession. Firearms had been wrapped in a bundle in the shape of a bedding. The appellants were far away from their own homes. In those circumstances, this Court held that they were rightly convicted under Section 399, I. P. C.

8. In the present case all the persons were arrested while going in a railway compartment.

They were not found in possession of any material required for committing house breaking and under those circumstances from the mere recovery of firearms from the possession of some of those persons arrested, no inference could be drawn that they had assembled having made preparations to commit dacoity.

The Sessions Judge relied on the case of *Nathwa v. State*, 1951 All 452 (AIR V38) (C). It was held in that case that where some of the accused persons assembled for the purpose of committing a dacoity had made preparations to commit it by arming themselves with unlicensed firearms, swords etc. while others were not so armed & had come to the assembly on the direction of others and not in pursuance of any previous agreement among themselves and there was no evidence to show that

they had done any other overt act which amounted to preparation, they could not be held guilty under Section 402 and not also under Section 399, I. P. C.

9. In our opinion, the Sessions Judge has rightly disbelieved the statement of Phullan Shah and if his statement is eliminated there is no other evidence to prove that all these persons were going on together with the object of committing dacoity and consequently the mere arrest of these persons together, three of whom possessed unlicensed weapons, does not necessarily lead to the inference that they had collected for the purpose of committing dacoity or that they had made preparations to commit dacoity.

10. There is, therefore, no force in this Government Appeal and we reject it.

11. As regards the appeal filed on behalf of three persons Janak Singh, Ghissu Khan and Baburam against their convictions under Section 19/20

(f), Arms Act, it has been contended by the counsel for the appellants that, on the findings arrived at by the Sessions Judge, they could not be convicted under Section 20, Arms Act. Section 20, Arms Act provides that-

"Whoever does any act mentioned in Clauses a, b, c, d or f of Section 19 in such a manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code (45 of 1860) or to any person employed upon a railway or to the servant of any public carrier.... shall be punishable with imprisonment for a term which may extend to 7 years or with fine or with both".

12. The Circle Inspector before whom these appellants were arrested and their search was made has stated that Janak Singh had a tamancha concealed in the folds of his dhoti. The tamancha contained live cartridges. In the pocket of Baburam were found three live cartridges and in the folds of Ghissu Khan's dhoti one spearhead was concealed. It will appear from this that these appellants had made preparations to conceal these weapons and firearms.

From the manner in which they were kept and the manner in which they were concealed the only legitimate inference that can be drawn is that they had kept them with the intention of concealing them. Under those circumstances it cannot be said that they have been wrongly convicted under Section 19/20 (f), Arms Act.

13. There is, therefore, no force in their appeals. The sentences do not err on the side of severity. We, therefore, reject the appeal. The appellants are on bail. They will surrender and serve out their sentences.