

PETITIONER:
SULEMAN AND ANR.

Vs.

RESPONDENT:
STATE OF DELHI THR. SECRETRY

DATE OF JUDGMENT: 10/02/1999

BENCH:
G.T. Nanavati, S.N. Phukan.

JUDGMENT:

Nanavati, J.

Both these appeals arise out of the common judgment passed by the court of Additional Designated Court - II, Delhi. Suleman and Chiman are the appellants in Criminal Appeal No. 627/98 and Sadhu Ram is the appellant in Criminal Appeal No. 750/98. The three appellants along with two others were tried for the offences punishable under Sections 399 and 402 I PC and Section 5 of the TADA Act. The three accused who were alleged to be in possession of knives were further charged under Section 25 of the Arms Act. The allegation against the appellants and the other accused was that they were planning to commit a dacoity and for that purpose they had assembled in Sarup Nagar Dharamshala with arms and ammunitions.

In order to prove its case, the prosecution had examined P.W.2 - Head Constable Chand Singh, P.W.3 - Rampal Sharma and P.W. 6 S.I. Om Prakash. The prosecution had also led evidence to prove that the seized articles were kept in proper custody and that the two fire arms were examined by the Central Forensic Science Laboratory. Relying upon the evidence of P.Ws. 2,3 and 5, the designated Court held that all the five accused had assembled in the Dharamshala at Sarup Nagar as alleged and were planning to loot a petrol pump on that day. As the appellants were held to have made preparations for committing dacoity and assembled for that purpose, they were convicted both under Sections 399 and 402 IPC. The trial court also held appellants Suleman and Sadhu Ram guilty under Section 5 of the TADA Act as they were found in possession of fire arms and ammunitions.

Learned counsel for the appellants took us through the evidence of P.Ws. 2,3 and 6 and pointed out the inconsistencies in their evidence as regards the place where the police officer had received information regarding the accused and non-availability of independent persons for joining the raiding party to witness the outcome of the raid. He also submitted that their evidence even otherwise is not sufficient to sustain

conviction under Sections 399 and 402 IPC. Learned counsel for the appellant - Suleman further submitted that the pistol recovered from him was not found in working order and, therefore, Suleman could not have been convicted under Section 5 of the TADA Act.

To prove why the five accused had assembled at Dharamshala of Sarup Nagar, the prosecution had mainly relied upon the evidence of P.W.2 who was the only witness who had gone near the Dharamshala and heard conversation amongst the accused. He was accompanied at that time by ASI - Bhagat Ram but the prosecution did not examine ASI - Bhagat Ram as a witness. P.W. 2 - Head Constable Chand Singh in his examination-in-chief did not depose anything about the conversation, he was declared hostile and permitted to be cross-examined by the learned public prosecutor. In cross-examination, he stated that the conversation which he had heard and reported to Sub-Inspector Om Prakash was about looting a petrol pump. According to this witness, he had remained near this Dharamshala for about 15 minutes. His further cross-examination on behalf of the accused discloses that when he had gone near the Dharamshala, it was dark as there was no light either inside or nearby. Dharamshala consisted of only one room and it had only one door and no window. He had stood outside that room and a little away from the door. He had not told anything more than that five persons inside the Dharamshala were planning to rob a petrol pump that night. He had not narrated what they had spoken or discussed. It is also doubtful that they were speaking so loudly that their conversation could be heard outside. It is also surprising as to how he could have reported to S.I. - Om Prakash that two of them had pistols and remaining three had knives. As the evidence discloses, the weapons were kept concealed on their persons and there was complete darkness inside this room. P.W. 2 had not even gone near the door. This would clearly indicate that P.W. 2 was not telling the truth when he stated that he had heard the accused talking about looting a petrol pump. It is, therefore, not possible to sustain the conviction of the appellants under Sections 399 and 402 IPC. Their conviction under Sections 399 and 402 IPC will have to be set aside.

But as regards possession of arms, the evidence of all the three witnesses is consistent. A revolver was found from Sadhu Ram, a pistol from Suleman and knives from the remaining three. The revolver carried by Sadhu Ram was found loaded with five live cartridges and the pistol of Suleman was found loaded with one live cartridge. The report of the Central Forensic Science Laboratory shows that the revolver was in working condition and all the five cartridges were live cartridges. The pistol was not in working order in the sense that firing mechanism was found defective. The cartridge found from it was a live cartridge. Live cartridge is an explosive within the meaning of Section 5 of the TADA Act. Therefore, even if evidence regarding

possession of pistol by Suleman is ignored, his conviction under Section 5 can be sustained. We see no reason to doubt the evidence of PWs. 2, 3 and 6 regarding their having apprehended the appellants and seized from them the fire arms,

In the result, Criminal Appeal No.627/98 is partly allowed. Conviction and sentence of appellant Suleman under Sections 399 and 402 IPC are set aside. His conviction under Section 5 of the TADA Act and the sentence thereunder are maintained. Conviction of appellant - Chiman under Sections 399 and 402 IPC and the sentence imposed for commission of those offences are set aside. His conviction under Section 25 of the Arms Act and the sentence imposed thereunder are maintained.

Criminal Appeal No. 750/58 is also partly avowed. Conviction of Sadhu Ram under Sections 399 and 402 IPC is set aside and so also the sentence in respect of those offences. His conviction under Section 5 of the TADA Act is maintained and the sentence for that offence is confirmed.