



2025:AHC:226716

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL APPEAL No. - 652 of 1987**

Lakhan Singh and another

.....Appellant(s)

Versus

State

.....Respondent(s)

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Counsel for Appellant(s)	: Brij Gopal, Devashish Tripathi, K S Chahar, V.s. Choudhary
Counsel for Respondent(s)	: A.G.A.

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**Reserved on 09.12.2025**  
**Delivered on 17.12.2025**

**Court No. - 89**

**HON'BLE MADAN PAL SINGH, J.**

1. Heard Sri Alok Kumar Singh, learned counsel for the appellant and learned AGA for the State and perused the record.

2. The instant criminal appeal is directed against the sentence judgment and order dated 21.02.1987 passed by Special Judge (D.A.A.) Agra in Sessions Trial no. 45 of 1984 (State v. Lakhan Singh and Ramesh) under section 392 I.P.C. , Police station G.R.P. Agra Cantt. Whereby both the accused/appellants has been convicted under section 392 I.P.C. and sentenced them to undergo three years of rigorous imprisonment.

**Brief Facts of the Case**

3. That on 12.02.1984, Jitendra Kumar (complainant), r/o Ayodhya Kunj, P.S. Shahganj, Agra, boarded the train from Agra Cantt. for going to Tundla. He was all alone in the compartment. At about 8:15 a.m. in the morning, as the train started from Agra Cantt., all the accused-appellant

also boarded the same compartment. When the train reached about half way between Agra Cantt. and Raja Mandi Railway Station, both the accuse persons looted the complainant by removing his H.M.T. watch and Rs. 125/- cash by pointing knife to the complainant. One of the accused person gave a blow on the nose of the complainant which resulted in bleeding from his nose and both the accused persons jumped from the running train. When the train reached at Raja Mandi Railway Station, the complainant narrated the whole incident to the guard of the train who referred the matter to G.R.P constables. The complainant took the G.R.P. constables to the place of incident where the complainant recognised the accused -appellants going toward the sweeper colony. On the same day at 9:00 a.m. the G.R.P. constables apprehended the accused-appellants and on search being made, one knife was recovered from each of the accused persons.

4. Further, the accused-appellants taken to the police station G.R.P. Agra, Cantt. where the complainant lodged the written First Information Report and recovery memo in that regard was also prepared by the said constables which is annexed as (Ext. Ka-2). Thereafter, complainant was medically examined on the same day.

5. Both the accused-persons denied the charges and claimed to be tried.

6. The prosecution to prove its case has examined P.W.-1. Jitendra Kumar (complainant), P.W.-2. Constable Subedar Singh, P.W.-3. Head Constable Data Ram, and P.W.-4. S.I. Krishna Avtar Pandey and P.W.-5 S.I. Fateh Singh Patel ( Investigating Officers of the case). On the other side defence also examined D.W.-1 Master Kasso Lal and D.W.-2. Nathu Ram, as a defense witnesses.

7. Besides the above oral testimonies, the prosecution has also produced documentary evidence in support of its case, which are (i) written report as Exhibit Ka-1, (ii) recovery memo of the knives, which were recovered from accused persons, as Exhibit Ka-2, (iii) Samples seal of knives as

Exhibit Ka-3 and Ka-4, site plan as Exhibit-Ka-8, and charge-sheet as Exhibit Ka-9.

8. Thereafter, the statements of accused-appellants have been recorded under Section 313 Cr.P.C., whereby they have stated that they have been falsely implicated in the present case. Since the Lakahan (accused appellant) along with the Ramesh (co-accused) were going on a cycle in Shahganj market and their cycle dashed against the complainant and lot of persons gathered there and they had given their names and addresses. On the next day in morning around 5:45 a.m. the police came at their house and took them away and falsely implicated in the instant case.

9. Before appreciating the evidence, which is available on record, it would be expedient to have a glance of the evidence adduced by the prosecution during the course of trial.

10. The complainant Jitendra Kumar has been examined as P.W.-1. In his examination-in-chief, he has narrated the prosecution story.

11. Subedar Singh (Constable) has been adduced as P.W.-2. In his deposition, he has stated that on 12.02.1984, he and constable Narendra Singh were on train squad duty and were traveling by the train. When they got down from the train at Raja Mandi Railway Station, at platform, complainant met him and narrated the whole incident. He further stated that the complainant has also narrated the incident to the Railway guard. Thereafter, both the constables took the complainant to the alleged place where according to the complainant the accused person had jumped from the train. On reaching there, the complainant pointed out both the accused person in locality of sweeper. Then both the constables ran towards them. The accused person tried to run on seeing the constables but got apprehended and recorded the names and addresses of the accused persons as Lakhan and Ramesh. On search being made knives were recovered from the both of the accused person. Then the accused persons taken to the Police Station- G.R.P. Cantt. The looted property

could not be recovered. He further stated that the two knives were sealed and the sample seal was affixed on the two packets. He further deposed that the head constable Data Ram has prepared the recovery memo and also prepared the chik F.I.R. on the information given by the complainant.

12. Data Ram (Head Constable) has been adduced as P.W.-3. In his deposition, he has stated that on 12.02.1984 he was posted as head Moharrir at Police Station G.R.P. Cantt. He has proved the original entry in the General Diary in writing of the constable clerk Raja Ram and proved its copy as Ext. Ka-4. He further proved the chik First Information Report as Ext. Ka-3 and the copy of its corresponding entry in the GD as Ext. Ka-5. P.W.-3 also proved the entry of special report of the incident in the GD entry no. 24 of the same day at 10:35 a.m. which has been marked as Ext. Ka-6 and also proved the original copy as Ext. Ka-7 of the report of the constable Shiv Kumar Tripathi, who had taken the special report, is also noted in GD at serial no. 66 at 7:00 p.m.

13. S.I. Krishna Autar Pandey (partly investigated the case) has been adduced as P.W.-4. In his deposition, he has stated that the investigation was started on the same day of the incident at 12:30 p.m. and on next day he prepared the site plan on the pointing of the complainant which is marked as Ext. Ka-8 and thereafter the investigation of the case was handed over to the S.I. Fateh Singh Patel (P.W.-5).

14. S.I. Fateh Singh Patel has been adduced as P.W.-5. He had completed remaining part of the investigation. In his deposition, he has stated that he found out the time of departure and arrival of the train at Raja Mandi Railway Station. He had also recorded the statement of R.P. Singh (Railway guard) and finally submitted the chargesheet against the accused person, which has been marked as Ext. Ka-9,10 and 11.

15. After appreciating the evidence adduced by the prosecution, it would be expedient to have a glance of the evidence adduced by the defense during the course of trial.

16. D.W.-1 Mater Kasso has stated in his statement that he knows the accused Ramesh and Lakhan since 1970-71 as they live in the same locality where he lives and both the accused are related to each other as brothers. He further deposed that on 12.02.1984 at about 8:30 a.m. , about eight constables came in the locality and enquired about the house of the accused persons. Thereafter, Nathu Ram taken the police to the house of the accused person.

17. D.W.-2 Nathu Ram has also narrated the same version of D.W.-1 Master Kasso that the accused persons were taken away by the police from their house in the morning.

18. In support of the present criminal appeal, following submissions have been raised on behalf of the accused-appellants;

**SUBMISSIONS ON BEHALF OF THE APPELLANTS**

19. Learned counsel for the appellants mainly contended that the alleged incident is stated to have occurred at about 8:00 a.m., and the accused were shown to have been arrested within one hour thereafter, i.e., at about 9:00 a.m., with the help of the GRP police. It was further argued that the distance between Raja Mandi Railway Station, where the train was stopped, and the place of arrest of the accused is more than 3 k.m. According to the prosecution case, the complainant along with the police officials reached the place of arrest on foot. In such circumstances, it is highly improbable and practically impossible for the police to have arrested the accused within such a short period of one hour..

20. It is further submitted that the alleged looted amount of Rs. 125/- and the HMT wristwatch were not recovered from the possession of the accused persons. On the contrary, the prosecution claims recovery of knives from the possession of both the appellants, which recovery is

wholly doubtful and appears to have been planted by the police. It is next submitted that if the accused persons had sufficient opportunity to dispose of the looted articles of Rs. 125/- and the HMT wristwatch, they would have had equal and ample opportunity to dispose of the alleged knives as well. It is highly improbable and unreliable to suggest that the accused persons would selectively dispose of the looted articles while retaining the knives in their possession.

21. It is further submitted that no medical examination of the complainant was conducted, which creates a dent in the prosecution story. It is next submitted that the accused had jumped from the running train and could have easily escaped from the reach of the complainant and the police officers. If they had committed the loot as alleged, certainly they would not have remained available at the place where they were arrested. It is also argued that the police randomly arrested both the accused persons from the Sweeper Colony and falsely implicated them in the present case. So far as the identification of the accused by the complainant is concerned, since the complainant was under the influence of the police officials, the possibility cannot be ruled out that, being influenced and pressurized by the police officials, the complainant may have identified the appellants as accused in the present case.

#### **SUBMISSIONS ON BEHALF OF THE STATE**

22. Per contra, learned AGA states that the accused were identified by the complainant; hence, the prosecution case cannot be doubted. It is also submitted that, so far as the non-recovery of the looted articles from the possession of the accused is concerned, the incident took place in a running train, and the accused had ample opportunity to dispose of the looted articles. In the meantime, they were apprehended by the police. It is further submitted that the complainant has no enmity with the accused, and under such circumstances, it is unlikely that the complainant would falsely implicate them. Hence, the judgment passed by the trial court is just and proper, and the appeal is liable to be dismissed.

### **ANALYSIS**

23. Having perused the materials on record, I have considered the rival submissions advanced by the learned counsel for the appellants as well as learned AGA.

24. As per the prosecution story the incident took place in a running train at about 8:00 a.m., after the train had departed from Agra Cantt. Station but before it reached Raja Ki Mandi, in between the stations, the accused-appellant looted the complainant and jumped from the running train. Thereafter, the train reached Raja Mandi Station. In respect of the above allegations, the manner in which accused-appellants were arrested and recovery effected appears doubtful. However, mere proof of robbery is not sufficient to hold that the accused persons who were put to trial were the ones who committed the offence.

### **Manner in which accused persons were arrested and recovery effected appears doubtful**

25. Firstly, from the perusal of the testimony of P.W.-2, Constable Subedar Singh (at page no. 2 of the impugned judgment), it appears that the place where the accused-appellants jumped from the running train, is more than 3 km away from Raja Mandi Railway Station, and the accused-appellants then ran away towards the Sweeper Colony, that means the distance between Raja Mandi Railway Station and the place where the accused-appellants were shown to have been arrested is approximately 4-5 km. The complainant and the police officials are stated to have reached the place of arrest by foot, as there is no evidence on record that they used any vehicle. In such circumstances, it is highly improbable that the police could have arrested the accused-appellants within 45 minutes of the incident. A perusal of the site plan shows that the place of arrest was marked as "Ga," whereas the complainant has

stated that after committing the offence, both the accused-appellants jumped from the train and ran towards the Sweeper Colony. The site plan, however, shows that the accused-appellants were arrested in an open place near the railway line, marked as "Ga." P.W.-2 further stated in his examination (at page no. 4 of the impugned judgment) that the accused-appellants were arrested while they were on their way towards the Sweeper Colony. It is highly improbable that, even after one hour of the incident, the accused-appellants would still have been near the place where they allegedly jumped from the train and not have reached the Sweeper Colony.

26. Secondly, It is admitted by the police that no recovery of the looted articles were made from the possession of the accused-appellants. On perusal of the impugned judgment, it is observed that the trial court recorded a finding that the looted articles could not be recovered because the accused-appellants dispose of the same, in the meantime. However, in view of this Court, if the accused-appellants had ample opportunity to dispose of the looted articles, they would also have had the same opportunity to dispose of the knives allegedly recovered from their possession. Therefore, the recovery of the knives only, without the recovery of the looted articles, raises a serious doubt in the mind of the Court. This Court is not convinced with the finding recorded by the trial court in this regard in this regard.

27. It also transpires from the facts of the instant case that, if the accused-appellants looted the complainant and safely jumped from the running train, it is improbable that they would have remained at the place from where they were subsequently arrested. In these circumstances, the testimony of D.W.-1 and D.W.-2, wherein they stated that the police had arrested the accused-appellants from their houses seems forceful. From the statements of defense witnesses extracted above, and on cumulative analysis of the circumstances discussed, while taking into consideration the statements of defense witnesses as D.W.-1



and D.W.-2, that accused-appellants were arrested from their home and falsely implicated by the police, a serious doubt is cast on the manner in which the prosecution claims to have arrested the accused-appellants. Unfortunately, the trial court were not circumspect while evaluating the prosecution evidence and thereby failed to test the prosecution evidence on the anvil of probability as was required in the facts of the case.

28. Lastly, it is notable from the facts of the case that the complainant stated that he sustained an injury when one of the accused-appellant allegedly hit him on the nose, causing it to bleed. However, no medical examination of the complainant was conducted, and no medical report is available on record. It is also possible that the complainant, being under the influence of the police, may have identified the accused -appellants. Therefore, the possibility that such identification was influenced or induced by the police cannot be ruled out.

29. In such circumstance, and in absence of corroborative evidence of recovery of looted articles at the instance of or from the accused-appellants, in our view this a fit case where both the accused-appellants should have been given the benefit of doubt.

30. The judgment and order dated 21.02.1987 passed by the Special Judge (D.A.A.), Agra in Sessions Trial No. 45 of 1984, convicting and sentencing the accused-appellants under Section 392 I.P.C., are hereby **set aside**.

31. The accused-appellants **Lakhan Singh and Ramesh** are **acquitted from the charge under Section 392 I.P.C. by giving them the benefit of doubt**.

32. The accused-appellants are on bail. Their bail bonds are cancelled and sureties discharged. They are not required to surrender, unless wanted in any other case.

33. Let a copy of this judgment be sent to the court concerned for necessary compliance.

**(Madan Pal Singh,J.)**

**December 17, 2025**

Akbar