A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 1458 of 1984

Ramphal And Others …..Appellant(s)

Versus

State of U.P. …..Respondents(s)

Counsel for Appellant(s)	:	Kamta Prasad, Shashank Kumar, Vinod Kumar Yadav, Virendra Singh Parmar
Counsel for Respondent(s)	:	A.G.A.

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard Sri Mahesh Prasad Yadav, Sri Kamta Prasad, learned counsel appearing for appellant and learned A.G.A. for the State.

2. The present criminal appeal has been preferred by two appellants, namely, Ramphal s/o Sukh Ram and Dhuram s/o Baij Nath, under Section 374 CrPC, as they have been found guilty for offence under Section 395 IPC for which both the accused were directed to undergo rigorous imprisonment for a term of ten years. The accused-appellant Ramphal is further found guilty for offence under Section 397 IPC and sentenced to undergo rigorous imprisonment for three years. For the

accused Ramphal, both the sentences were directed to run concurrently. This conviction and sentence has been recorded by the trial court (Special Sessions Judge, Jhansi) by judgment and sentence dated 24.04.1984 in Sessions Trial No.43 of 1977 (State Vs. Hindupat and others), arose out of Case Crime No.10 of 1975 and Case Crime No.11 of 1975 for offences under Sections 395, 397, 307 IPC and Section 25 of Arms Act, respectively, Police Station Garotha, District Jhansi.

3. The prosecution case is such that a police party consisting HC Jayatram A.P., C.A.P. Nathuram, C.A.P. Thakur Prasad and Constable Ram Kishan, who were posted for dacoity guard duty at village Tharro, when got a tip off at 11:30 a.m. on 19.01.1975 from Hardass, a village watchman of village Para that 8 to 9 miscreants extorting the passersby near Pearghata at Jhansi. Believing the tip off, the police party has taken Kalka Singh Thakur and Harju Gadaria from village Tharro and also taken the police persons from out post Kakarbai, namely, H.C. 759 C.P. Krishan Pal, C 456 Ram Awdhar, C 507 Mahabir Singh C and 898 Brindavan. They also took Nepal Singh, whom they met in the way to the place of incident Pearghata. The police persons reached the place of incident and saw that 9 persons were extorting passersby. They were seen equipped with one rifle, two SBBL gun, two country made pistols, three axes and one lathi and were spotted making personal search of two persons namely, Lakhan Singh of village Dhanora and Baldev Prasad Khare, a forest guard. The police party intercepted, one of the miscreants has raised alarm that the police has arrived, on which the miscreants have challenged the police persons and cross-firing begun. After indiscriminate firing on each other, the firing was stopped from the side of accused and two of the accused, namely, Ramphal and Dhuram have surrendered. Rest accused had sprinted away. The incident is of 19th January,1975 occurred at 12:30 p.m. The F.I.R. was registered the next date on 20th January,1975, at 12:15 p.m.

4. The memo of arrest and recovery (Exhibit Ka-1) disclosed that the two accused-appellants, namely, Dhuram s/o Baij Nath and Ramphal s/o

Sukh Ram have surrendered before the police party and in their disclosure statements, the name of seven other accused has been mentioned in the memo, they are Hindupat Lodhi, Ramratan, Moolchand Nai, Tijua Teli, Halkua Chamar, Sukhainya Chamar, Ajuddi Chamar, who were stated to be present at the place of incident committing dacoity. It is further disclosed in the memo that Nandram Yadav of village Goti had called them to commit dacoity. From the personal search of Ramphal, the country made pistol 12 bore, two live and five empty cartridges as well as the booty was recovered; whereas from the personal search of Dhuram, jewellery and watch as booty had been recovered.

5. During the investigation, the identification parade of four accused, namely, Ramratan, Hindupat Lodhi, Ramphal and Dhuram has been carried out.

6. After the investigation, the charge sheet is submitted against six accused, namely, Hindupat Lodhi, Ramratan, Ramphal, Dhuram, Sukhainya Chamar and Tijua Teli.

7. It is mentioned in the judgment that Sukhainya Chamar and Tijua Teli, both had been discharged.

8. By the impugned judgment, accused Hindupat Lodhi and Ramratan were not found guilty of offence under Section 395 IPC and they have been acquitted. Accused Ramphal was also not found guilty for offence under Section 25 of Arms Act. Hence, acquitted for the said offence.

9. The learned counsel for the appellant has submitted that there is delay in lodging the F.I.R. The accused, who are only four in numbers, after discharge of two accused out of six, could not be charged for the offence of dacoity. Further submits that the police witnesses were interested witnesses, who have falsely implicated the accused-appellants,

because the accused-appellants were sitting in a dhaba and enjoying their tea, when some police persons came there and asked them to leave, on which, there was altercation between the accused-appellants and the police persons, due to which the police persons have falsely implicated the accused-appellants in a false case of dacoity. Further submits that despite firing, no one has suffered any gun shot injury. Though, the accused Ramphal was beaten by the police persons and was injured, but his injuries were shown to be caused due to accidental slip in cross firing. Further submits that the two of the star witnesses, namely, Lakhan Singh and Baldev Prasad Khare, have not been examined in the court, who were spotted being extorted by the accused during the dacoity. The learned counsel has relied on the case of ***Ram Lakhan Vs. State of Uttar Pradesh***[1] on the point of trial of less than five accused for offence under Section 395 IPC; the case of ***Jackaran Singh Vs. State of Punjab***[2] on the point of recovery; and the case of **Dilawar Singh Vs. State of Delhi**[3]**,** on the point of conviction under Section 397 I.P.C.

10. **Per contra**, learned A.G.A. for State submits that the charge sheet is submitted against six persons. It is the judicial process that the two accused have been discharged and two were acquitted. As such, the trial of offence of dacoity was rightly initiated against the accused. He further submits that the accused-appellant were committing dacoity, who have been identified by the persons of the vicinity and from their possession, the ornaments and watches have been recovered, which were identified by the owners of the articles. He further submits that the prosecution has produced 6 witnesses, namely, P.W.-1 Jayatram Singh, who is the informant and was leading the police party; P.W.-2 Nepal Singh, who is an independent witnesses; P.W.-3 Angad Singh the Investigating Officer; P.W.-4 Meghraj, P.W.-5 Parmeshwari, who have identified their articles recovered from accused; and P.W.-6 Kuldeep Singh, the witness of arrest of Hindupat. The prosecution witnesses have not only proved the

1 (1983) 2 SCC 65
2 AIR 1995 SC 2345
3 (2007) 12 SCC 641

documentary evidences, which are the memo of recovery, F.I.R., site plan, memo of identification of accused and booty, but have also proved the material Exhibit Ka.1 to 20, which have been recovered from the accused-appellants. Further submits that the accused-appellants has not led any defence evidence. As such, submits that the appeal deserves to be dismissed.

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.

12. The points of concern in the present appeal are:-

12.1 Whether less than five miscreants could be convicted for the offence of dacoity under Section 395 of Indian Penal Code?

12.2 Whether the single accused-appellant, Ramphal could be convicted under Section 397 of Indian Penal Code for the offence of attempt to cause death or grievous hurt, while committing dacoity although the trial court has acquitted the accused-appellant Ramphal for offence under Section 25 of Arms Act, which implies that Ramphal was not carrying any weapon, which may cause death or grievous hurt?

12.3 Whether the trial court has rightly appreciated the evidence adduced by the prosecution and convicted the two accused-appellants, while acquitted two accused?

13. The points of concern taken hereinabove have been dealt with concomitantly, because the matter is not only about the conviction of two accused-appellants for dacoity, but also about the appreciation of evidence by the trial court.

14. Section 391 of Indian Penal Code, provides the definition of dacoity, reiterates underneath:-

> *"When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".*

The above definition has its genesis from the word robbery defined under Section 390 of Indian Penal Code, which provides that all robbery are either theft or extortion. The definition is provided underneath:-

> *"390. Robbery.—In all robbery there is either theft or extortion.*
>
> *When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.*
>
> *When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.*
>
> *Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint. "*

15. The prosecution case deals with extortion committed by robbers, who are more than five in numbers. As per prosecution, the number of robbers was nine, against whom the F.I.R. has been lodged.

16. The robbery has allegedly been committed at 12:30 p.m. on 19.01.1975, reflected from Exhibit Ka-2, the first information report lodged by P.W.-1 Jayatram Singh.

17. The initial investigation was conducted by P.W.-3 Angad Singh, who was the first Investigating Officer and prepared the site plan Exhibit Ka-3, he has not conducted subsequent investigation, as the investigation has been transferred to S.O. The prosecution has not produced other Investigating Officer(s), who had conducted subsequent investigation and submitted the charge sheet.

18. The impugned judgment reveals that Sukhainya Chamar and Tijua Teli were discharged by the trial court. This shows that the number of accused, who had to face trial, then became four.

19. On 19.06.1981, two separate charges have been framed against four accused. The accused-appellant Ramphal has been charged for offence under Sections 395, 397 IPC and Section 25(1)(a) of Arms Act, whereas the other accused Dhuram and the two acquitted accused were charged for offence under Section 395 IPC This shows that at the time charge of dacoity and attempt to cause death or grievous hurt while committing dacoity has been framed against four persons.

20. In the case of ***Ram Lakhan (Supra)***, Hon'ble the Supreme Court while allowing the appeal against conviction of the appellant for offence under Section 395 IPC considered that the accused-appellants, who are convicted for dacoity were less than five. The relevant paragraph is reiterated underneath:-

> "*In this appeal the appellant has been convicted under Section 395, IPC, 1860 and sentenced to 7 years' rigorous imprisonment. In our opinion this appeal must succeed on a short point. It appears from the FIR that only nine persons viz. 1. Ramroop Kurmi, 2. Ramdhoop Kurmi, 3. Rambodh Kurmi, 4. Ram Noker Kurmi, 5. Sampuran Kurmi, 6. Rambachan Kurmi, 7. Ram Lakhan Kurmi, 8. Ram Ujagir Kurmi, and 9. Ram Pyare Kurmi have participated in the dacoity which is alleged to have been committed in the course of which ornaments, grains and other property were looted away. The trial court had acquitted five persons and convicted four. But on appeal the High Court acquitted the remaining three persons and convicted Ram Lakhan the present appellant. The position now is that out of nine persons named in the FIR who are alleged to have participated in the dacoity Ram Lakhan is alone left. Before an*

> *offence under Section 395 can be made out there must be an assembly of five or more persons. On the findings of the courts below it is manifest that only one person is now left. In these circumstances therefore the appellant cannot be convicted for an offence under Section 395. The High Court has not found that Ram Lakhan was guilty of any overt act so as to bring his case within any other minor offence. For these reasons therefore the conviction and sentence imposed on the appellant are set aside and he is acquitted of offence charged under Section 395. The appeal is accordingly allowed. The accused is on bail. His bail-bonds are cancelled."*

21. In the present case even the charge is framed for dacoity against less than five accused. Therefore, the appeal deserves to be allowed on this ground alone, but the evidence adduced requires further consideration to see whether the accused-appellant could be convicted for minor offence.

22. So far as, the role of accused-appellant Ramphal, for offence of attempt to cause death or grievous hurt by using deadly weapon, is concerned, the trial judge has not convicted the accused-appellant Ramphal for offence under Section 25 of Arms Act on the ground that the prosecution sanction is not a proper sanction to prosecute the accused-appellant for the offence of Arms Act. Hence, acquitted the accused-appellant Ramphal for the offence under Section 25(1)(a) of Arms Act, but during appreciation of evidence, the trial judge has specifically made observation that the accused-appellant Ramphal was carrying a country made pistol, which has been proved by P.W.-1 Jayatram Singh and P.W.-2 Nepal Singh, an independent witness, who was made the witness of recovery of the accused-appellant Ramphal and Dhuram. P.W.-2 Nepal Singh is projected as a public witness, who is an ex-Army man and was taken by the police party, while he was on the way leading to Kotra from Dhanora via Pearghata was made an independent witness. In his examination-in-chief, he has stated specifically that he met the police persons at 11:00 a.m. on the date of incident. He has also stated that in the way, he met two Hawaldars, six constables, Kalika and Harju. He submits that by that time, when he met the police party, the police party was proceeding to arrest the miscreants

at Pearghata and he has accompanied them on their request. The trial judge has not taken into consideration a vital point that the tip off was made to the police by one Hardass, who is village watchman of village Para at about 11:30 a.m. stating that 8 to 9 miscreants were robbing the passersby near Pearghata. The time of giving the tip off is specifically mentioned in memo of recovery Exhibit Kha-1 proved by P.W.-1 Jayatram Singh. It is the cross-examination of P.W.-1 Jayatram Singh and P.W.-2 Nepal Singh, which reveals that the place of incident, which is Pearghata, situated at a distance from where the tip off is given. The time of intimation and the time of meeting of Nepal Singh with the police party is inconsistent to each other and shows that Nepal Singh as framed witness., it is also because P.W.-2 stated in cross-examination that there is another way to reach Kotra from Dhanora, via Barmain and Pratappura, on which route Pearghata does not come in way. There is no plausible reply that why this witness has chosen a longer route to reach his house.

23. The prosecution has produced two witnesses, namely, P.W.-4 Meghraj and P.W.-5 Parmeshwari, both are students. They have also stated in their statements that the incident occurred at 11:00 a.m., when their belongings have been looted. They are the witnesses, who have identified their belongings, recovered from the accused. The pant, shirt and socks of Meghraj was identified by him, which is recovered from the accused Ramphal. He has also identified accused Hindupat and Ramphal during the test identification parade carried out at the jail, but the trial judge has acquitted Hindupat and convicted Ramphal. There is nothing in the prosecution case to show that the particulars of pant, shirt and socks mentioned in the memo of recovery, but the same has been identified by the P.W.-4, Meghraj. How the clothes have been identified; what was the colour of the clothes and the size of the clothes is nowhere reflected in the police papers. This shows a sham identification parade of the accused-appellant and the material.

24. Moreover, P.W.-6 Kuldeep Singh, who was made a witness of arrest of Hindupat has turned hostile and denied the arrest in his presence. Moreover, the prosecution has not produced two star independent witnesses, namely, Lakhan Singh and Baldev Prasad Khare, who have been projected as the victims, who have been searched by the accused while committing dacoity and the police has reached there, rescued the two victims and arrested the accused. The victim Lakhan Singh is of village Dhanora and victim Baldev Prasad Khare, is the forest guard. No reason has been attributed for not producing these two star witnesses by the prosecution during the trial. Moreover, in the cross firing between the accused and police persons, neither side suffered gun shot injuries.

25. Even victims from whom their belongings have been looted, did not suffer any injury.

26. It could not be out of place to mention that the site plan of the place of incident of dacoity shows that there is forest on both the sides of road. Out of 9 miscreants, only two accused-appellants have themselves surrendered and have not sprinted away along with the other miscreants, shows substance in the defence taken by the accused-appellants in their statements under Section 313 CrPC, that they were enjoying tea at a hotel and had an altercation with police person due to which they have been framed in a false case of dacoity.

27. In the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh***[4] Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate could should not shy away in giving benefit of doubt to the accused.

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4 (2024) 2 SCC 666

28. Therefore, the appellants cannot be held guilty for offence of dacoity or any other minor offence and liable to be acquitted for the offence of dacoity and attempt to cause death or grievous hurt, while committing dacoity, as the trial court has incorrectly adduced evidence. Thus, the judgment of conviction dated 24.04.1984 in Sessions Trial No.43 of 1977 (State Vs. Hindupat and others), arose out of Case Crime No.10 of 1975 for offences under Sections 395, 397 IPC, Police Station Garotha, District Jhansi, is set aside.

29. The appeal is **allowed**. The accused-appellants Ramphal and Dhuram are acquitted of offence under Sections 395, 397 IPC. Appellants are on bail. Their bail bonds are discharged. The material Exhibit Nos. 1 to 20, shall be disposed of as per law.

30. Record be remitted back forthwith alongwith the copy of judgment.

(Avnish Saxena, J.)

February 03, 2026
Shivangi

Criminal Appeal No. - 1458 of 1984