

A.F.R.

Reserved



2026:AHC:41194-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 17 of 1988

Amar Singh and Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Bimla Prasad, K.c. Saxena, Kartikey Singh, Rajesh Pachauri, Rajrshi Gupta
Counsel for Respondent(s) : A.G.A.

Court No. - 44

**HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.**

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the convicts, to wit, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori and Biri Singh, against the judgment and order passed by Mr. Jaswant Singh, the then Ist Additional Sessions Judge, Mathura dated 22.12.1987 in Sessions Trial No. 166 of 1986, State v. Amar Singh and Others (arising out of Case Crime No. 196 of 1985), under Section 396 IPC, Police Station Goverdhan, District Mathura.

2. By the impugned judgment and order, the learned Additional Sessions Judge, Mathura, has convicted the appellants for an offence punishable under Section 396 IPC and sentenced them to suffer rigorous

imprisonment for life. Aggrieved by the judgment and order dated 22.12.1987, the appellants have preferred this appeal.

3. The prosecution case, in brief, is that on the basis of a written report dated 11.11.1985 (Exhibit Ka-1) submitted by the informant Tika Ram (PW-1), a First Information Report dated 11.11.1985 (Exhibit Ka-11) was registered as Case Crime No. 196 of 1985, under Section 396 IPC, at Police Station Goverdhan, District Mathura, against six nominated accused, which includes the appellants and six unnamed men.

4. According to the prosecution case, in the intervening night of 10/11.11.1985, at about 2:00 a.m., the informant Tika Ram (PW-1), heard gunshots and cries of distress coming from the direction that his brother Pohap Singh's house was situate. Upon hearing the same, the informant, along with Baboo Lal and other villagers, rushed towards the place of occurrence. On reaching the spot, they saw that 10-12 armed dacoits were committing dacoity in Pohap Singh's house. The dacoits armed with deadly weapons, were moving in and out of the house, and were assaulting the inmates. In the electric light at Pohap Singh's house at the time of occurrence, the informant Tika Ram (PW-1), his brother Pohap Singh, and his nephew Murari Lal, clearly saw and identified six of the miscreants, namely Hardayal, Beeri Singh, Bahori Jatav, Prakash, Amar Singh Jatav, and Kunji, who were well known to them since before. During the course of the incident, the dacoits were firing indiscriminately, as a result of which, Summera, son of Sufha Jatav, resident of the same village, sustained fire arm injuries and succumbed thereto. Pohpi, Murari, Banwari Lal, Baboo Lal, Ramshri, Kishni, Ramvati, and Sundarlal also sustained injuries in the incident.

5. Further, the prosecution case is that the dacoits looted cash and ornaments from Pohap Singh's house. The looted articles included silver and gold ornaments belonging to Premvati and the daughter-in-law of Pohap Singh, besides one gold *Kantha* weighing one *tola* and cash to the tune of Rs. 11,000/-. After committing the offence, the dacoits fled towards Neem Gaon. The prosecution has also alleged the existence of

previous enmity. It is stated that on 13.07.1985, the appellant Hardayal had eloped with the wife of one Deepa of the village, and that Pohap Singh had helped Deepa in that matter. On account of the said dispute, the appellant Hardayal harboured animosity towards Pohap Singh and, in furtherance of the same, committed the present offence along with the other appellants.

6. On the basis of the written report lodged by the informant, an FIR (Exhibit Ka-11) was registered under Section 396 IPC against the accused, including the appellants. The investigation of the case was taken up by Investigating Officer Virendra Kumar Tiwari (PW-4). He inspected the place of occurrence and directed Sub-Inspector, Ashok Kumar to hold inquest (*Panchayatnama*) on the cadaver of Summera. PW-4 collected empty cartridges, *tikli*, and pellets from the place of occurrence and prepared the recovery memo. After inspecting the place of occurrence, he prepared the site plan (Exhibit Ka-14). PW-4 also prepared necessary documents (police papers), including the photolash, chalanlash, letter to the CMO, and letter to the R.I. Thereafter, the dead body of the deceased Summera was sent for autopsy and the nine injured persons were sent for medical examination.

7. Dr. M.K. Gupta of District Hospital, Mathura, conducted the postmortem examination on the dead body of deceased Summera and reported following ante-mortem injuries in his postmortem report (Exhibit Ka.27):

- (i) Contusion 4 x 3 cm on right side forehead 4 cm above right eyebrow.
- (ii) Abrasion 0.25 x 0.25 cm on 3 cm on the right chin.
- (iii) Abrasion 2 x 1 cm on left temporal region 3 cm lateral to the left eye.
- (iv) Three gun shot wounds on the front of upper part of right side chest, size of each 0.25 x 0.25 cm. Blackening, tattooing absent.
- (v) Two gun shot wounds on lateral side of middle and lower part of right side chest. Size 0.25 x 0.25 cm. Blackening, charring, tattooing absent.
- (vi) Multiple gun shot wound (4) on front and lateral part of right side of upper and middle part of abdomen. Blackening, charring, tattooing absent.

(vii) Multiple gun shot wound (4)- two on front and two on back of lower part of right side arm. Blackening, charring, tattooing absent. Size 0.25 x 0.25 cm to 0.2 x 0.2 cm.

(viii) Three gun shot wounds size from 0.25 x 0.25 cm to 0.2 x 0.2 cm on the front and upper part of right thigh. Blackening, charring, tattooing absent.

(ix) One gun shot wound 0.25 x 0.2 cm on the right side of upper part of gestines. Blackening, charring, tattooing absent.

(x) Two gun shot wounds on upper part of left thigh. Size 0.25 x 0.25 cm. Blackening, charring, tattooing absent.

(xi) Abrasion 1 cm x 0.5 cm on the lateral side of left knee.

In the postmortem report, Dr. M.K. Gupta opined that death was caused due to 'shock and hemorrhage'.

8. All the injured persons, namely, Smt. Kishni, Smt. Ramwati, Pohpi, Murari Lal, Smt. Prem, Smt. Ramshri, Sunder, Babu Lal and Banwari, were referred to District Hospital, Mathura, where, their medical examination was conducted by Dr. RR Vaishya and he reported following injuries as per Exhibit Ka.2 to Exhibit Ka.10 as reproduced below:

(i) Injury Report of Smt. Kishni (Exhibit Ka.2)

1. Pellet wound of entry 0.2 x 0.2 cm on medial side of middle part of left thigh.
2. Pellet wound of entry 0.2 x 0.2 cm on front upper part of right leg.

(ii) Injury Report of Smt. Ramwati (Exhibit Ka.3)

1. Pellet wound of entry 0.2 x 0.2 cm on front middle and lower part of abdomen near pubic bone.
2. Pellet wound of entry 0.2 x 0.2 cm on front upper part of left thigh.
3. Pellet wound of entry 0.2 x 0.2 cm on medial side of left ankle.

(iii) Injury Report of Pohpi (Exhibit Ka.4)

1. Multiple pellet wounds of entry in an area of 14 cm x 1 cm on medial side of left foot.

(iv) Injury Report of Murari Lal (Exhibit Ka.5)

1. Multiple pellets wounds of entry in an area of 23 cm x 10 cm on front of right leg, x-ray advised.
2. Abrasion (scabbed) 3 cm x 0.5 cm on front & lower part of left leg.

3. Traumatic swelling 6 x 4 cm on front of left knee.
4. Multiple abraded scabbed contusion on back of left side chest upper part.

(v) Injury Report of Smt. Prem (Exhibit Ka.6)

1. Pellet wound of entry 0.3 x 0.3 cm on front of right thigh middle part.

(vi) Injury Report of Smt. Ramshri (Exhibit Ka.7)

1. Pellet wound of entry 0.3 x 0.3 cm on back & middle of left forearm.
2. Pellet wound of entry 0.3 x 0.3 cm on left blank.
3. Pellet wound of entry contusion 3 cm x 2 cm on medial side & upper part of left thigh.

(vii) Injury Report of Sri Sunder (Exhibit Ka.8)

1. Complaint of pain in right foot but no mark of external injury seen.

(viii) Injury Report of Sri Baboo Lal (Exhibit Ka.9)

1. Scabbed abrasion 0.2 x 0.3 cm on outer surface & middle of right ear.
2. A scabbed linear abrasion 2 cm long on right side middle part of neck.
3. Multiple pellets wound of entry in an area of 30 x 15 cm back of both side chest & upper part right upper arm.
4. Multiple pellets wound of entry in an area of 15 x 6 cm on both buttocks.

(ix) Injury Report of Sri Panwari (Exhibit Ka.10)

1. Multiple pellets wounds of entry in an area of 17 x 15 cm on right side face & head, congestion & ecchymosis of right eye conjunction.
2. Multiple pellets wound of entry in an area of 21 x 6 cm on medial side of right knee and leg.
3. Multiple pellets wound of entry in an area of 30 x 8 cm on front & medial side of left leg.

9. The Investigating Officer, Virendra Kumar Tiwari (PW-4) recorded statements of eye-witnesses and other witnesses of the incident under Section 161 Cr.P.C. Thereafter, the Investigating Officer, Virendra Kumar Tiwari (PW-4) was transferred. After his transfer, Rahtu Singh (PW-5) took charge of investigation of this case and completed the same submitting a charge-sheet (Exhibit Ka.26) under Section 396 IPC against

the appellants, namely, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori, and Biri Singh in the Court of the Magistrate.

10. After submission of the charge-sheet (Exhibit Ka.26)) in the concerned Court by PW-5, the learned Magistrate committed the case to the Court of Session as it was triable by the Court of Sessions.

11. The learned Ist Additional Sessions Judge, Mathura framed charges against the appellants, namely, Amar Singh, Prakash @ Om Prakash, Hardayal, Bahori, and Biri Singh, under Section 396 IPC. The charges were read over to the appellants, who pleaded not guilty and claimed trial.

12. The prosecution to substantiate its case examined prosecution witnesses i.e. Tika Ram (PW-1), Baboo Lal (PW-2), Banwari Lal (PW-3), Virendra Kumar Tiwari (PW-4) and Rahtu Singh (PW-5). Apart from oral evidence, the prosecution also relied upon documentary evidence in support of its case, such as, Exhibit Ka.1 to Exhibit Ka. 27.

13. After recording of evidence of the prosecution witnesses, the appellants were examined under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., all appellants denied the charges. In their statement recorded under Section 313 Cr.P.C., they have stated that due to enmity and rivalry in village, they have been falsely implicated in this case. They have also stated that they are innocent and have not committed dacoity as alleged.

14. After the prosecution evidence, the defense have not produced any evidence in their support. The Trial Court, after hearing arguments of both sides, passed the impugned judgment and order of conviction and sentence dated 22.12.1987 against the appellants, convicting them of the offence punishable under Section 396 IPC and sentencing them. All the appellants were sentenced to rigorous imprisonment for life.

15. We have heard Mr. Rajrshi Gupta, learned Counsel for the appellants and Mr. Anil Kumar Mishra, learned Additional Government Advocate for the State.

16. Learned Counsel for the appellants submitted that there is enmity between parties as admitted by the prosecution witnesses, which has resulted in a false nomination for them in the First Information Report. He next submitted that it is also admitted to the prosecution that though the appellants were known to the injured and the informant since before, but the appellants did not take any precaution to conceal their identity. He next submitted that Kunji, who is alleged to have fired and shot Summera to death, has not been *challaned* by the police as an accused in the present case. There was no motive for the appellants to commit dacoity at Pohap Singh's house, particularly when the appellant Hardayal had already executed a will of his property in favour of Ram Kumar, the real nephew of Pohap Singh. It was also argued by the learned Counsel for the appellants that the prosecution witnesses did not say which appellant had what weapon and who caused injuries to whom, when they were well known to the prosecution witnesses since before. All the prosecution witnesses belong to the same family. They are father, son and nephew. They are partisan who harboured animosity against the appellants and cannot be believed when independent witnesses whose presence is admitted at the spot have not been produced. The prosecution deliberately withheld Pohap Singh as a witness in the case at whose house the dacoity is said to have been committed. It is also submitted that despite the dacoits being known and familiar, who were *challaned* by the police, the police could not recover any looted articles, ornaments and other valuables from the appellants' house. It is also submitted that apart from the appellants who were known, six unknown men also participated in the commission of dacoity as per prosecution story but the unknown offenders could not be arrested by the police. In the light of above arguments, learned Counsel for the appellants submitted that all the charge-sheeted and known appellants were falsely implicated in this case of dacoity only on the ground of previous enmity with a view to seek revenge from them. Hence, it is submitted by the learned Counsel for the appellants that the present criminal appeal is liable to be allowed

and judgment and order of conviction and sentence dated 22.12.1987 deserves to be set aside.

17. *Per contra*, the learned A.G.A. for the State has vehemently opposed the submissions advanced by learned Counsel for the accused-appellants and contended that the written report (Exhibit Ka-1) was promptly lodged by the informant, Tika Ram (PW-1), wherein he specifically named all the appellants along with some unknown men. It was submitted that the appellants committed dacoity and murder visible in electric light. As a result of the acts of the appellants, one Summera died on the spot due to firearm injuries, and nine others sustained firearm injuries. The prosecution witnesses, namely, Tika Ram (PW-1), Baboo Lal (PW-2), and Banwari Lal (PW-3), who are eyewitnesses to the incident, have fully supported the prosecution case in their depositions. The motive for the commission of dacoity was previous enmity with the appellant Hardayal. Owing to this enmity, the appellant Hardayal along with other appellants, hatched a plan to seek revenge. All the appellants were well known and familiar to the prosecution witnesses.

18. Further, the learned Trial Judge, upon proper appreciation of the evidence of the prosecution witnesses, found the appellants guilty of the alleged offence. By a well-reasoned and speaking judgment, the learned Trial Judge passed a judgment of conviction, and, accordingly, held the appellants guilty. There is no illegality, perversity or misappreciation of evidence in the findings recorded by the learned Trial Court. The appeal preferred by the accused-appellants is devoid of merit and liable to be dismissed.

19. We have heard the arguments advanced by learned Counsel for the appellants and the learned A.G.A. for the State, and have gone through the evidence available on record. We have also perused the judgment and order of conviction and sentence dated 22.12.1987.

20. In the light of the arguments advanced by learned Counsel for the parties, we find that the present case is one of dacoity with murder. We further find that the six accused arraigned were well known and familiar

to the prosecution witnesses, who is said to have committed dacoity visible in electric light.

21. A perusal of the written report (Exhibit Ka-1) reveals that the motive for the commission of the crime was enmity harboured by the appellant Hardayal. It is stated therein that Hardayal had eloped with the wife of Deepa, a resident of the same village. In connection with this dispute, Pohap Singh, brother of the informant Tika Ram (PW-1), had extended assistance to Deepa, on account of which the appellant Hardayal, in retaliation, along with the other men arraigned, committed dacoity at Pohap Singh's house. It is further said in the written report that the dacoity was committed in the presence of electric light, enabling clear visibility, and that all the dacoits were seen and their identities fully known to the prosecution witnesses. Apart from the named accused, six other unknown dacoits are also said to have participated in the incident, who could be identified by the prosecution witnesses if produced before them.

22. It is also a noteworthy fact that the incident occurred in the night intervening 10/11.11.1985 at about 2:00 a.m., and the First Information Report was lodged promptly on 11.11.1985 at 3:30 a.m. The place of occurrence, situated in village Sakarva, is at a distance of only two miles from the concerned police station. After receiving the information, the Investigating Officer conducted a raid on 13.11.1985 at the house of the appellant Bahori. But, he was not present at his residence. The Investigating Officer searched the house of the appellant Bahori, but no looted article was recovered from his house, as evident from Exhibit Ka-24. The Investigating Officer also conducted a raid at the house of accused Hori Singh, who was also not present at his residence at the relevant time. A search of Hori Singh's house was carried out, but the Investigating Officer was unsuccessful in recovering any looted article from his possession, as reflected in Exhibit Ka-25.

23. When informant, Tika Ram (PW-1) was examined in the Court, he stated in his examination-in-chief that "The accused persons present in

Court, namely, Biri Singh, Bahori, Amar Singh, Prakash @ Om Prakash and Hardayal, are known to me since before the incident. Hardayal is from my village, and the others used to visit his place frequently, that is how I know them. About three-four months prior to the incident, the accused Hardayal had eloped with the wife of Deepa, a resident of our village, and had started living in Krishna Nagar. My brother, Pohap Singh, had helped Deepa, on account of which the accused persons bear a grudge (enmity) against us. It is a matter, that is about one and half years old. At 2 O' clock in the night dacoity was committed at the house of my brother, Pohap Singh. At that time, I was sleeping at my house. I woke up to the sound of gunshots coming from the direction of Pohap Singh's house and went towards his home. Baboo Lal and others from the neighborhood were also with me. The lights were on in the *Veranda*, Courtyard (*Angan*) and the shop at Pohap Singh's house. I saw there that 10-12 men, armed with sticks (*lathi*), axes (*farsa*), country-made pistols (*katta*) and torches, were beating and looting Pohap Singh's family members and were moving in and out. Pohap Singh and his sons, Banwari and Murari, were sleeping in the *Veranda*. They were also assaulted by the dacoits. One dacoit had climbed onto the upper roof and was saying, 'I am the Kunji of Totha, if anyone comes, I will shoot him down.' He was firing. The dacoits looted for half an hour and then left. We did not chase them out of fear. Among those dacoits/miscreants, we identified five men i.e. Bahori, Biri Singh, Amar Singh, Prakash, and Hardayal. These people were involved in the assault and looting. Murari, Banwari, Pohap Singh, Premvati, Ramvati, Ramshri, Kishni and Sundar sustained injuries, and one Summera died on the spot from a bullet fired by the dacoits."

24. During his cross examination, the informant, Tika Ram (PW-1) has stated that "The accused Hardayal had made a will in the name of my son, Ram Kumar. At that time, Hardayal's wife had run away and Hardayal was ill, until then, he had not remarried. Hardayal had no children from his first wife. Before this dacoity, the accused Hardayal had cancelled that will on the date 28.03.1984. I felt neither good nor

bad about Hardayal cancelling the will. It is wrong to say that I have falsely implicated Hardayal and his family members in this dacoity because of the cancellation of the will."

25. PW-1, in his cross-examination, further stated that he was not aware that all the accused were related to each other. He also stated that he did not know that Amar Singh and Prakash were cousins of Biri and Bahori. PW-1 further stated that none of the dacoits had covered their faces at the time of commission of the offence.

26. Thus, the evidence of the informant Tika Ram (PW-1) reveals that he stated in Court the same facts as mentioned in his written report (Exhibit Ka-1). According to him, the appellant Hardayal was the mastermind behind the incident. Hardayal had eloped with Deepa's wife, and when Pohap Singh, Tika Ram's brother, helped Deepa, Hardayal harboured animosity against Pohap Singh. Hardayal's first wife later left him, and he had executed a will in favour of Tika Ram's son, Ram Kumar, but cancelled it 3-4 months before the incident.

27. Upon a perusal of the written report (Exhibit Ka-1) and the evidence of informant Tika Ram (PW-1) in Court, it is revealed that according to this witness, the appellant Hardayal, along with his relatives, committed dacoity at the house of Pohap Singh. The incident occurred in the presence of electric light, and the appellants did not cover their faces.

28. Upon a perusal of the evidence of informant Tika Ram (PW-1), it is clear that due to the enmity, the appellant Hardayal, along with his relatives, committed the alleged dacoity at the house of Pohap Singh, the brother of informant Tika Ram (PW-1). However, upon examining Tika Ram's evidence, we find that it lacks forthrightness and truthfulness. It appears that this witness, due to enmity, falsely implicated known and familiar persons in this case. The testimony of this witness does not inspire confidence, making it unreliable.

29. The prosecution produced Baboo Lal as PW-2 and Banwari Lal as PW-3. Upon a perusal of evidence of these two witnesses, it is revealed

that they stated in their evidence that at the time of the incident, there was electric light, and in the presence of electric light, they identified Hardayal, Biri Singh, Bahori, Amar Singh, and Prakash while they were assaulting and committing dacoity. These two prosecution witnesses stated that they saw Hardayal and others assault with fire arms and other weapons, resulting in Summera's death and injuries to nine others. Banwari Lal (PW-3) also said in his cross-examination that amongst the accused, only Hardayal is from his village, and the rest usually come to Hardayal's place. Thus, it appears that Hardayal was from the same village, and other accused were relatives or acquaintances of Hardayal. The testimonies of Baboo Lal (PW-2) and Banwari Lal (PW-3) corroborate the informant Tika Ram's (PW-1) account.

30. It is also noteworthy that the Investigating Officer could not recover any looted articles, such as, ornaments, or other things from the appellants' houses or possession. No recovery of any looted items, objects, or materials could be made by the Investigating Officer from the possession of the accused persons or from their houses, although the First Information Report was lodged promptly. Since the Investigating Officer could not recover a single ornament, valuable or thing from the appellants' houses of the accused persons or at their instance, the appellants cannot be held connected to the dacoity.

31. It is a well-known fact that dacoits usually commit their evil deeds by the darkness of night and cover their faces so that their identity cannot be known. However, surprisingly, in this case, the appellants allegedly committed dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1), at night, visible in electric light, and even without covering their faces. It is also a very surprising fact that the appellant Hardayal was a resident of the same village as informant Tika Ram (PW-1), yet he did not cover his face during the crime. It appears that the appellant Hardayal, along with other perpetrators, intentionally committed the crime at the house of Pohap Singh, visible in electric light, without covering their faces, so that the informant Tika Ram (PW-1) and the other prosecution witnesses, namely, Baboo Lal (PW-2) and

Banwari Lal (PW-3), could easily identify them and lodge a First Information Report against them.

32. Upon a perusal of the evidence of eye witnesses in this case, it is revealed that all the prosecution witnesses of fact narrated a concocted, artificial, and fabricated story only due to enmity against the appellant Hardayal. It is a fact that any person who is committing a crime tries his best to conceal his identity so that the victim of the crime and the police do not trace out his presence at the place of occurrence and cannot connect him to the commission of the crime. But in this case, the prosecution witnesses say facts that are against human nature, that all the appellants were committing the dacoity even without covering their faces. Due to these reasons, we are unable to believe the evidence of these prosecution witnesses.

33. It is worthwhile to refer, at this stage, to the authority of the Supreme Court in *Iqbal & another v. State of UP; (2015) 6 SCC 623*. The Supreme Court observed in paragraphs 10, 16 and 17 of the report as follows:

10. In cases of dacoity, usually, the offence is committed by unknown persons with the criminal background. It is only in very few cases, are the accused dacoits known to the victim. PW 1 Patia Singh and PW 2 Jay Singh have stated that they had witnessed the incident from a distance of three-and-a-half yards. PW 3 Begraj also stated that he had witnessed the incident from a distance of five-six yards in the feeble torchlight. Admittedly, according to the witnesses, there was no electricity at the time of incident in their houses. They claimed that they could see the accused persons with the help of their torchlights. In the courts below, on behalf of the accused persons, it was argued that the night of incident was an amavasya-new moon night. On a perusal of calendar of that month in that year, it is seen that the intervening night of 21-9-1979/22-9-1979 was a new moon night i.e. "amavasya".

16. It is pertinent to note that in the present case no recovery of articles which are the subject of dacoity was made from the appellants or other non-appealing accused persons. In his complaint, PW 1 gave a list enumerating fifty expensive items, such as gold jewellery, silver articles, sarees and clothes and also cash. As per the recovery memo, what was recovered was just three kilograms of ghee in a claypot. In his deposition, PW 8 Nepal Singh (investigating officer) has stated that at the instance of Kripa, he had recovered a "chaptaghu" and an "attire". However, in the recovery memo, only three kilograms of ghee is mentioned which is said to have been recovered on the disclosure statement of accused Kripa. From the appellants as well as from the non-appealing accused persons, not a single valuable item out of the whole list of stolen articles was recovered. It is quite unbelievable that within a

short span of time i.e. from 21-9-1979 (date of incident) to 9-10-1979 (date of arrest), the accused would have converted or sold out all the valuable items. Even if we accept that they had done so, the prosecution ought to have adduced evidence as to how and in what manner the articles which were the subject-matter of dacoity were either disposed of or converted. Murder and robbery were part of the same transaction. Consequent upon the disclosure statement, only three kilograms of ghee was recovered.

17. In order to bring home the guilt of the accused persons, it is the duty of the prosecution to prove that the stolen property was in the possession of the accused persons or that the accused had knowledge that the property was a stolen property or the accused persons had converted the stolen property. No such recovery was made to connect the appellants and other non-appealing accused persons with the crime."

34. The Supreme Court in ***Lakshman Prasad v. State of Bihar; AIR 1981 SC 1388***, observed the following key points in the context of a case of dacoity in para 3 of the report, which is reproduced as under:

"3. The central evidence against the appellant consisted of the testimony of PWs 1 and 2 who were the servants of complainant PW 4 Baijnath Prasad. It appears from the evidence that Baijnath Prasad was a rich businessman of the locality and the accused-appellant Lakshman Prasad was his next door neighbour having a double storey house. Both the courts below have accepted the prosecution case that a dacoity took place in the house of Baijnath Prasad in the course of which cash and other articles were stolen away. In the instant case, counsel for the appellant has not challenged this finding of the courts below. We are also satisfied that a dacoity undoubtedly took place in the house of Baijnath Prasad. The only question that falls for consideration is whether or not the appellant participated in the crime. PWs 1, 2 and 4 have supported the prosecution case that the appellant clearly participated in the dacoity and was, in fact, the leader of the dacoits. After going through their evidence, we do find that there is some amount of consistency in their evidence but mere congruity or consistency are not the sole test of truth. Sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. This appears to be one of these cases. There are many inherent improbabilities in the prosecution case so far as the participation of appellant is concerned. In the first place, admittedly the appellant was a respectable man in the sense that he was possessed of sufficient means and was a well-known homeopath doctor and also the neighbour of the complainant. In this view of the matter, it is difficult to believe that he would commit dacoity in the house of his own neighbour and that too in the early hours of the evening, so that he may be caught any moment and take the risk of a conviction under Section 395 Indian Penal Code. Secondly, the evidence of the complainant PW 4 clearly shows that the dacoits had no doubt concealed their identify but they did it in such a way that their faces were visible. Indeed, if the appellant had participated in the dacoity and took the precaution of concealing his identity, then he would have seen to it that his face was fully covered so that identification by the complainant or the witnesses would become impossible. If he was a dare-devil, then he would not have concealed his identity at all. Thirdly, FIR having been lodged the same evening the police visited the house of the appellant next morning and found him there. If the appellant had really participated in

the dacoity, he would have at least made himself scarce. The house of the accused was also searched and nothing incriminating was at all found. Finally, there was the important circumstance that in view of a dispute between complainant Baijnath Prasad and the appellant, there was a clear possibility of the appellant having been falsely implicated due to enmity. The complainant himself admits that there is a boundary wall around the house of the appellant and there is a road which runs to the east of his house and the mill of the complainant is situated to the west of the house. There is evidence of DW 2 that there has been some dispute between Baijnath Prasad and accused Lakshman Prasad two or three years before the occurrence of dacoity in respect of a passage near the house of accused Lakshman Prasad through which he used to go to his mill. The evidence of DW 2 does support what the complainant has himself admitted. The gravest provocation which the complainant must have felt was the fact that Lakshman Prasad bought a piece of land near his house from Kishori Lall, the nephew of Baijnath Prasad. This is proved by Ex. Kha and the evidence of DW 4. The High Court also observed that the sale-deed executed by the nephew of the complainant in favour of the appellant was executed only a month before this occurrence. This therefore furnishes an immediate motive for the false implication of the appellant. Another important circumstance which seems to have been overlooked by the courts below is that PW 4 has clearly admitted in his evidence at page 44 of the paper-book that immediately after the occurrence, a number of people near the mosque assembled, of whom he recognized Suba Raut and Moti Raut, but they never came to his help. The witness also says that when he came from the west, he saw 40 to 50 persons at a little distance, including Ganesh Raut, Achhelal, Mathura Ram and Rameshwar. Obviously, if an occurrence of dacoity had taken place in the early hours of the evening, the near neighbours must have assembled and yet none of these neighbour have been examined to support the complainant's version that the appellant has participated in the occurrence. It seems to us that the reason why these persons did not choose to support the complainant was that perhaps the appellant had been falsely implicated and hence the persons who had assembled may not have relished the idea of supporting the complainant if he had gone to the extent of falsely implicating the appellant in the dacoity. These intrinsic circumstances speak volumes against the prosecution case and raise considerable amount of suspicion in our minds regarding the complicity of the appellant in the dacoity. It is well settled that while witnesses may lie, circumstances do not."

35. When the evidence in the present case is examined in the light of the aforesaid principles laid down by the Supreme Court, it emerges that dacoits ordinarily commit dacoity during darkness of the night after covering their faces, so as to avoid identification and evade tracing by the police. However, in the case at hand, the offence was committed in a bold and unusual manner, in the presence of electric light and without the appellants covering their faces.

36. In view of the principles laid down by the Supreme Court in the aforesaid authorities, the testimony of the prosecution witnesses does not inspire confidence and cannot be safely relied upon to establish the

commission of the offence by the appellants. Furthermore, the Investigating Officer failed to recover any looted articles, ornaments, or other incriminating material from the appellants' possession.

37. In view of the facts and circumstances of the case, it is amply clear that the prosecution witnesses have not placed the true facts before the Court. Consequently, the prosecution story appears to be concocted and false. In other words, the prosecution have put forward an improbable and unbelievable version of events and falsely implicated the appellants in the crime.

38. Upon a perusal of the written report (Exhibit Ka-1) and the testimony of eye-witnesses for the prosecution, namely, the informant Tika Ram (PW-1), Baboo Lal (PW-2), and Banwari Lal (PW-3), it appears that the accusation levelled against the appellant Hardayal and his relatives of committing dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1), is false and fabricated. The first cause of animosity, as stated in the FIR and reiterated by the informant Tika Ram (PW-1), is that the appellant Hardayal had eloped with the wife of Deepa, and that Pohap Singh had supported Deepa in the said matter. The second cause of animosity is that Hardayal had executed a will in favour of Ram Kumar, son of the informant Tika Ram (PW-1), which was subsequently cancelled by him three to four months prior to the incident. In view of these admitted causes of animosity, the prosecution version that Hardayal and his relatives committed dacoity openly, in the presence of electric light, and without covering their faces, appears highly doubtful and suspicious.

39. The Supreme Court in the case of *Sushil And Others v. State of U.P. 1995 SSC (Cri.) 388* and in the case of *State of Punjab v. Sucha Singh (2003) 3 SCC 153*, has held:

"Enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

40. Thus, only on the ground of enmity, without any other corroborating or connecting evidence, an accused cannot be held guilty of the commission of a crime because if enmity can be a ground for commission of a crime, it can also be a ground for false implication in any case. As such, only on the ground of enmity, it cannot be legally presumed that the appellants in this case, in the presence of electric light, without covering their faces, had committed dacoity at the house of Pohap Singh, brother of the informant Tika Ram (PW-1).

41. Upon a perusal of record, it is evident that Pohap Singh, at whose house the dacoity is said to have committed, was not examined by the prosecution as a witness. The reasons for the prosecution's failure to produce Pohap Singh are best known to the prosecution themselves. This fact also goes against the prosecution.

42. Upon a perusal of the reasoning and findings of conviction recorded by the Trial Court, it is evident that the Trial Court has failed to consider the aspect of enmity in the correct perspective. It is well settled that enmity is a double edged weapon which cuts both ways. It may constitute motive for commission of the crime, and at the same time, may also provide a motive for false implication. The learned Trial Court has also failed to consider that offences of this nature are ordinarily committed in a clandestine manner, with the assailants concealing their identities and covering faces. Despite these material aspects, the learned Trial Judge did not give due consideration to them and, in a cursory manner, wrongly and contrary to settled principles of law, relied upon the prosecution evidence. In view of the foregoing discussion, and in the light of the law laid down by the Supreme Court, we are unable to sustain the findings, reasoning, and conviction recorded against the appellants in the present case by the learned Trial Judge.

43. It was also the responsibility of the prosecution to produce evidence of an electricity department employee from the concerned subdivision or feeder, who could have verified from which feeder village Sakarva was supplied electricity. If such an official had been examined

as a prosecution witness, he could have testified whether, on the date and time of the alleged incident, i.e., the intervening night of 10/11.11.1985 at about 2:00 a.m., electricity supply was available in village Sakarva or not. This omission assumes significance, inasmuch as, it is a fundamental principle of criminal law that the burden lies upon the prosecution to prove its case beyond reasonable doubt.

44. Although, six persons were named as accused, only five were charge-sheeted by the Investigating Officer, as the named accused, Kunji Jatav, could not be traced out and *challaned* by the police. Thus, in view of the foregoing discussions, we are of considered opinion that the reasoning and findings recorded by the Trial Court, holding the accused-appellants guilty and convicting them, are not sustainable in the eyes of law. We find considerable force in the submissions advanced by the learned Counsel for the accused-appellants. For the reasons aforesaid, the present criminal appeal deserves to be allowed and is, accordingly, ***allowed***.

45. Consequently, the judgment and order of conviction and sentence dated 22.12.1987 passed by the learned Ist Additional Sessions Judge, Mathura, in Sessions Trial No. 166 of 1986 (State v. Amar Singh and Others), arising out of Case Crime No. 196 of 1985, under Section 396 IPC, Police Station Goverdhan, District Mathura, is hereby **set aside**.

46. The present criminal appeal on behalf of the appellant **Hardayal** has already been abated *vide* order dated 26.07.2018. The appellants, namely, **Amar Singh, Prakash @ Om Prakash, Bahori and Biri Singh**, are on bail. They need not surrender. Their bail bonds stand cancelled and sureties discharged.

47. The appellants, **Amar Singh, Prakash @ Om Prakash, Bahori and Biri Singh**, each shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against his acquittal.

48. Let a copy of this judgment be transmitted to the learned Trial Court along with the lower Court records forthwith for necessary compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

February 24, 2026
Aditya