

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
(LUCKNOW)**

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**Neutral Citation No. - 2024:AHC-LKO:34460**

**Reserved on :- 14.03.2024**  
**Pronounced on :- 03.05.2024**

**Court No. - 3**

**Case :-** GOVERNMENT APPEAL No. - 494 of 2001

**Appellant :-** State of U.P.

**Respondent :-** Avadhesh @ Pappu And Ors2.

**Counsel for Appellant :-** Govt. Advocate

**Counsel for Respondent :-** Vivek Chandra, Alka Singh, Kapil Dev Mishra, Niraj Singh, Vivek Chandra

**Hon'ble Mrs. Sangeeta Chandra, J.**

**Hon'ble Ajai Kumar Srivastava-I, J.**

**(Per :- Hon'ble Ajai Kumar Srivastava-I, J.)**

**1.** Heard Ms. Meera Tripathi, learned A.G.A. for the appellant/ State and perused the entire record available before us.

**2.** No one has appeared on behalf of the accused/respondents to assist this Court.

**3.** However, having regard to the fact that this Government appeal is an old appeal which pertains to the year 2001, we propose to dispose of this appeal on its merits on the basis of material available on record.

**Government Appeal No.494 of 2001**

**4.** Under challenge in this government appeal is the impugned judgment and order dated 03.03.2001, passed by the learned IIIrd Additional Sessions Judge, Sitapur in Sessions Trial Nos.354 of 1993, arising out of Crime No.271 of 1992, under Sections 394, 397, 411/34 I.P.C., Police Station, Mahmoodabad, District Sitapur, whereby the learned trial Court has acquitted the accused/respondents, Avdhesh alias Papoo, Deshraj alias Raoot and Suresh of the charges under Sections 394, 307 and 411 I.P.C.

**5.** The prosecution case, in nutshell, is that the complainant, Shiv Kumar Verma S/o Mahavir Prasad Verma submitted a written report, Ext. Ka-1 stating therein that on 17.12.1992 at about 7:15 P.M., the complainant along with Drig Pal Verma were returning from Mahmoodabad to their village. When they reached in front of Village Sherapur, four armed persons, who were carrying torches, stopped them. They assaulted the complainant, Shiv Kumar and Drig Pal Verma and snatched their by-cycle and Rs.300/-. Upon hearing the commotion, the villagers arrived at the spot. One of the accused was apprehended, who was beaten up by them. The accused, Ashok alias Pappoo, who was apprehended on the spot, succumbed to his injuries. The other three accused persons succeeded in fleeing away from the spot.

**6.** On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, Shiv Kumar Verma, the first information report as Case Crime No.271 of 1992, Ex. Ka-13 came to be lodged against three unknown persons and one accused, Ashok alias Pappoo for the offence under Sections 392, 307 and 411 of I.P.C. at Police Station Mahmoodabad, District Sitapur.

**7.** The accused, Ashok alias Papoo, who was apprehended at the scene of occurrence and was beaten up by mob, succumbed to his injuries. The inquest proceeding in respect of the deceased, Ashok alias Pappoo started on 18.12.1992 at 08:00 AM and got concluded on 18.12.1992 at 10:00 AM. The inquest report has been duly proved by P.W.-2, Kunwar Pratap Singh as Ex. Ka-3. The cause of death of the accused, namely, Ashok alias Pappoo, according to postmortem report, is reported to be shock and haemorrhage as a result of antemortem injuries.

**8.** According to the injury report of P.W.-3, Shiv Kumar Verma, who is the complainant, following injuries were found on his body:-

*"1. Reddish contusion 10cmx2cm on back of Lt arm 10 cm below Lt. shoulder situated obliquely.*

*2. Reddish Contusion 7cmx2cm over back of Lt arm 7.5 cm below injury no.1."*

**9.** According to the injury report of Drig Pal Verma, P.W.-1, following injuries were found on his body:-

*"Traumatic Swelling 4cmx2cm over dorsal aspect of Lt. hand over medial part.*

**10.** The Investigating Officer recorded statements of the witnesses under Section 161 of the Code of Criminal Procedure<sup>1</sup>. He visited the place of occurrence and prepared site plans thereof as Exhibits Ka-8 and Ka-11.

**11.** Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ext. Ka-12 against the accused/respondents for the offence under Sections 394, 307 and 411/34 I.P.C.

**12.** Charges for the offences under Sections 394, 307 and 411/34 I.P.C. were framed against the accused/respondents, who denied the charges and claimed to be tried.

**13.** In order to bring home guilt of the accused/respondents, the prosecution has examined Drig Pal Verma as P.W.-1, Kunwar Pratap Singh as P.W.-2, Shiv

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<sup>1</sup> hereinafter referred to as "Cr.P.C."

Kumar Verma as P.W.-3 and S.I., Laxmi Narain Trivedi as P.W.-4.

**14.** The accused/respondents in their statements recorded under Section 313 Cr.P.C. have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case and they claimed to be innocent.

**15.** No evidence in defence was adduced by the accused/respondents.

**16.** The learned trial court, after appreciating the evidence available on record adduced by the prosecution and by the accused, acquitted the accused/respondents as stated herein above.

**17.** In such circumstances referred to above, the appellant/ State is before this Court with the present appeal.

**18.** Ms. Meera Tripathi, learned A.G.A. for the appellant/ State has submitted that the prosecution had proved its case beyond reasonable doubt on the basis of reliable testimonies of prosecution witnesses. Therefore, the learned trial Court has erred in disbelieving the testimonies of such prosecution witnesses.

**19.** Her further submission is that the fact that one of the accused was apprehended on the spot and was assaulted by the mob, causing his death, itself shows that this incident occurred at the time and place shown in site plan, Ext. Ka.8.

**20.** She has also submitted that the impugned judgment is based on conjectures and surmises, which renders the impugned judgment unsustainable. Therefore, it deserves to be set aside and the accused/respondents deserve to be convicted of all the charges framed against them.

**21.** Having heard the learned A.G.A. for the appellant/ State and upon perusal of record, it transpires that the first information report was lodged by Shiv Kumar Verma S/o Mahavir Prasad Verma, who is also the victim. According to the written report, Ext. Ka-1 and the first information report, Ext. Ka-13, this incident occurred at about 7:15 P.M. on 17.12.1992 at the place shown in site plan, Ext. Ka-8, which offence was committed by four unknown persons, who were carrying a torch, a lathi and a countrymade firearm. It is also stated in the written report, Ext. Ka-1 and in the first information report, Ext. Ka-13, which was registered on the basis of written report that the culprits could be identified by the first informant if this witness happens to see them again.

**22.** It is pertinent to mention that Drig Pal Verma, who was examined as P.W.-1 is a resident of village Unera, Police Station Mahmoodabad, District Sitapur. P.W.-1, Drig Pal Verma, in his testimony, has stated that the accused/respondents, Suresh and Deshraj are residents of Village Banewapur. The accused/respondent, Deshraj has a house in Village Bakhrapur also. He, thus, lives in both villages i.e. Banewapur and Bakhrapur. The village Bakhrapur is situated at a distance of about 2 furlongs from the village, Unera, where P.W.-1, Drig Pal Verma resides whereas the village Banewapur is situated at a distance of about 4-5 furlongs. This witness has his agricultural holding in village Banewapur also. The accused/respondent, Avdhesh alias Papoo is a resident of village Rahilamau, which is situated at a distance of about 3-4 furlongs from the village, Unera. According to this witness, his real niece is married in village Rahilamau and he regularly visits villages Banewapur, Bakrapur and Rahilamau. Based on his such assertion, learned trial Court has recorded a finding of fact that despite being aware of the villages where the accused/respondents reside and despite his frequent visits to villages where the accused/respondents reside, the fact that the accused/respondents were not identified by the first informant on the date of incident, which led to lodging of F.I.R. against unknown culprits, definitely raises serious doubts about whether the first

informant had actually witnessed the accused/ respondents committing this crime in question.

**23.** When we scan the testimonies of P.W.-1, Drig Pal Verma, P.W.-2, Kunwar Pratap Singh and P.W.-3, Shiv Kumar Verma, we find that P.W.-2, Kunwar Pratap Singh and P.W.-3, Shiv Kumar Verma, who were witnesses of recovery, have been declared hostile as they have not supported the fact of recovery of a cycle from the accused/respondent, Avdhesh whereas P.W.-1, Drig Pal Verma has not supported the fact of recovery of a cycle in the manner in which it is described in recovery memo, Ext. Ka-9.

**24.** A perusal of the oral testimonies of P.W.-1, Drig Pal Verma and P.W.-3, Shiv Kumar Verma reveals that though the prosecution has been successful in establishing that on 17.12.1992 at about 7:15 P.M. an incident of robbery had taken place, however, it was the duty of the prosecution to prove beyond reasonable doubt that the crime was committed by the accused/respondents herein.

**25.** As discussed above, it is apparent from the testimony of P.W.-1, Drig Pal Verma that had he witnessed this incident, he would have named all the accused/respondents in the written report, Ext. Ka-1. However, the conspicuous absence of the names of accused/respondents in the first information report,

Ext. Ka-13 shows that they were not identified by P.W.-1, Drig Pal Verma, at the scene of occurrence. This fact, thus, shakes credibility of the testimony of P.W.-1, Drig Pal Verma, who claimed himself to be an eye-witness of this incident. P.W.-3, Shiv Kumar Verma, in his testimony, has also not stated that he had identified the accused persons on the date of incident.

**26.** As stated above, the fact of recovery from the possession of accused/respondents has also not been proved so as to lend credibility to the recovery memo, Ext. Ka.-9. We find serious infirmities and material contradictions in the statements of witnesses of recovery i.e. P.W.-1, Drig Pal Verma and P.W.-2, Kunwar Pratap Singh.

**27.** The Hon'ble Supreme Court in the case of **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415** has held that an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. It also held that if two reasonable conclusions are possible on

the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

**28.** The principles laid down by Hon'ble Apex Court in **Chandrappa (Supra)** have been quoted with approval by Hon'ble Supreme Court in **Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471.**

**29.** In **Ramphubala Reddy and Others vs. State of Andhra Pradesh** reported in **AIR 1971 SC 460, 463, 464,** the Hon'ble Supreme Court has held that if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the findings of trial court.

**30.** Thus, having regard to the aforesaid overall facts and circumstances of the case, we find that the learned trial court's findings regarding acquittal of accused/respondents herein are based on proper appreciation and analysis of evidence available on record which do not, in any manner, appear to be improbable or perverse. The order of acquittal of the respondents on the bases of evidence on record appears to be probable view which does not suffer from any infirmity.

**31.** We are, thus, of the considered view that instant appeal lacks merit which is, accordingly, **dismissed.**

**32.** In compliance with the provision contained in Section 437-A Cr.P.C. the accused/respondents are directed to furnish personal bonds and two sureties each to the satisfaction of the court concerned within a period of six weeks from today.

**33.** Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

**(Ajai Kumar Srivastava-I, J.)      (Sangeeta Chandra, J.)**

**Order Date :- 03.05.2024**  
Mahesh

**Government Appeal No.494 of 2001**