

2025:AHC:181473

Court No. 75

REPORTABLE

Reserved on 29.8.2025

Delivered on 08.10.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 664 of 1986

Mahesh Chandra & Another

...Appellant(s)

v/s

State of U.P.

...Respondent(s)

JUDGMENT

HON'BLE SANJAY KUMAR PACHORI, J.

1. The present Criminal Appeal under Section 374 Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C.") has been filed against the judgment and order dated 24.2.1986 and 25.2.1986 passed by Special Judge (Anti Dacoity)/IIIrd Additional Sessions Judge, Mainpuri, in Special Case No. 349 of 1984, whereby the appellants have been convicted under Sections 395 read with Section 397 of I.P.C. and sentenced them to undergo seven years of rigorous imprisonment.

2. Brief facts of the case, as per first informant report (Ext. Ka-1) dated 6.3.1984 which was registered by Ranveer Singh (PW-1) against the appellants and 6-7 unknown dacoits under Sections 395, 397 of I.P.C., are that at about 11:30 pm in the intervening night of 5/6 March, 1984 offence of dacoity had been committed in his house by appellants and 7-8 unknown dacoits. Appellant no. 1 Mahesh Chandra was armed with single barrel gun .12 bore and appellant no. 2 Raj Bahadur was armed with country made pistol and other unknown assailants were armed with guns,

countrymade pistol, axe and sticks. Family members (mother, younger brother, wife, sister-in-law along with children) were trapped inside the house at the time of incident. There was sufficient light of dibbi. On hue and cry of first informant and villagers came for the rescue.

2(i) After lodging of the F.I.R., investigation has been started by S.I. Ram Roop Sharma (PW-7) on 6.3.1984 and recorded the statement of prosecution witnesses and prepared sketch plan of the place of incident (Ex. Ka-7) and taken into possession the tickli and empty cartridge from the place of incident (Ex. Ka-8), torch (Ex. Ka-10), dibia (Ex. Ka-9) and prepared recovery memo respectively. He has also collected the medical examination report of injured Sanjawati and Narayani Devi (Ex. Ka-2, Ex. Ka-3). After completing the investigation S.I. Jagmohan (PW-6/IInd Investigating Officer) submitted charge sheet (Ex. Ka-6) against the appellants under Sections 395, 397 of I.P.C. before the Special Judge. The trial court framed the charges against the appellants under Section 395 of I.P.C. on 2.5.1985, whereby appellants denied the charge and they demanded trial.

3. To prove the charges against appellants prosecution examined as many as 7 witnesses namely; PW-1 Ranveer Singh (first informant), PW-2, Smt. Sanjawati (injured witness), PW-3, Vijay Singh (brother of the first informant), PW-4, Dr. V.S. Yadav (Medical Officer who examined the PW-3 and Narayani Devi), PW-5 H.C. Devendra Pal Singh (Scriber), PW-6 S.I. Jag Mohan Singh (Ist Investigating Officer) and PW-7 S.I. Ram Roop Sharma (IInd Investigating Officer).

4. After examining the prosecution witnesses, statement of appellants had been recorded under Section 313 of Cr.P.C. wherein they stated that prosecution has produced false evidence due to enmity. However, appellants had not produced any evidence either oral or documentary in their defence.

5. Before the trial court, it had been argued on behalf of appellants that PW-1 Ranveer Singh, PW-2 Smt. Sanjawati and PW-3 Vijay Singh had no opportunity to identify the appellants and other dacoits because according to the evidence on record, unknown dacoits were covered their faces by cloth and were resorting to indiscriminate firing causing scare and the canal wherefrom Ranveer Singh (PW-1) and Vijay Singh (PW-3) claims to have seen the appellants coming out from their house from distance of 100 or 125 paces. Prosecution has not produced any independent witness of the incident.

6. The trial court held that the prosecution has successfully proved its case beyond reasonable doubt against the appellants without taking notice of the arguments of learned counsel for the appellants and after referring the evidence of PW-1 Ranveer Singh and PW-2 Smt. Sanjawati (who sustained bodily injury), it was observed that F.I.R. of the case was promptly lodged against the appellants and the appellants have not shown any reason of their false implication. Appellants have stated vague statement under Section 313 of Cr.P.C. wherein they stated that they have been implicated due to enmity without giving any details about the alleged enmity. Trial court convicted and sentenced the appellants. Hence the present appeal.

7. Learned counsel for the appellants submits that first information report has been lodged after about 10 hours of the incident which took place at 11:30 pm, however, F.I.R. had been lodged at 9:30 am wherein the distance between the place of incident and police station is only 6 km. It is further submitted that medical examination report of the injured persons including PW-2 Sanjawati was conducted on 6.3.1984 after lodging of the F.I.R. There is no explanation in causing delay in lodging the F.I.R. as well as conducting the medical examination of PW-2. It is further submitted that as per prosecution evidence, present appellant no. 2 Raj Bahadur and appellant no. 1 Mahesh Chand (now deceased) had not covered their faces at the time of incident and they did not hide their

identity, whereas they were resident of same village. It is further submitted that no efforts have been made by the prosecution to identify 8-9 unknown dacoits. It is further submitted that Ranveer Singh (PW-1) and Vijay Singh (PW-3) were not eye-witnesses of the incident. There is material contradictions between the testimony of Ranveer Singh (PW-1), Smt. Sanjawati (PW-2) and Vijay Singh (PW-3). It is further submitted that impugned judgment and order has been passed without appreciating the evidence in right perspective as well as against the weight of evidence. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

8. It is further submitted that no looted article has been recovered on pointing out of present appellants. As per prosecution case, the present case is based on solitary evidence of Smt. Sanjawati because PW-1 and PW-3 identified the present appellant from behind in the night on a distance of 40 to 50 paces. There is no other corroborative evidence to corroborate the sole testimony of Smt. Sanjawati. Therefore, the present appeal is liable to be allowed.

9. Learned A.G.A. vehemently opposed the arguments of learned counsel for the appellant no. 2 and supported the judgment and order passed by trial court and submits that there is no illegality committed by the trial court while appreciating the evidence and has rightly held that prosecution has successfully proved its case beyond reasonable doubt against the appellants. The present appeal is liable to be dismissed.

10. Heard Sri S.K. Dubey, learned counsel for the appellant no. 2 and Sri Kamleshwar Singh, learned A.G.A. for the State and perused the material available on record.

11. Appellant no. 1 Mahesh Chand had died during the pendency of present criminal appeal and present appeal had already been dismissed as abated for appellant no. 1 vide order dated 16.1.2017.

12. Learned counsel for the appellant no. 2 argued that the fact witnesses (PW-1, PW-2 and PW-3) have not identified the appellants and 6 unknown dacoits which is emerged from the following evidence:

(a) First Information Report has been lodged after about 10 hours of the incident where distance between the place of incident and police station is only 6 km. Offence is alleged to have been committed at 11:30 pm on 5.3.1984 and the F.I.R. of the incident had been lodged by alleged eye witness Ranveer Singh (PW-1) at 9:30 am on 6.3.1984.

(b) The medical examination of Sanjawati (PW-1) (mother of the first informant) and one Narayani Devi (wife of Ranveer Singh) was conducted after lodging of F.I.R. at 10:00 am on 6.3.1984 and at 12:20 pm on 7.3.2024. Prosecution has not explained causing the delay in lodging the F.I.R. as well as conducting medical examination of injured persons.

(c). As per testimony of PW-2 Smt. Sanjawati (injured witnesses), it has been stated that she identified the present appellant no. 2 Raj Bahadur and appellant no. 1 Mahesh Chand (deceased) who had not covered their faces whereas other assailants covered their faces. It is significant that the present appellant no. 2 Raj Bahadur and appellant no. 1 Mahesh Chand who is/was resident of same village, (i.e. village of the incident), whereas Ranveer Singh (PW-1) and Vijay Singh (PW-3), saw the assailants from behind from a distance of 40 to 50 paces.

(d) Prosecution has not produced or proved the source of light before trial court.

(e) There is no recovery of looted article from the instance of the appellant no. 2.

13. Before considering the arguments of learned counsel for the appellants, it is appropriate to go through entire prosecution evidence.

14. As per cross-examination of PW-1 (Ranveer Singh), he was present at his Baithak at the time of incident which is 40 to 50 paces away from the place of incident. He identified present appellant no. 2 and deceased-appellant no. 1 (Mahesh Chand) from the side of lane of *bamba* and at the same time when he reached near lane of *bamba*, assailants left his house after committing offence and further stated that no door was broken in the incident. At the time of leaving house, some assailants had covered their faces but some had left open.

15. It has been suggested by the defence to this witness that it is wrong to say that deceased-appellant No. 1 Mahesh Chand had company with Ram Beti and due to this reason, he has been implicated. It is wrong to say that distance between the house of first informant and *bamba* is one furlong, 50 to 60 paces.

After analyzing the evidence of Ranveer Singh (PW-1), it appears that he saw the assailants from side of lane of *bamba* which is 40 to 50 paces far from his house. He had seen the appellants and other unknown dacoits when they were leaving the place of incident (house of first informant) after committing dacoity. No door of the house was broken by the dacoits in the incident. He was not present at the place of incident. In the house of first informant, there were three constructed rooms and thereupon lying a thatch outside. Younger brother of the first informant Ravindra (who has not been produced in evidence), who was sleeping by the side of Smt. Sanjawati (PW-2) and wife of first informant and his younger brother were sleeping in the constructed room. It is significant to note that younger brother Ravindra who was sleeping nearby PW-2 but he had not sustained any injury.

16. PW-2- Sanjawati (mother of PW-1 Ranveer Singh) stated in her cross-examination that dacoits committed dacoity after breaking the door

of Kotha. She was sleeping near his son Raveendra in courtyard while her daughter-in-laws were sleeping in other Kotha. She was beaten with butt of gun by deceased-appellant no. 1 Mahesh Chand on her back. There were two constructed rooms in the house. Ranveer Singh (PW-1) reached after the incident. She had admitted that her baithak is 50 feet away far from her house and canal is 20 feet away.

17. It has been suggested from the evidence of this witness that appellant no. 2 has been implicated due to enmity of field and for deceased-appellant, it has been suggested that Ram Beti was her relative and due to this reason, he had been falsely implicated.

After having gone through the evidence of PW-2 Sanjawati, offence of dacoity was committed after breaking the door of constructed room and deceased-appellant no. 1 Mahesh Chand beaten her on her back with butt of gun while she was sleeping in thatch in front of constructed room. Her son Ranveer Singh (PW-1) and Vijay Singh (PW-2) were present at baithak which was 50 feet away from the place of incident. She identified the assailants and informed her sons Ranveer Singh and Vijay Singh about the incident.

18. PW-3, Vijay Singh stated in his chief examination that he and his brother Ranveer Singh (PW-1) were sleeping in *baithak* and he heard noise of shot fire from the side of his house, then they rushed to the house and identified the appellants in the light of torch.

19. He further stated in his cross-examination that he identified the appellant no. 2 and deceased appellant no. 1 Mahesh Chand in light of torch and he and his brother Ranveer Singh (PW-1) identified the assailants from same place when dacoits were leaving the house. After identifying the appellants he and his brother Ranveer Singh (PW-1) reached their house. He further stated that there were two constructed rooms having thatch and window in which one *Dibiya* was enlightened. He identified the appellants from behind who had covered their faces.

20. It has been suggested by defence from this witness that appellants have been implicated due to enmity.

After close scrutiny of evidence of Vijay Singh (PW-3), it appears that PW-3 Vijay Singh and Ranveer Singh (PW-1) identified the appellants from same place and baithak of the first informant was at a distance of 40 to 50 paces away in the light of torch. In the house of first informant two rooms were constructed and the mother and other ladies of the house also told about the identity of appellants.

21. PW-4 Dr. B.S. Yadav, who medically examined Sanjawati (PW-2) on 6.3.1984, wherein he found following injuries:

- (i) An incised circular wound over right lower eye-lid medially 1.3 x 1 c.m. x muscle deep clotted blood present spairing eye ball.
- (ii) Multiple contusions crossing each other measuring 2.5 c.m. in breadth over an area 14 c.m. x 10 c.m. over left shoulder to scapular region. Colour red.
- (iii) Contusion over left outer upper thigh 9 x 6 cm, colour red.
- (iv) Complaint of pain on the left wrist joint without evidence of external injuries.”

22. PW-4 Dr. B.S. Yadav medically examined Narayani Devi (wife of PW-1) on 7.3.1984. She sustained following injuries:

- (i) Contusion 10 x 2 cm on the left thigh outer spect.
- (ii) Contusion 9 x 2 cm on the right shoulder
- (iii) Abrasion on the left side of the fore-head 1.5 x 1 cm.
- (iv) Abrasion on the left buttock.

23. Before appreciating the prosecution evidence, it is helpful to re-visit the position of law related to the delay in lodging of the F.I.R. by which the prosecution has not putforth the real genesis of the case

24. It is well-settled position of law that delay in lodging the FIR does not make prosecution case improbable when such delay is properly explained, but a deliberate delay in lodging the FIR may prove fatal. In

cases where there is delay in lodging the FIR, the court has to look for a plausible explanation for such delay. [Thulia Kali v. The State of Tamil Nadu, (1972) 3 SCC 393 (SCC p. 397, para 12), Meharaj Singh & Ors. v. State of U.P. & Ors, (1994) 5 SCC 188 (SCC p. 195-96, para 12), Satpal Singh v. State of Haryana, (2010) 8 SCC 714 (SCC p. 397, para 12)]. It is settled position of law that there is no rule of law that corroboration is necessary to prove the testimony of solitary witness.

25. In **Yogesh Singh Vs. Mahabeer Singh & Ors., (2017) 11 SCC 195**, the Supreme Court observed in paragraph No. 15, 16, 17, 18 and 29 which are reproduced as under:-

“15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J., in State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: (SCC pp. 313-14, paras 25-26)

“25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.”

[See also Krishnan v. State, (2003) 7 SCC 56; Valson v. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar and Ors. v. State of Karnataka, (2009) 11 SCC 690].

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Vide Kali Ram v. State of H.P., (1973) 2 SCC 808; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180; Chandrappa v. State of Karnataka, (2007) 4 SCC 415; Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain v. State of Assam and Anr., (2015) 11 SCC 242).

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in the case of *State of Punjab v. Jagir Singh*, (1974) 3 SCC 277: (SCC pp. 285-86, para 23)

“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge, the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy, on grounds which are fanciful or in the nature of conjectures.”

18. Similarly, in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793, V.R. Krishna Iyer, J., stated thus: (SCC p. 799, para 6)

“6... The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.”

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi Vs. State of M.P.*, (1999) 8 SCC 649; *Leela Ram Vs. State of Haryana and Another*, (1999) 9 SCC 525; *Bihari Nath Goswami Vs. Shiv Kumar Singh* (2004) 9 SCC 186; *Vijay Vs. State of Madhya Pradesh*, (2010) 8 SCC 191; *Sampath Kumar Vs. Inspector of Police*, (2012) 4 SCC 124; *Shyamal Ghosh Vs. State of West Bengal*, (2012) 7 SCC 646 and *Mritunjoy Biswas Vs. Pranab*, (2013) 12 SCC 796).

26. On the basis of above discussion and after keeping in mind the position of law following facts clearly emerged:

(i) F.I.R. had been lodged after about 10 hours of the incident without any explanation.

- (ii) There is a material contradiction between the evidence of Ranveer Singh (PW-1) and Smt. Sanjawati (PW-2); PW-1 stated that the dacoits had not broken the doors of the constructed room whereas PW-2 stated that dacoits had broken the doors of the house.
- (iii) Except the appellants, other unknown dacoits covered their faces at the time of incident, which is highly improbable in the circumstances that the witnesses and the appellants are/were resident of same village.
- (iv) Torch, dibia have not been produced and proved by the prosecution as source of light to identify the appellants at the time of incident.
- (v) PW-1 and PW-3, identified the present appellant from the distance of 40 to 50 paces in the night whereas source of light has not been proved by the prosecution.
- (vi) The younger son of Smt. Sanjawati, who was sleeping near by PW-2, had not sustained any injury in the incident.
- (vii) Besides above, there is neither recovery of any looted article nor any country made pistol or empty cartridges have been recovered from the appellants or at his instance to connect the link connecting the appellants in the incident.

27. On the basis of the facts and circumstances discussed above, an inference can easily be drawn that the prosecution has not proved its case beyond reasonable doubt. The contrary view taken by the trial court is against the weight of evidence.

28. For all the reasons recorded and discussed above, I am of the considered view that the prosecution has failed to prove the charges for the offence punishable under Section 395 I.P.C. read with Section 397 of I.P.C. against the appellant no. 2 beyond reasonable doubt as the evidence on record does not bring home the guilt of the appellant no. 2 beyond the pale of doubt, the appellant no. 2 is entitled to the benefit of doubt.

Consequently, the appellant no.2 is entitled to be acquitted of the charges for which he was tried.

29. As a result, present criminal appeal is **allowed**. The impugned judgment and order of conviction as well as sentence recorded by the trial court is set aside. The appellant no. 2 Raj Bahadur, is acquitted of the charges for which he has been tried. The appellant no. 2 Raj Bahadur, is on bail, therefore, his personal bonds and sureties are, hereby, discharged. The appellant no. 2 will fulfill the requirement of Section 437-A, Cr.P.C. to the satisfaction of the trial court at the earliest.

30. The trial court records be returned forthwith with a certified copy of this judgment for compliance.

October 8, 2025

A.P. Pandey/Ishan

(Sanjay Kumar Pachori,J.)