



2026:UHC:2891

Judgment delivered on:21.04.2026

Judgment reserved on:11.02.2026

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Criminal Appeal No.51 of 2005

Razmat khan @ Paluwa and ors.

.....Appellant

Vs.

State of Uttaranchal

.....Respondent

Presence:

Mr. Ramji Srivastava, learned counsel for the Appellants.

Mr. S.S. Chauhan, learned Deputy Advocate General assisted by Mr. Vipul Painuly, learned AGA, for State.

Hon'ble Ashish Naithani, J.

1. The present criminal appeal has been preferred against the common judgment and order dated 17.03.2005 passed by the learned Upper Sessions Judge / 2nd Fast Track Court, Udham Singh Nagar, in Sessions Trial No. 4 of 1999, *State v. Razmat and others*, and Sessions Trial No. 73 of 2000, *State v. Hanif and others*, whereby the Appellants were convicted under Sections 395 and 412 of the Indian Penal Code. They were sentenced under Section 395 IPC to undergo five years' rigorous imprisonment with fine of Rs. 2,000/- each, and were also convicted under Section 412 IPC and sentenced to undergo three years' imprisonment with default stipulation.
2. The State case is that on the intervening night of 22/23.05.1998, about eight or nine persons entered the house of Pradeep Kumar and Kailash, assaulted the inmates, injured Smt. Anjana, confined the family, and



decamped with gold and silver jewellery, coins, and about Rs. 50,000/-, treating the incident as dacoity.

3. During investigation, some accused were apprehended at different stages and recoveries were allegedly made, leading to two sessions trials, namely Sessions Trial No. 4 of 1999 and Sessions Trial No. 73 of 2000, both arising from the same occurrence and decided by a common judgment.
4. The State relied mainly on the testimonies of Pradeep Kumar and Ramswaroop, who deposed that 8 to 9 persons committed the robbery, that the assailants were seen in electric light, and were later identified in jail identification proceedings.
5. The State also relied on identification evidence of Magistrates. PW-5 Girish Kumar Sharma conducted TIP on 17.04.1999 for accused Hanif and Kamruddin, identified by Pradeep Kumar but not by Mohit, while PW-7 Atul Kumar Gupta conducted TIP on 28.10.1998 for accused Ishrat and Rajmat.
6. The Trial Court convicted Razmat Khan alias Paluwa, Israt, Hanif, and Kamruddin. During appeal, Hanif expired and the appeal abated qua him, surviving only for Razmat Khan alias Paluwa, Israt, and Kamruddin.
7. Learned counsel for the Appellants would submit that the learned Trial Court erred in recording conviction on the basis of evidence which does not satisfy the standard of proof required in a criminal case. It is submitted that the State version, though grave in nature, was required to be established by cogent, reliable, and consistent evidence connecting each accused individually with the occurrence, which, according to learned counsel, has not been done in the present matter.



8. It is argued that the alleged occurrence took place in the night and involved a large number of assailants. In such a situation, the identification of the accused assumes central importance. Learned counsel would contend that the State has sought to establish identity mainly on the basis of test identification proceedings and in-court assertions, but the same do not inspire confidence to the degree necessary for sustaining conviction for a serious offence like dacoity.
9. Learned counsel would further submit that even on the State's own showing, the identification evidence is not wholly consistent. The record indicates that while one witness is stated to have identified certain accused in the jail proceedings, another witness identified none.
10. It is urged that this feature itself weakens the certainty of the State case and renders the identification evidence unsafe for conviction unless supported by strong independent corroboration.
11. It is next argued that the Prosecution evidence does not clearly and convincingly establish the distinct role or participation of each Appellant. Learned counsel submits that in a case of this nature, where several unknown persons are alleged to have entered the house, general allegations of participation are insufficient unless the evidence clearly fixes the identity and involvement of each accused beyond reasonable doubt.
12. Learned counsel would also assail the recovery evidence. It is submitted that the alleged recoveries have not been proved in a manner that irresistibly connects the recovered articles with the crime in question or with the conscious possession of the respective accused. Mere assertion of recovery, according to learned counsel, cannot substitute legal proof, especially when conviction has been recorded not only under Section 395 IPC but also under Section 412 IPC.



13. It is further submitted that the learned Trial Court failed to appreciate the evidence with the caution required in a case resting substantially on identification and alleged recoveries. Learned counsel would contend that the cumulative effect of the infirmities in the State case entitled the accused to benefit of doubt, but the learned Trial Court instead proceeded to convict them on an inadequate appreciation of evidence.
14. Learned counsel thus prays that the impugned judgment and order be set aside and the surviving Appellants be acquitted of the charges.
15. Per contra, learned Deputy Advocate General for the State would support the impugned judgment and submit that the State has proved the occurrence of dacoity in a consistent and reliable manner through the testimony of the victim-side witnesses.
16. It is submitted that the evidence on record clearly establishes that a group of 8 to 9 persons entered the house, assaulted the inmates, confined them, and committed looting of cash and ornaments. The factum of the incident, according to the State, stands firmly proved from the ocular account of the witnesses and the attending circumstances.
17. Learned State counsel would further submit that the State did not rest on a bare allegation, but also led evidence regarding identification proceedings conducted before competent Magistrates in Sub Jail, Haldwani. It is submitted that the witnesses identified the accused in those proceedings, and the Magistrates who conducted the same have supported the State case. According to the State, this constitutes a material circumstance corroborating the involvement of the accused persons.



18. Learned counsel for the State also contend that the State case is fortified by the recovery of looted property from the accused persons, which lends assurance to the State version and justifies the convictions recorded under Sections 395 and 412 IPC.
19. It is lastly submitted that the learned Trial Court has appreciated the evidence in its correct perspective, and that no perversity or material illegality has been shown warranting interference in appellate jurisdiction. The State, therefore, prays that the appeal, insofar as it survives against the remaining Appellants, be dismissed.
20. Heard learned counsel for the parties and perused the records.
21. At the outset, it requires to be noted that the factum of an incident involving robbery in the house of the complainant side is not seriously in dispute. The testimonies of the Prosecution witnesses, particularly the injured and other inmates of the house, do establish that on the intervening night of 22/23.05.1998, a group of persons entered the house, assaulted the occupants, and removed valuables. The occurrence, in its broad outline, thus stands proved.
22. However, in a criminal trial, particularly one involving an offence under Section 395 IPC, the burden upon the State does not end with establishing that an offence occurred. The State must further establish, beyond reasonable doubt, the identity and participation of each accused in the commission of the offence. It is this second requirement which assumes decisive importance in the present case.
23. The State has sought to establish the identity of the accused persons primarily through the evidence of identification by the witnesses, both in test identification proceedings and in Court.
24. It is well settled that test identification parade is not substantive evidence, but serves as a corroborative circumstance to support the



testimony of a witness in Court. At the same time, where the accused are not previously known to the witnesses, the evidentiary value of identification in Court, without a reliable prior identification, becomes inherently weak.

25. In the present case, the occurrence is alleged to have taken place at night, involving 8 to 9 assailants. The State witnesses were subjected to a sudden and stressful situation, wherein they were assaulted and confined. In such circumstances, the ability of a witness to observe, retain, and later identify the individual features of multiple assailants must be approached with caution.
26. The record further reveals that the identification evidence is not wholly consistent. While one witness is stated to have identified certain accused persons during the test identification proceedings, another witness failed to identify any accused. This inconsistency is not a minor discrepancy, but goes to the root of the reliability of the identification process itself.
27. Moreover, the State has not been able to demonstrate that the identification proceedings were conducted in a manner completely free from the possibility of suggestion or prior exposure. In the absence of such assurance, the evidentiary value of the identification proceedings stands diminished.
28. The learned Trial Court, in placing reliance upon such identification evidence, appears to have overlooked the inherent limitations and the inconsistencies reflected in the record. In a case resting substantially on identification, such infirmities assume critical significance.



29. The State has also relied upon alleged recoveries of looted property from the accused persons in order to connect them with the offence.
30. It is settled law that recovery, to be of evidentiary value, must be proved in a manner which establishes not only the fact of recovery but also the nexus between the recovered articles and the crime in question, as well as the conscious possession of the accused.
31. In the present case, the recovery evidence does not inspire the level of confidence required to sustain conviction under Sections 395 and 412 IPC. The record does not convincingly establish that the articles allegedly recovered were unmistakably connected with the offence, nor does it establish exclusive and conscious possession of the accused in a manner free from doubt.
32. The learned Trial Court appears to have treated the recovery as a corroborative circumstance without subjecting it to the necessary scrutiny regarding its authenticity and probative value.
33. Another significant aspect which cannot be overlooked is the absence of clear and specific evidence regarding the individual role of each accused.
34. In a case of dacoity involving multiple assailants, the State must establish, with reasonable certainty, the participation of each accused. General allegations that a group of persons committed the offence cannot suffice to sustain conviction against individual accused unless their identity and participation are clearly proved.
35. In the present case, the evidence does not distinctly and convincingly establish the participation of each of the surviving Appellants. The State case, in this regard, remains generalized and lacks the specificity required in criminal law.



36. The criminal justice system rests upon the foundational principle that an accused is presumed innocent unless proven guilty beyond reasonable doubt.
37. Where the evidence raises reasonable doubt regarding the identity or involvement of the accused, such doubt must necessarily enure to the benefit of the accused.
38. In the present case, the cumulative effect of the infirmities in the State evidence, particularly with regard to identification and recovery, creates a reasonable doubt as to the involvement of the Appellants.
39. The learned Trial Court, in recording conviction, appears to have proceeded on a standard of appreciation which falls short of the rigorous standard required in criminal cases.
40. This Court is, therefore, unable to sustain the findings of guilt recorded by the learned Trial Court against the surviving Appellants.
41. The State has succeeded in proving the occurrence of a dacoity, but has failed to establish, beyond reasonable doubt, the identity and participation of the Appellants in the said occurrence.
42. In such circumstances, the Appellants are entitled to the benefit of doubt.

ORDER

The appeal is allowed.

The judgment and order dated 17.03.2005 passed by the learned Upper Sessions Judge / 2nd Fast Track Court, Udham Singh Nagar, in Sessions Trial No. 4 of 1999, *State v. Razmat and others*, and Sessions Trial No. 73 of 2000, *State v. Hanif and others*, convicting the Appellants under Sections 395 and 412 of the Indian Penal Code and sentencing them thereunder, is hereby set aside.



2026:UHC:2891

The Appellants, namely, Razmat Khan alias Paluwa, Israt, and Kamruddin, are acquitted of all the charges levelled against them.

The appeal, insofar as it relates to Appellant Hanif, stands abated.

The Appellants are on bail. Their bail bonds are discharged. The sureties, if any, stand released.

(Ashish Naithani J.)

Dated:21.04.2026

NR/