



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of reserving: 4th August, 2026

Date of Decision: 24th August, 2026

IN THE MATTER OF:

CNR No. DLHC010094122004

+ **CRL.A. 202/2004**

TULSI

.....Appellant

Through: Mr. Zeeshan Diwan, Adv. (DHCLSC)
with Mr. Harsha, Adv.
Appellant-in-person.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Rahul Malik, PS Roop Nagar.

CNR No. DLHC010094152004

+ **CRL.A. 205/2004**

SHYAM KUMAR

.....Appellant

Through: Mr. Ashutosh Kaushik and Mr.
Anupam Agrawal, Advs. with
Appellant-in-person.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Rahul Malik, PS Roop Nagar.

CNR No. DLHC010094172004

+ **CRL.A. 207/2004**

MAHA RAM SINGH @ LALA

.....Appellant

Through: Mr. Ashutosh Kaushik and Mr.
Anupam Agrawal, Advs. with
Appellant-in-person.



versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Rahul Malik, PS Roop Nagar.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. A secret information about a proposed dacoity was received by SI Naseeb Singh on 26.08.1999 while he was posted at the Operation Cell of North-West District having its office at Maurice Nagar. The said information was shared by him with his senior officers and according to the instructions received, he constituted a raiding party consisting of eight persons including himself, namely, ASI Uma Shankar, ASI Rajiv, HC Rajbir, HC Randhir Singh, Cts. Mahipal, Sukhpal and Arjun Singh. He also took the secret informer along with the Police team to Roshnara Park where, according to the information received, the assailants were to assemble and plan a dacoity. The Police team spread and surrounded itself near gate no.4 of the Roshnara Park. About 04:15 PM three persons arrived in the park followed by two more persons on motorcycle, who all were pointed out by the secret informer as the persons concerned with dacoity.

2. To verify and confirm the information, secret informer and HC Randhir Singh, who were in plain clothes, deputed to ascertain the purpose of assembly and veracity of the proposed plan of dacoity. These two persons especially HC Randhir was instructed to give a pre-determined signal in the event of the information turning out to be correct by moving his hand on



head. These two persons moved closer to those five persons sitting in Roshnara Park presumably within the hearing distance, to hear the conversation of those persons. HC Randhir Singh gave the pre-determined signal which activated the police team, who had hitherto concealed themselves from those five persons. The policemen surrounded those persons from all four corners and managed to apprehend four of those persons as one Raju somehow managed to make his escape good from the spot. He, however, could not be apprehended at all at any stage as if he evaporated in thin air.

3. The persons who were apprehended were searched and a button actuated knife was recovered from Maharam from his right dub, a dagger from accused Tulsi and a Kripan from Shyam Kumar. The paperwork with regard to the recovered articles i.e. sketch and seizure memo etc. was carried and, thereafter, SI Naseeb Singh prepared a *rukka* (Ex.PW-2/A) and got a case registered at Police Station Roop Nagar under Section 399/402 of Indian Penal Code, 1860 (IPC) together with Section 25 of the Arms Act, 1959. The investigation, thereafter, was handed over to ASI Ram Kumar, completion of which shaped up in the chargesheet under Section 399/402 IPC and 25 Arms Act.

4. To the charges framed under Section 399/402 IPC, all the four persons i.e. Maharam Singh, Shyam Kishore, Shyam Kumar and Tulsi pleaded not guilty, whereas to the charge framed under Section 25 Arms Act, Mahram also pleaded not guilty. It is pertinent here to mention that the fifth person who was one of those four apprehended i.e. Shyam Kishore was declared a proclaimed offender post framing of the charge. The fifth one i.e. Raju remained elusive throughout as he could neither be apprehended or arrested at any stage.



5. The case of the prosecution, travelling through the investigation framing of charge, recording of evidence of the witnesses and after the statement of accused Tulsi, Maharam Singh and Shyam Kumar resulted into the conviction of the aforesaid three persons. All three namely Maharam, Shyam Kumar and Tulsi were held guilty and convicted under Section 399/402 IPC, whereas Maharam was convicted under Section 25 of Arms Act also through the Impugned Judgment dated 26.02.2004. The order on sentence dated 27.02.2004 handed down a sentence of Rigorous Imprisonment (RI) for 05 years and a fine of Rs. 500/- each under Section 399/402 IPC respectively, whereas, no separate sentence for Maharam under Section 25 Arms Act was awarded, with the rider that the sentences to run concurrently with the benefit of set off given to all the convicts under Section 428 Cr.P.C. All the three persons i.e. Shyam Kumar, Tulsi, Maharam preferred separate appeals, which are being taken up together for disposal as all three emanates from common judgment and order as referred above.

6. Apart from credibility of the witnesses and the case of the prosecution, a very basic issue has been raised that the Appellants could not have been even if chargesheeted and charged, punished or convicted under Section 399/402 IPC inasmuch as minimum five persons were to be there in order to invoke both the aforesaid provisions which, in fact, stems from Section 391 IPC. It is asserted that at no point of time five persons were there right from very inception. It is clarified that the elusive Raju was deliberately introduced to bring the case within the realm of Section 399/402 IPC whereas no such fifth person was ever there. Additionally, it is submitted that the case of the prosecution falls apart under its own weight on account of the inherent contradictions and improbabilities, which go to the



root of the matter and entitles the Appellants to be acquitted.

7. Learned counsel for the Appellant has drawn the attention of the Court and focussed his arguments on the testimony of three witnesses, who are material for the purpose of charges framed against the Appellants i.e. PW-1, 3 & 6. In order to strengthen his arguments vis-a-vis the number of persons / accused required to invoke Section 399/402 IPC, he has placed reliance on the following judgments apart from the bare provision.

- i) ***Raj Kumar @ Raju v. State of Uttaranchal***, (2008) 11 SCC 709;
- ii) ***Yog Raj and Ors. v. State***, 1985 SCC OnLine Del 278;
- iii) ***Hari v. State***, 2026 SCC OnLine Ker 856.

8. Learned counsel for the Appellant has placed a reliance upon the Judgment in ***Raj Kumar @ Raju v. State of Uttaranchal*** (2008) 11 Supreme Court Cases 709 to emphasise that conviction cannot be recorded for the offence of dacoity or other related offences where number of persons fall short of five persons. The other two judgments referred hereinabove also reiterate the requirement of five persons to invoke Section 399 and 402 IPC.

9. It is, thus, emphasized that the presence of minimum number of five persons, the most vital ingredient is amiss and therefore, the Appellants cannot be held responsible for the offences under Sections 399/402 IPC. Additionally, it is, with the help of the aforesaid judgments, contended that something more than coming together of five or more persons has to be there in order to constitute the offence of preparation to commit dacoity. Mere assembly of five or more persons without their being any concrete evidence of preparation cannot make them liable. With these contentions, acquittal of Appellants has been sought by the learned counsel.



10. As regards the offence under Section 25 Arms Act, it is submitted that the kirpan, dagger and knife were all planted by the police in order to make a foolproof case and in the absence of any independent public witnesses this cannot be said that the Appellants were planning a dacoity or were in possession of the aforesaid illegal weapons.

11. Learned APP on the other hand, submitted that presence of five persons is very much there as the witnesses have deposed about all those five persons, albeit police had arrested and apprehended four of them. The fifth one i.e. Raju managed to escape from the scene, but that does not mean that five persons were not there. This in itself does not mean and cannot be taken that number of five persons were not there and that the Section 399/402 IPC would not be attracted. The recovery of prohibited weapons fortifies the evil design of the Appellants and their associates and that amounts to preparation to commit dacoity.

12. It is further contended by the learned APP that the police team made a sincere and sustained effort to join the public witnesses, as can be seen in the testimony of PW-1 HC Randhir Singh and PW-6 SI Naseeb Singh reflecting that at least 8-10 persons were requested to join the raiding party but to no avail. Even post-apprehension also an effort was made to include independent witnesses but for the fact that none agreed to join the proceedings.

13. It is further asserted by learned APP that there is no requirement of joining any so-called independent public witness to the proceedings. The evidence is to be evaluated irrespective of the fact that the witness is an official witness or public witness. With these arguments it is submitted that the prosecution has been able to prove its case and through the Impugned Judgment learned Trial Court has rightly held the Appellants guilty.



14. Having considered the submissions made by rival sides and after going through the record, what seems indispensable is to establish as to what exactly prosecution was required to prove so as to show that all required ingredient of offences with which the Appellants have been charged revolving around dacoity and possession of illegal weapons are there on record. Section 391 IPC is to be read along with the other two Sections i.e. 399/402 IPC in order to clearly understand the requirement of these provisions. Section 391/399/402 IPC are reproduced below for ready reference:

“391 IPC- 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.”

“399 IPC- Whoever makes any preparation for committing dacoity shall be punished with Rigorous Imprisonment for treatment which may extend to 10 years and shall also be liable to fine.”

“402 IPC- Whoever at any time after the passing of this Act shall be one of 5 or more persons assembled for the purpose of committing dacoity shall be punished with Rigorous Imprisonment for a term which may extend to 07 years and shall also be liable to fine”.

15. It is evident that dacoity in terms of Section 391 IPC requires five or more persons and that automatically becomes an integral part of Section 399/402 IPC. Assembly of five or more persons for the purpose of committing dacoity has been made punishable as preparation of committing dacoity has been through Section 399/402 IPC respectively. Question is how the preparation and assembly can be ascertained and designated as that for the purpose of committing offence of dacoity. It is very difficult to gather



such evidence even if it is presumed that the secret informers of the police were so meticulous so as to provide almost exact information of place of assembly, number of persons etc. It is still to be ascertained and brought on record that the persons had gathered for the purpose of committing dacoity or were in preparation of committing the dacoity. How this can be inferred as long as something more than the assembly of five or more persons is not shown by the prosecution. In this context, the prosecution has fallen back on the testimony of HC Randhir Singh, who along with the secret informer was tasked to go as close as possible to those persons and hear their conversation so as to ascertain as to what they were planning and discussing.

16. They were tasked to confirm the purpose of assembly and if it is found that gathering was for the purpose of committing dacoity, in that eventuality they, more particularly HC Randhir Singh was instructed to give a signal confirming the secret information being true. Evidently, this requires HC Randhir Singh and for that matter the secret informer to be so close to those five persons so that they may hear their conversation. This proposition in itself is very unusual that some persons who had gathered in broad day light, in a public place teeming with people with a particular object of committing dacoity would allow anyone to come so close that to overhear them. One may try to visualise such a planning at a public place where these persons would discuss it in such a manner that somebody sitting close by would not only be able to hear but decipher the exact purpose of assembling and contents of their discussion. Such people would certainly talk in a manner so as to conceal their design and discussion by using coded or sign language. It is not conceivable that such a talk would be audible, decipherable and available to anyone else except those for whom it is meant for. It is not the case of prosecution that the policeman and secret informer



hid themselves behind bushes or tree or such other object so as to escape the attention of the Appellants to the extent that they were able to hear their talks.

17. In such circumstances, how HC Randhir Singh and the secret informer were able to see through their conversation. On the scale of possibility, feasibility and rationality this seems to be a very feeble and weak situation. Nevertheless even if it is presumed that these two persons were somehow able to go so close so as to hear the conversation and were able to decipher, interpret and understand the topic of the talks, still the requirement of the prosecution would not be satisfied unless five persons were there. Five or more persons were part of the assembly and involved in a particular purpose have to be there.

18. Preparation to commit dacoity is far, if no less, complicated to infer. In this context, the prosecution has again fallen back on the testimony of PW-1, 3 & 6, to show that they were preparing to commit a dacoity, apart from the conversation which was purportedly heard by HC Randhir Singh. The recovered arms i.e. button actuated knife, dagger and kirpan have been put forth to show that the aim and objective of assembly was nothing else but the commission of dacoity and they came prepared with weapons in order to sail through their design.

19. It essentially means that the recovery of weapon should be above-board and that there should be something concrete with regard to the conversation. So far as, the latter part is concerned there is no evidence as to what kind of talks were going on amongst those five persons which made the secret informer and HC Randhir Singh to conclude that the assembly was for purpose of committing dacoity. Prosecution has not cared to bring even one word to show the purpose of assembly or preparation except that



Maharam was the person who was directing or acting as their head but then what kind of directions were being issued by him and what they exactly heard, has not been deposed by HC Randhir Singh and there is no question of “secret informer” being examined, so no evidence is on record.

20. It has been deposed by HC Randhir Singh that he heard those persons conversing in order to commit dacoity but then what kind of conversation was going on. What is important is that all this were heard by him and the secret informer by concealing them in such a manner that the accused persons did not get a wind of them and remain unaffected by their presence. Not even ordinary individuals, leave alone a criminal or any sane person, would talk something of the nature attributed to the Appellants in the presence and hearing of unknown persons. There is nothing on record, which may reflect as to how HC Randhir Singh and secret informer concealed themselves.

21. It appears from the tone and tenor of the deposition of witnesses that except the secret informer and HC Randhir Singh all others were in uniform although the officials of the Special Cell do not have any prescribed uniform. The case of the prosecution falters at the very inception on the aspect of the verification of the so-called secret information.

22. The contention of the learned APP is correct to the extent that joining independent public witness to the proceedings is not mandatory but then the offences where possession in itself is an offence then the Investigating Agency though not under any procedural requirement, but sort of moral duty and sense of fair play is, to come clean on the aspect of possession of contraband or the illegal weapon. Joining of independent public witness only strengthens the case provided, the independent public witness stands by the case of the prosecution. It is correct that none from the general public wants



to get entangled in any proceedings where Police or Court would come into picture. Thus, in these circumstances, a dilemma remains with regard to the importance and weightage attached to the deposition of official / public witnesses. Here also the case of the prosecution appears to be a slippery ground as in a public park that too in Roshnara Park, a good number of people can be expected at any point of time, being located in thickly populated area of North Delhi. Therefore, the police team was unable to find even one person to join proceedings is slightly unbelievable, in view of the fact that efforts, according to the deposition of the witnesses, were made, twice not once. The recovery of weapons, thus, cannot be termed as clean.

23. In Raj Kumar's case (supra), while considering the Judgments in **Ram Lakhan v. State of U.P.** (1983) 2 SCC 65, **Saktu v. State of U.P.** (1973) 1 SCC 202 and several other cases where involvement of a certain number of persons were there, it was observed in the following words:

“It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons –or even one –can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.”

24. In Raj Kumar's case the observation made where the charges were framed against six persons but eventually two were acquitted and four were convicted by the Trial Court but conviction of those four persons was also set aside on the premises that the requisite minimum number of five persons



was not there. The observations made are reproduced herein below:

“It is not in dispute that charges were framed against six persons but even the Trial Court was not convinced with the prosecution evidence about complicity of all the accused and granted benefit of doubt to two of them. It may be stated that the Trial Court did not record a finding that there were six persons who committed dacoity and out of them, two accused could not be identified but the remaining four were identified and came to the conclusion that it was proved that there were six accused and all of them committed the offence of dacoity but in view of the insufficient evidence as to identity, two of them were required to be acquitted. In such case, conviction of less than five accused can be sustained as an accordance with law. But, once the Court doubts the presence and participation of two out of the six accused and grants benefit to them, there are less than five persons and no conviction can be recorded for an offence under Section 396 IPC against them.”

In the instant case not even five persons were charged, what to talk about framing a charge against five or more persons. Thus, the flaw in the instant case was inherent right from the very inception.

25. The death knell has been sounded to the prosecution's case so far as assembly and preparation is concerned by two elusive characters i.e. Raju, who according to the prosecution was part of those five persons who had assembled and were preparing to commit dacoity, and Constable Arjun Singh who, according to SI Naseeb Singh and other witnesses was part of the police raiding team. Raju could not be apprehended at all at any point of time once he escaped from the scene and Constable Arjun Singh, who had chased the said Raju, according to the testimony of PW-1,3 & 6, when appears in the witness box as PW-4 turns the tables on the prosecution's case by saying that he was not part of the raiding team and joined the proceedings of this case only on 27.08.1999 by joining the investigation with ASI Ram Kumar. The incident, that is, apprehension and arrest of the



Appellants in the instant case whereas took place on 26.08.1999. So evidently PW-4 Arjun Singh was not part of the raiding team and only joined investigation for a limited purpose of interrogation of Maharam, Shyam Kumar and Tulsi and for pointing out proceedings. He has not deposed anything beyond these two aspects. It is thus, evident that the contention put forth on behalf of the Appellants is correct to the extent that no fifth person was there and a fictitious character by the name of Raju was introduced by the police officials to bring the case within the realm, scope and purview of Section 399/402 IPC. The relevant part of the testimony where it has been deposed by the witnesses that Raju managed to escape from the scene and was chased by Constable Arjun Singh is reproduced below. PW-1 HC Randhir Singh has deposed in the following words:

“I immediately then signalled the whole of police party. And the raiding party then pounced upon all the accused persons All the four accused persons today present in court were apprehended then and there whereas one of them i.e. the 5th person managed to escape.”

26. The deposition of PW-3 HC Ravinder Singh on this aspect is in the following words:

“I saw 5 persons including 4 accused persons, present in court today. (witness pointed one by one to towards accused Maha Ram Singh, Shyam Kishor, Shayam Kr. and Tulsi) were sitting in the park and they stood up on seeing the police party and tried to slip away in one and the other direction. Accused Maha Ram intercepted by SI Naseeb Singh with the help of HC Rajbir. Accused Tulsi was intercepted by ASI Uma Shankar with the help of Ct. Mahi Pal. Accused Shayam Kishore was intercepted by ASI Rajeev and HC Randhir Singh, wherr as accused Shayam Kumar was intercepted by myself and Ct. Sukhpal. The 5 th person was chased by Ct. Arjun, but he manged to escape.”

The deposition of SI Naseeb Singh goes as under:



“On receiving the signal, we immediately raided the place from all the four corners and managed to apprehend the three accused persons present in the court alongwith Sham Kishore then and there. But, accused Raju managed to escape from the spot and could not be apprehend even later on.”

27. When the testimony of these three witnesses as reproduced hereinabove is juxtaposed to the testimony of Constable Arjun Singh then it knocks the bottom of the prosecution's case out and turn the edifice sought to be raised by prosecution, into rubble. It clearly reflects that witnesses are not deposing the correct facts and in the process lose the credibility and the strength of the case, so far as assembly and preparation for dacoity is concerned.

28. This leaves the aspect of recovery of button actuated knife also to be looked into as to how far that is credible. The witnesses, who are material, are those very witnesses i.e. PW-1, 3 & 6. It is their testimony which talks about the recovery as referred above. In the backdrop of what has been the deposition of these three and Constable Arjun Singh *vis-a-vis* Raju brings their testimony into the realm of doubt and suspicion so far as recovery of the arms is concerned as it too cannot be treated as above board.

29. Had there been any independent witness to the recovery or the proceedings at the spot then that would have saved the situation but for the fact that no such witness is there and testimony of these three witnesses has been found to be prone to incorrect narration.

30. The only inference in such circumstances, which can be drawn is that it is a false and concocted case foisted upon the Appellants without there being any substance in it. The testimony is, therefore, required to be discarded in respect of the recovery of button actuated knife also.



31. As a result, appeals are allowed. Appellants are acquitted of the charges. Their Bail Bond(s) stands discharged.
32. The above referred weapon(s) be destroyed after the expiry of period of appeal.
33. Pending application(s), if any, stand disposed of accordingly.
34. Copy of the judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J

AUGUST 24, 2026/hk/MY