



2026:AHC:204067

Reserved on 27.5.2026

Delivered on 29.9.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1103 of 1983

Suresh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Along with :

1. Criminal Appeal No. 1102 of 1983:

Naresh

Versus

State of U.P.

Counsel for Appellant(s)	:	Babita Upadhyay(a.c.), Subodh Kumar
Counsel for Respondent(s)	:	A.G.A.

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Ms. Babita Upadhyay, learned Amicus Curiae for the appellants, and Sri Devesh Kumar, learned A.G.A. for the State.

2. This appeal has been preferred against the judgment and order dated 30.04.1983 passed by the learned Additional Sessions Judge, Moradabad, in Sessions Trial No. 422 of 1978, whereby the appellants, namely, Suresh, Naresh and Gajram, were convicted and sentenced to undergo seven years' rigorous imprisonment under Sections 395/397 IPC.

3. The appeal in respect of appellant Gajram stood abated vide order dated 06.02.2026, on account of his death. The present appeal, therefore, survives in respect of appellants Suresh and Naresh.

4. The prosecution story, as emerges from the written report (Ex. Ka-1) submitted by Ashok Kumar Tiwari (P.W.-1), is that the victims of the present occurrence were employed in the Agwanpur Card Board Factory, known as U.P. Straw Agro Products. A Matador bearing registration No. USE 9905 was owned by the said factory and was used for bringing the staff

from Agwanpur to Moradabad.

5. On 31.03.1978, the complainant Ashok Kumar Tiwari (P.W.-1), then posted as Assistant Personnel Officer, along with Aftab Masi (P.W.-5), S.P. Sinha (P.W.-6) and other employees, was returning to Agwanpur from Moradabad by the aforesaid Matador. When the vehicle reached Agwanpur Railway Line Crossing at about 11:45 p.m., it stopped as the railway gates were closed. At that time, two miscreants armed with knives entered the Matador and threatened the driver with a knife and asked him to get down. As soon as the Express Passenger train passed through the crossing, 6-7 miscreants, armed with pistols, forced the driver and other passengers of the vehicle to get down and thereafter looted their cash, clothes, watches, shoes, transistor, briefcase and other articles, including cash amounting to Rs.25/-.

6. On the basis of the written report (Ex. Ka-1), an FIR was lodged at Police Station Civil Lines, Moradabad, at about 12:30 a.m. on 01.04.1978 against unknown accused persons under Sections 395/397 IPC. Thereafter, the statements of P.W.-1 Ashok Kumar Tiwari, P.W.-6 S.P. Sinha, P.W.-5 Aftab Masi and other witnesses were recorded by S.I. Sudhir Kumar (P.W.-7). He thereafter inspected the place of occurrence and prepared the site plan (Ex. Ka-6).

7. On 02.04.1978, on the basis of confidential information, the Investigating Officer arrested accused Suresh at about 3:00 p.m. from Harthala Sonakpur. During interrogation, the complicity of accused Naresh and Gajram was also revealed. Subsequently, the other accused persons were arrested and sent to jail. Accused Suresh was put up for test identification on 31.05.1978 and was correctly identified by Ashok Kumar Tiwari (P.W.-1) and Vijai Pal (P.W.-2). Similarly, accused Naresh and Gajram were put up for test identification in Rampur Jail on 27.07.1978 and were correctly identified by Ashok Kumar Tiwari (P.W.-1), S.P. Sinha (P.W.-6), Vijai Pal (P.W.-2) and Aftab Masi (P.W.-5).

8. The articles recovered from accused Suresh, namely, the looted clothes and watch, were also put up for test identification before the Executive Magistrate and were correctly identified by S.P. Sinha (P.W.-6), Anil Johri and G.N. Mishra.

9. The case was investigated by S.I. S.P. Sharma, who stated that the case was initially being investigated by S.I. C.B. Singh, who submitted charge-sheet (Ex. Ka-9) against accused Suresh. Thereafter, charge-sheet (Ex. Ka-11) against accused Naresh and Gajram under Sections 395/397 IPC was submitted by S.I. S.P. Sharma.

10. The prosecution examined as many as eight witnesses to prove its case. P.W.-1 Ashok Kumar Tiwari proved the written report (Ex. Ka-1) and the list of looted property. P.W.-4 Constable Rohtang Singh proved the G.D. entries of Police Station Civil Lines, Moradabad.

11. The learned trial court, after evaluating the evidence on record, found the testimonies of the eyewitnesses to be consistent and reliable and held that the prosecution had proved its case beyond reasonable doubt. It was further observed that P.W.-1 Ashok Kumar Tiwari and P.W.-2 Vijai Pal, who was the driver of the aforesaid Matador, had corroborated the prosecution version. The FIR was lodged promptly by P.W.-1 Ashok Kumar Tiwari himself and the testimonies of the eyewitnesses supported the prosecution case. Accordingly, the learned trial court convicted the accused persons under Sections 395/397 IPC and sentenced them to undergo seven years' rigorous imprisonment.

12. Learned Amicus Curiae for the appellants submitted that appellant Suresh was arrested on 02.04.1978 and was confined in Moradabad Jail since 03.04.1978, whereas appellants Naresh and Gajram were arrested on 02.05.1978 and 29.06.1978, respectively, and were confined in District Jail, Rampur. All three accused were released on bail on 06.05.1983. It was further submitted that the appeal in respect of accused Gajram stood abated on 06.02.2026 on account of his death during the pendency of the appeal.

13. Learned Amicus Curiae submitted that he does not wish to press the appeal on its merits and confines the prayer to the question of sentence. It was submitted that the appellants are now at an advanced age, that the incident occurred nearly four decades ago and that the appellants have already undergone about five years of imprisonment out of the sentence of seven years awarded to them, i.e. more than half of the sentence. It was, therefore, prayed that the period of incarceration already undergone by the appellants be treated as sufficient to meet the sentence awarded to them and that their sentence be modified to the period already undergone.

14. Learned A.G.A., on the other hand, submitted that the facts and circumstances of the case disclose a serious offence and establish that the accused persons, being members of an unlawful assembly, acted in furtherance of their common object. It was further submitted that the evidence of the eyewitnesses is consistent and credible and that the sentence awarded by the learned trial court is commensurate with the gravity of the offence.

15. Heard learned counsel for the parties and perused the judgment of the learned trial court dated 30.04.1983 as well as the material available on

record.

16. So far as the conviction is concerned, the prosecution case is supported by the prompt lodging of the FIR and the consistent testimony of the eyewitnesses. P.W.-1 Ashok Kumar Tiwari and P.W.-2 Vijai Pal, who was the driver of the Matador, corroborated the prosecution version. The other eyewitnesses also supported the prosecution case. The accused persons were subsequently identified in the test identification proceedings. The learned trial court, after considering the entire evidence, recorded a finding of guilt against the accused persons.

17. The occurrence in question was undoubtedly a serious one. The prosecution case, as proved before the learned trial court, is that 6-7 miscreants armed with weapons entered the Matador and, by threatening the driver and passengers, forced them to get down and thereafter looted their belongings. The occurrence took place on 31.03.1978 when the complainant Ashok Kumar Tiwari (P.W.-1), then posted as Assistant Personnel Officer, along with Aftab Masi (P.W.-5), S.P. Sinha (P.W.-6) and other employees, was returning from Moradabad to Agwanpur in the aforesaid Matador. The vehicle stopped at Agwanpur Railway Line Crossing at about 11:45 p.m. as the railway gates were closed. Two miscreants armed with knives initially entered the Matador and threatened the driver. Thereafter, when the Express Passenger train passed through the crossing, 6-7 miscreants armed with pistols forced the driver and other passengers to get down and looted their cash, clothes, watches, shoes, transistor, briefcase and other belongings, including cash of Rs.25/-.

18. In view of the aforesaid discussion, this Court finds no ground to interfere with the finding of conviction recorded by the learned trial court. Accordingly, the conviction of the appellants Suresh and Naresh under Sections 395/397 IPC is hereby upheld.

19. So far as the question of sentence is concerned, it is evident that the incident occurred on 31.03.1978, i.e. nearly forty-eight years ago. The appellants have already undergone about five years of imprisonment out of the sentence of seven years awarded by the learned trial court. They are now above seventy years of age. In the facts and circumstances of the present case, and having regard to the considerable lapse of time since the occurrence, keeping the appellants in jail at this stage would not serve any useful purpose.

20. Accordingly, while maintaining the conviction of the appellants Suresh and Naresh under Sections 395/397 IPC, the sentence awarded to them by the learned trial court is modified to the period of imprisonment already

undergone by them.

21. Accordingly, the appeal is allowed in part, as set out above.

22. The conviction of the appellants, namely, Suresh and Naresh, under Sections 395/397 IPC is hereby upheld, but the sentence awarded to them is modified to the period already undergone by them. The appellants are on bail. Their bail bonds are cancelled and the sureties are discharged.

23. The record of the trial court be remitted back along with a copy of this judgment.

24. Compliance report be submitted to this Court at the earliest. The office is directed to keep the compliance report on record.

25. Ms. Babita Upadhyay, learned Amicus Curiae, who has rendered valuable assistance to the Court, shall be paid fees as admissible to an Amicus Curiae under the rules.

September 29, 2026

Ujjawal

(Anil Kumar-X,J.)