



2026:AHC:206315

Reserved on : 3.7.2026.
Delivered on : 1.10.2026.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1167 of 1984

Ramayan And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Dharmendra Kumar, Dileep Kumar,
Ram Surat Patel, S.K. Srivastava, Sunil
Vashisth

Counsel for Respondent(s) : A.G.A.

Court No. - 68

HON'BLE HARVIR SINGH, J.

1. This criminal appeal has been preferred against the judgment and order dated 12.04.1984 passed by the learned Special Judge (DAA), Hamirpur in Sessions Trial No. 59 of 1981 (*State vs. Gorey and others*). By the impugned judgment, the learned trial court convicted the appellants under Sections 399 and 402 of the Indian Penal Code (IPC) and sentenced each of them to undergo 4 years' Rigorous Imprisonment under Section 399 IPC and 3 years' Rigorous Imprisonment under Section 402 IPC. Both the sentences shall run concurrently. The appellants were acquitted of charges under Section 307 IPC, and accused Gorey, Ram Pal, and Ram Kishun were acquitted of charges under Section 25(1)(a) of the Arms Act due to lack of statutory sanction under Section 39 of the Arms Act.

2. As per the office report on 24.07.2025, the learned CJM, Hamirpur, vide letter dated 24.01.2022, reported the death of appellant Ramayan, following which notices were served on the remaining three accused-appellants. Subsequently, on 13.08.2025, it was reported that another accused-appellant, Gorey, died on 28.03.2025, while bailable warrants were executed against the remaining two appellants namely, Rampal and Ram Krishna.

3. In vie of the report of learned C.J.M., Hamirpur, the appeal against the accused-appellants Ramayan and Gorey is accordingly dismissed as abated.

4. Heard learned counsel for the surviving appellants, Rampal and Ram Krishna, learned A.G.A. for the State and perused the record.

5. The prosecution story in nutshell is that on 23.05.1980 at about 7:00 PM, an information was received through police informer (*mukhbir khas*) by the Station Officer of Police Station Korara, District Hamirpur that a gang of dacoits would assemble near a well under a Banyan tree in the vicinity of Chaudhuri Ahra to prepare and commit a dacoity at the house of one Dhani Ram in Village Kutubpur.

6. Acting on the information received from a police informant, Station Officer S.B. Singh accompanied by ASI Narayan Prasad Dwivedi, Constables Sukhpal Singh, Veer Singh, Har Saran Singh, and Ram Kumar Singh, along with other police personnel set out for the scene of the incident equipped with service weapons, revolvers, a very light pistol, and ammunition. On the way, independent witnesses Babu Singh, Jagat Singh, Khusta, and Mahendra Nath were joined in the raiding party. Constables Muslim Ansari and Sudhir Kumar were deputed to secure the house of Dhani Ram.

7. The Police personnel reached the spot and strategically divided into two squads, first squad led by S.O. S.B. Singh along with Constable Sukhpal Singh, Revati, Juma Singh, and witness Khusta, taking position towards the north-west of the well. Second squad led by A.S.I. Narayan Prasad Dwivedi along with Constable Vir Singh, other constables, and witness Jagat Singh, taking position towards the south of the well.

8. At about 10:00 P.M., the miscreants began assembling under the Banyan tree, talking and smoking. At about 11:00 P.M., one of the miscreants remarked to his companions that it was time to commit the dacoity at Dhani Ram's house. Thereupon, the police party challenged them. It was alleged that the dacoits fired upon the police party and in retaliation the police also opened fire.

9. After a chase, four miscreants, including present accused-appellants were apprehended on the spot. Upon personal search, a 12-bore gun and a strip containing cartridges (Exh.1 to 7) were recovered from the possession of Gorey. A country made pistol, a strap of cartridges, and four live cartridges (Exh. 8 to 13) were recovered from the possession of Ram Pal a country-made pistol and two live cartridges (Exh. 14 to 16) were recovered from the possession of Ram Kishun and a lathi (Exh. 17)

was recovered from the possession of Ramayan.

10. A recovery memo (Exh. Ka-1) was prepared on the spot on 24.05.1980 at 2:30 A.M. The arrested accused and seized articles were brought to P.S. Korara at 3:30 A.M. on 24.05.1980, where an FIR (Exh. Ka-7) was lodged. The case was entrusted to Investigating Officer Sukhbir Singh (P.W.3/P.W.5). He inspected the scene of the incident and prepared a site plan (Exh. Ka-2). Upon completion of the investigation, he submitted the charge-sheets (Exh. Ka-3, Ka-4, Ka-5) against the accused-appellants before the learned Magistrate. The learned Magistrate took cognizance of the matter and, observed that the offences are triable by the Court of Session and committed the case to the Court of Sessions on 13.04.1981. The Sessions Judge framed charges against all the accused under Sections 399, 402, and 307 of the IPC, and additionally framed charges against Gore, Ram Pal, and Ram Kishan under Section 25(1)(a) of the Arms Act. The accused pleaded not guilty and claimed to be tried.

11. In order to prove its case, the prosecution has examined four witnesses namely, P.W.1 (Babu Singh): Independent witness of recovery and assembly, P.W.2 (Mahendra Nath): Independent witness of fact, P.W.3 / P.W.5 (Sukhbir Singh): Investigating Officer, P.W.4 (Narayan Prasad Dwivedi, A.S.I.): Police witness of fact and raiding party member.

12. No medical evidence or injury reports were adduced, as no person sustained any injury during the incident. No empty cartridges or empty shells were recovered from the spot.

13. In their statements recorded under Section 313 Cr.P.C., the appellants denied the charges, claiming false implication due to local enmity, though no defense witnesses (DWs) were produced.

14. PW-1: Babu Singh, a local resident of Korara village, was examined as a key independent witness who had joined the police team before the attack. In his testimony, he testified that he had accompanied the police team led by the station officer to the scene of the incident, near Chaudhary's well and the nearby banyan tree. He admitted to taking up positions with the raiding party to intercept the criminals and testified that he had directly witnessed the accused gathering. He specifically corroborated the prosecution's case regarding the conversation he overheard from the bandits at around 11:00 P.M., in which they discussed that it was the right time to commit the robbery at the house of Dhani

Ram in Qutubpur village. He further testified that the police subsequently challenged the gang, pursued them, arrested them, and recovered illegal weapons, ammunition, and a stick at the scene in his presence. As an attesting witness, he signed the recovery memo, which was marked as Exh.-Ka1. During cross-examination, the defense attempted to question his neutrality by claiming that, he had a prior acquaintance with the accused, as his sister was married in Saurapur village, barely a kilometer from the accused's village, Ayotara. Babu Singh categorically denied this connection and also rejected the idea that he was a habitual or stock witness for the police, or that the recovery memo had been fabricated. The trial court found his testimony highly credible, free of any exaggerations, and that he had no personal grudge or motive to falsely implicate the accused persons.

15. Another resident of village Korara namely, Mahendra Nath (PW-2) was examined as independent witness. He accompanied the raiding team and witnessed the capture and seizure. He described the formation of two separate police parties upon arriving at the scene, taking up tactical positions near the well, and finally surrounding and arresting the dacoits, along with the recovery of weapons from their possession. He provided essential topographical details of the crime scene, stating that the well's parapet was about 5 to 6 feet high and surrounded by about an acre of open land. He also stated that bullets were fired during the encounter, although they were so numerous that they were difficult to count. PW-2 in his cross-examination has stated that his statement was recorded at the police station between 10:00 and 12:00 P.M., which the court considered a minor omission due to the long time before he testified. More importantly, on page 10 of his cross-examination, he admitted that he had heard some whispering from under the banyan tree, but he could not clearly understand the words spoken by the miscreants. He stated that he mentioned the plot against Dhani Ram's house, because other members of the party had told him about it. He also did not accuse the accused persons of any specific shooting, directly. Nevertheless, the court held that, despite slight discrepancies in the overheard conversation, his convincing testimony reliably corroborated the key facts of the gathering, ambush, and arrest, and rejected the defense's claim that, he was an interested or "pocket" witness.

16. PW-3: Sukhbir Singh, the investigating officer and officer of inquest, took over the investigation of the case following the lodging of the First Information Report (Exh. Ka-7) at Police Station Korara. As part of his

official investigation, he visited the spot of the ambush and prepared the site plan, marked as Exh. Ka-2, which illustrated the relative positions of the two police ambush parties (marked as Points 'A' and 'B') and the Banyan tree at distances of 22 paces and 20 paces from the well. In his deposition, he described the physical surroundings of the site, noting that the height of the well's *Jagat* was about 3 to 4 feet. Upon concluding the investigation, he submitted the formal charge sheets against the accused persons, which were brought onto the record as Exh. Ka-3, Ka-4, and Ka-5. While his procedural steps regarding the site inspection and charge-sheeting under the Indian Penal Code were accepted, the trial court recorded severe strictures against his conduct regarding the Arms Act charges. The court observed that he exhibited utter callousness and negligence by failing to obtain the mandatory prior statutory sanction from the District Magistrate under Section 39 of the Arms Act before filing the charge sheet under Section 25(1)(a), a fatal omission that directly necessitated the acquittal of the accused on all charges under Arms Act, despite the physical recovery of unauthorised weapons.

17. PW-4: Narayan Prasad Dwivedi Assistant, Sub-Inspector Narayan Prasad Dwivedi was examined as an eye-witness of fact and a leading member of the police contingent. He provided a comprehensive, chronological narrative of the entire police action starting from the receipt of the secret informant's (*mukhbir*) tip-off at P.S. Korara regarding the planned assembly of dacoits. He explained how the raiding contingent departed for the spot with arms, ammunition, and a Very Light Pistol, recruited public witnesses on the way, and deployed Constable Muslim Ansari and Sudhir Kumar to guard the house of Dhani Ram. Upon arrival at the spot, he was placed in charge of the second squad alongside Constable Ram Vir Singh and witness Jagat Singh, taking a concealed position, south of the well adjacent to its *Jagat* under the cover of a pitch-dark night. He testified that around 10:00 PM, the dacoits arrived, gathered on the roots of the Banyan tree, smoked, and gossipped, until around 11:00 P.M., when one of them declared that the time had come to strike Dhani Ram's house. He detailed the police challenge, the retaliatory encounter, the subsequent chase across the open fields, and the specific personal search and recovery of a 12-bore gun with five cartridges from Gorey (Exh.1 to 7), a country-made pistol with four live cartridges from Ram Pal (Exh. 8 to 13), a country-made pistol with two live cartridges from Ram Kishun (Exh. 14 to 16), and a *lathi* from Ramayan (Exh. 17). In evaluating his testimony against defence arguments, that he was an interested police official, the court ruled that official police acts are

presumed to be performed regularly in the discharge of public duty, unless the defence adduces affirmative evidence of personal hostility or improper motive, thereby accepting his evidence as fully reliable and corroborated by the independent witnesses and site circumstances.

18. Learned counsel for the appellants submitted that, the prosecution narrative of an exchange of fire is completely falsified by the absence of any medical evidence or recovered empty cartridges. The trial court itself disbelieved the firing narrative and acquitted the appellants under Section 307 IPC.

19. Learned counsel for the appellants further submitted, that the recovery of arms was rendered unprovable under the Arms Act, due to lack of statutory sanction under Section 39. Once the search/recovery and the alleged firing are discredited, the essential ingredients of Sections 399 and 402 IPC cannot stand independently. In support of his contention, learned counsel for the appellant has placed reliance upon the judgments of Hon'ble Supreme Court as well as this Hon'ble Court in the case of **Jasbir Singh vs. State of Haryana** : decided on 06.04.2015 in Criminal Appeal No. 54 of 2015 (Arising out of SLP (Crl.) No. 8663 of 2014); **State of U.P. vs. Punni and Ors** : decided on 04.01.2008 in Criminal Appeal No. 463 of 2001; **Rambir Singh and others vs. State of U.P.** passed in Criminal Appeal No. 402 of 1983.

20. Learned counsel for the appellants further submitted that, there are material contradictions in the statements of independent witnesses (P.W.1), (P.W.2) and police personnel (P.W.4) regarding visibility, distance, ability to overhear conversations in a dark night, and the recording of statements.

21. On the other hand, the learned A.G.A. supported the conviction, contending that the testimonies of P.W.1, P.W.2, and P.W.4 sufficiently prove the assembly and preparation for dacoity.

22. It is apparent from the facts of the case that essential Ingredients for Sections 399 & 402 IPC is not fulfilled as to sustain a conviction under Sections 399 and 402 IPC, the prosecution must prove beyond reasonable doubt that the assembly was explicitly for the purpose of committing dacoity and that active preparation was taking place.

23. According to the prosecution, the raiding team was hidden behind the

parapet of a well, situated 20 to 22 paces away, in the darkness of the night. During cross-examination, P.W.2 specifically admitted that, he could not comprehend the conversation or words exchanged by the miscreants and had merely heard whispering; he later claimed that he had recounted these details, because others had told him so. Under these circumstances, overhearing a specific plan to commit dacoity at Dhani Ram's house appears, in itself, to be impossible and implausible.

24. Learned counsel for the appellant submitted, in order to falsity of Firing & Recovery, the trial court rightly noted, that no empty cartridges were collected and no injury was sustained by any person. The complete absence of medical evidence or physical evidence of crossfire casts serious doubt on the entire encounter story, disproving the prosecution case.

25. Furthermore, since the charges under Section 25(1)(a) of the Arms Act failed, the alleged recovery of weapons becomes highly suspicious and uncorroborated by independent material.

26. Regarding contradictions in the statements of witnesses', P.W.2 gave conflicting accounts concerning the time and place, where his statement was recorded. This suggests that the recovery memo and other formalities were likely prepared at the police station rather than at the scene of the incident.

27. In view of these glaring infirmities, the prosecution failed to prove the charges under Sections 399 and 402 IPC beyond reasonable doubt. The findings of conviction recorded by the trial court are unsustainable in law and on facts.

28. The Criminal Appeal is allowed.

29. The judgment and order of conviction dated 12.04.1984 passed by the learned Special Judge (DAA), Hamirpur in Sessions Trial No. 59 of 1981 are hereby set aside.

30. Appellants **Ramayan, Gorey, Ram Pal, and Ram Kishun** are acquitted of the charges under Sections 399 and 402 IPC.

31. The appellants are on bail. Their bail bonds are cancelled, and sureties are discharged. They need not surrender unless required in any other case.

32. Let a copy of this judgment along with the learned Trial Court Record (LCR) be transmitted to the trial court concerned forthwith, for compliance and necessary action.

(Harvir Singh,J.)

October 1, 2026

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