



2026:ANE:77354

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL APPEAL No. - 1488 of 1987

Idrish And 2 Others

.....Appellant(s)

Versus

State

.....Respondent(s)

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|---------------------------|---|-------------------|
| Counsel for Appellant(s)  | : | Vindhyachal Singh |
| Counsel for Respondent(s) | : |                   |

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#### Court No. - 93

#### **HON'BLE MRS. VANI RANJAN AGRAWAL, J.**

1. This appeal has been filed against the judgment and order dated 26.05.1987 of learned Special Judge, Dacoity Affected Area/ VI Additional Sessions Judge, Kanpur Dehat, in Special Trial No. 90 of 1986, State Vs. Idrish and others, in convicting and sentencing the appellants under Section 399 and 402 I.P.C. to 4 years rigorous imprisonment and under Section 25 of Arms Act to 1 year rigorous imprisonment.
2. Vide order dated 23.02.2021, the present appeal has been abated qua Appellant No. 2, Raj Bahadur, and Appellant No. 3, Ram Sewak. The appeal now survives only on behalf of Appellant No. 1, Idris.
3. Heard Sri Vindhyachal Singh, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.
4. Briefly, the prosecution case, as disclosed in the memo of arrest and recovery is that in the night of 08.03.1986, SHO- Indra Pal Singh of Police Station- Sheoli, received an information that a gang of dacoit armed with firearms was to assemble in the grove of Shiv Bodhan Singh for purpose of committing dacoity in the house of Shiv Narain Singh. Acting upon the information, S.H.O.- Indra Pal Singh along with other police officials proceeded towards the spot after getting noted departure entry in G.D. No.37. On the way they took public witnesses namely Madho Singh, Lal Singh, Shivdhar Singh and Tej Singh. S.H.O. Indra Pal Singh divided the police party into two teams. Two constables Shahabuddin and Mohd. Ibrahim were sent to the house of Shiv Narain for his safety. Both the police party reached the Mango grove at about 11.25 P.M. and hidden themselves in the grove. Two miscreants from the side of south west came and sat underneath the mango tree. Thereafter four miscreants came and started talking together. One of the miscreants said that we were sufficiently armed

and we would get sufficient valuables from the house of Shiv Narain Singh and we should go and commit dacoity. On hearing this S.H.O. Indra Pal Singh immediately challenged the miscreants and fired V.L.P. shot and asked them to surrender. The police party apprehended accused person Idris, Raj Bahadur and Ram Sevak and three of them managed to escape. Illegal firearms and cartridges were recovered from the possession of the accused persons who were arrested on the spot.

5. On the basis of memo of arrest and recovery, F.I.R. was registered and after getting sanction for prosecution under Arms Act from District Magistrate, Kanpur Dehat, matter was investigated and after investigation of the case, charge-sheet was submitted.

6. Charges were framed for offences under Section 399 and 402 I.P.C. and read over to the accused person. They denied the charges levelled against them and claimed to be tried.

7. In order to prove its case, the prosecution has examined as many as five witnesses namely, P.W.-1 Lal Singh, P.W.-2 Madho Singh, P.W.-3 S.I. V.K. Tewari, P.W.-4 Brijendra Singh Head Moharrir, P.W.-5 Investigating Officer, Pitamber Lal.

8. P.W.-1 Lal Singh and P.W.-2 Madho Singh supported the prosecution version in their deposition. P.W.-3 S.I. V.K. Tewari has narrated the prosecution story in detail and prove Ext. Ka-1. P.W.-4 Head Moharrir Bijendra Singh proved his handwriting and signatures on FIR Ext. Ka-2 and carbon copy of G.D. Ext. Ka-3. P.W.-5 Investigating Officer S.I. Pitamber Lal, narrated the process of investigation and proved site plan as Ext. Ka-6. Memo of torches Ext. Ka-7, Ka-8, Ka-9 and Ka-10. Sanction of the prosecution Ext. Ka-11, Ka-12 and Ka-13, bearing the signatures of the then District Magistrate- Kanpur Dehat. He also stated that after completion of the investigation he submitted charge-sheet on 30.04.1986. He proved his handwriting and signatures on charge-sheet which has been exhibited as Ext. Ka-14, Ka-15 and Ka-16.

9. In statement recorded under Section 313 Cr.P.C. the accused persons denied of the charges and their involvement of the occurrence.

10. The trial court, after hearing the arguments advanced by both the parties and considering the oral and documentary evidences on record, returned the finding of guilt and convicted the accused persons for offences under Section 399 and 402 I.P.C. and Section 25 of Arms Act and sentenced them accordingly.

11. Aggrieved with the judgment and order of conviction and sentence, the present appeal has been preferred on the ground that the conviction and sentence of the appellants are contrary to law and evidence on record. The trial court has ignored to consider the material evidence on record and the

sentence awarded to the appellants is also too severe.

12. Learned counsel for the appellants has submitted that the essential ingredients of Section 399 and 402 I.P.C. have not been established. It is argued that the prosecution has failed to prove the presence of five or more persons, which is a *sine qua non* for constituting an offence under Section 399 and 402 I.P.C. It is further submitted that the entire prosecution story suffers from material inconsistencies and improbabilities.

13. Learned A.G.A. for the state supports the judgment of conviction and sentence.

14. Section 399 I.P.C. reads as under :

***"Section 399:- Making preparation to commit dacoity***

*Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."*

15. Dacoity has been defined in Section 391 I.P.C., which reads as under :-

*"391. Dacoity :- 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"*

*When robbery is either committed or an attempt to commit it is made by five or more persons then all such persons, who are present or aiding in its commission or in an attempt to commit it, would commit the offence of dacoity."*

16. Section 402 I.P.C. reads as under :-

***"Section 402:- Assembling for purpose of committing dacoity***

*Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."*

17. Learned counsel for the appellants relied on the judgment passed by the Apex Court in **State of Punjab Vs. Jagga Singh, (1998) LawSuit (SC) 717**, wherein the order of acquittal of accused person was upheld on the ground

that no report from F.S.L. obtained to prove that the recovered gun was in working condition. There was no satisfactory evidence to show that the recovered arms and cartridges were sent for ballistic examination. No report from F.S.L. was available on record. Similarly in **State of U.P. Vs. Punni, 2008 Cri LJ 1028 (SC)**, the Hon'ble Supreme Court held that where the alleged dacoity was said to have been committed without any resistance or struggle, and the information received by the police from an informer was not supported by the Sub-Inspector, the accused was entitled to acquittal.

18. Having heard learned counsel for the appellants and learned A.G.A. for the State and perused the record, this Court finds that according to prosecution, on the intervening night of 8/9.03.86, at about 12.00 midnight, the police received secret information that some miscreants have assembled at village Sariayan Lalpur, Police Station – Seoli, District- Kanpur Dehat with illegal arms and were planning to commit dacoity at the house of one Shiv Narain. Acting upon the said information, the police party formed two teams, took along independent witnesses and reached the spot. It is alleged that the police overheard the miscreants planning the dacoity and thereafter surrounded them. The appellants were apprehended, while three of them managed to escape. Illegal firearms and cartridges were recovered from their possession.

19. Though independent witnesses P.W.-1 Lal Singh and P.W.-2 Madho Singh have supported the prosecution case to some extent, their testimony does not satisfactorily establish that five persons were assembled at the spot. Only three accused persons were apprehended and there is no reliable evidence regarding the identity or the existence of the alleged two absconding person. During investigation, no effort appears to have been made to ascertain the identity of the alleged absconding miscreants nor were their names disclosed by the apprehended persons.

20. The prosecution has not examined Shiv Narain at whose house the dacoity was allegedly planned. The constables Shahabuddin and Mohd. Ibrahim were also not examined who were allegedly sent to the house of Shiv Narain for his safety.

21. It is admitted that the miscreants did not fire any shot nor is there any evidence of any overt act except the alleged conversation. The recovered arms and cartridges were also not sent for ballistic examination to ascertain that they were in working condition at the time of arrest and recovery.

22. The place of occurrence is stated to be in complete darkness though the witnesses claimed that the police had torches, the same were neither produced nor brought before the Court. The Investigating Officer has admitted in his cross-examination that the torches which were taken into possession were not produced before the Court.

23. Even the sealed articles when produced before the Court were found in such condition where the inscriptions were not legible thereby creating doubt about the integrity of case property.

24. In view of the above deficiencies, prosecution has failed to establish beyond reasonable doubt that five or more persons had assembled on spot with intention to commit dacoity. The foundational requirement for offence under Section 399 and 402 I.P.C. is not satisfied. The findings recorded by the learned Trial Court do not appear to be sustainable in law as it overlooked material consistencies and lack of essential ingredients of Sections 399 and 402 I.P.C. Accordingly, the appeal deserves to be allowed.

25. The appeal is **allowed**. The conviction and sentence imposed by the learned trial court is hereby set aside. Accused- appellant No.1- Idris is acquitted of the charges under Section 399 and 402 I.P.C.

26. The accused-appellant is on bail. His bail bonds and sureties are discharged.

27. A copy of this judgment along with trial court record be transmitted to trial court concerned for necessary compliance.

**February 23, 2026**

P. Pandey

**(Mrs. Vani Ranjan Agrawal,J.)**