



2026:AHC:34548

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1732 of 1987

Shiv Sampat

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	, Sunil Dubey
Counsel for Respondent(s)	:	

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been preferred by the appellants against the conviction and sentence recorded vide judgment and order dated 22.06.1987 passed by Special Judge (D.A.A), Banda in Session Trial No.175 of 1986, convicting and sentencing the appellants under Section 216A I.P.C. to three years rigorous imprisonment each.

2. Vide order dated 13.11.2025, the present appeal stands abated qua appellant No.1 Shiv Sampat and now the appeal only survives with respect to the appellant no.2 namely Dan Singh.

3. The prosecution case, in brief, is that on 05.07.1986, the S.H.O., K.K. Shukla, along with other police personnel, proceeded in a government jeep in search of dacoits belonging to the Hanuman Gang. The police party was informed by an informer that some dacoits were staying in a hilly forest. On the basis of the information received, the police party reached a hilly forest area near a small embankment, where it was alleged that the accused persons, namely Shiv Sampat and Dan Singh, were serving food to the dacoits. The police party, after concealing themselves, allegedly saw 10 miscreants, and the present appellants were serving them food. Upon being challenged, the miscreants fled away, while the appellants were apprehended at the spot.

4. From the place of occurrence, ten leaf plates (pattal) were recovered, along with one basket containing puri and sabji. The First Information Report was registered on the basis of the recovery memo, and after investigation, a charge sheet was submitted. The prosecution, in order to prove its case, examined as many as four witnesses: PW1 Sub-Inspector Krishna Kumar Shukla, PW2 Constable Krishna Dev Mishra, PW3 S.I. Rameshwar Shukla, and PW4 S.I. Surendra Narayan Pandey, the Investigating Officer. Documentary evidence, namely the recovery memo (Ext. Ka-1), chick FIR (Ext. Ka-2), site plan (Ext. Ka-3), charge sheet (Ext.

Ka-4), and copy of GD (Ext. Ka-5), are available on record. The trial court, after considering the evidence, convicted the appellants under Section 216A IPC, holding that they were assisting the dacoits by providing them food.

5. Learned counsel for appellant no. 2 submitted that there is no evidence to prove the existence of any gang of dacoits, such as the Hanuman Gang. The prosecution failed to establish that the alleged persons were proclaimed offenders or dacoits. It was further argued that the testimony of the witnesses is unreliable, as PW1, K.K. Shukla (S.I.), himself admitted that he had never charge-sheeted any such gang and did not personally know Sitaram of the Hanuman Gang. No independent witness was examined. Even basic circumstances raise doubt, as no water utensils were found at the alleged spot, and the existence of a distant water source about two furlongs away appears improbable. It was also submitted that the appellants had no criminal history to their credit.

6. Learned A.G.A. supported the judgment of conviction and argued that appellant no. 2 was caught red-handed while serving food, and the recovery of food articles corroborates the prosecution version.

7. In support of his contention, he has referred Section 216 IPC which read as under:-

"216. Harboursing offender who has escaped from custody or whose apprehension has been ordered
.—Whenever any person convicted of a charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence.— if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with 3[imprisonment for life] or imprisonment for ten years, he shall be punished with imprisonment of

either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both."

8. It requires: (i) the existence of an offender who has committed a crime; (ii) knowledge or reason to believe that such person is an offender; (iii) harbouring or assisting such offender; and (iv) mere suspicion or presence is not sufficient—knowledge and intention must be clearly established.

9. Upon careful scrutiny of the record, this Court finds that the prosecution has failed to establish that any such gang, like the Hanuman Gang, exists. P.W.-1, Mr. K.K. Shukla, himself admitted that he had no knowledge regarding the Hanuman Gang. The alleged miscreants were neither identified nor apprehended at the spot. No evidence was led to prove that the so-called miscreants were dacoits or wanted in any criminal case. There is also no evidence regarding the criminal antecedents of the alleged associate of appellant no. 1, namely Shiv Sampat. No material is available on record to show that Sitaram, allegedly belonging to the Hanuman Gang, was present at the spot.

10. It has not been established that the appellants had knowledge or reason to believe that such persons were dacoits, or that the appellants intentionally harboured them.

11. Upon consideration of the evidence available on record, this Court finds that the very foundation of the prosecution case is inherently weak and legally unsustainable.

12. It is an admitted position that no person was apprehended or identified as a dacoit at the time of the alleged incident. The alleged offenders, whom the appellants are said to have harboured, remain unidentified and unverified.

13. There is no evidence on record to establish that the said persons were, in fact, offenders. The prosecution has failed to prove any prior criminal antecedents of such persons. It has also not been shown that any criminal history was ever recorded against them.

14. In the absence of motive, the essential ingredient of harbouring, which

attracts Section 216 IPC, is missing. The case solely rests on the evidence of police witnesses, and there is no independent corroboration. While the testimony of police officers cannot be discarded merely on that ground, it must still inspire confidence.

15. In the present case, the evidence does not inspire confidence in the absence of foundational facts. The recovery of alleged food items and leaf plates, in the absence of any connecting evidence, is too fragile and inconclusive to establish the offence.

16. The inconsistencies regarding recovery, including the absence of basic items such as water containers, further weaken the prosecution case. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof.

17. The prosecution has failed to prove its case beyond reasonable doubt.

18. In view of the above discussion, this Court is of the considered opinion that the conviction of appellant no.2 under Section 216A IPC is unsustainable in the eyes of law and suffers from serious infirmities.

19. Accordingly, the appeal deserves to be allowed.

20. In the result, the conviction and sentence recorded vide judgment and order dated 22.06.1987 are set aside. The appeal is **allowed**.

21. A copy of this judgment, along with the trial court record, be sent forthwith to the learned trial court for necessary compliance.

February 17, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)