



2026:AHC:40842

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2244 of 1986

Chunni Lal And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Arvind Singh Sengar, Dharm Vir Jaiswal, G.S. Hajela, Harsh Vikram
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed against the judgment and order dated 23.07.1986 passed by learned Additional Sessions Judge, Moradabad in Sessions Trial No.834 of 1984, convicting and sentencing of the appellant under Section 392 read with Section 397 I.P.C. for three years rigorous imprisonment.
2. Heard Sri Arvind Singh Sengar, learned Amicus Curiae for the appellants and Sri Rahul Asthana, learned A.G.A. for the State
3. The prosecution story, which emerges out from the evidence on record is to the effect that complainant Hansmukhi, resident of village Gumthal, Police Station- Baniyather, District- Moradabad was married in village Rahtol of the same police station. On 05.09.1982, she heard the news of the death of her grandmother. She proceeded alone from village Rahtol to Gumthal. On the way, when she was in front of the Arhar field of Gopal Murao at about 6.30 p.m. accused Chunni Lal came out from the Arhar field with a knife. He put the knife on her chest and asked her not to raise any alarm, otherwise he will chop off her head by the said knife. After giving threat to life, he forcibly took out her silver chain patti, golden nose pin and silver necklace and fled towards South-East. On her alarm, his uncles Moti Ram and Ram Lal, who were working in their fields rushed for help. They saw the accused fleeing along with robbed ornaments. They chased him but the accused could not be apprehended.
4. The complainant got a written report scribed by Badan Singh, son of Lakhan Singh, who met her on a tea stall and went to police station. On the basis of written report, FIR was registered and G.D. entries were drawn. The

complainant told them that the accused who was the son of Aseyram, resident of village – Bhulawai had looted her ornaments by threatening to kill her. During investigation of the case, looted ornaments were recovered on pointing out of the accused, Chunni Lal from his house. After investigation of the case, charge-sheet was submitted.

5. In order to prove its case, the prosecution has examined as many as five witnesses namely P.W.-1 the complainant Hansmukhi, P.W.-2 Motiram, P.W.-3 Ramlal, P.W.-4 Constable Jarif Ahmad, P.W.-5 Investigating Officer S.P. Singh.

6. The complainant P.W.-1 supported the FIR version regarding robbery of her ornaments by son of Aseyram. P.W.-2 Moti Ram and P.W.-3 Ram Lal have stated that on the alarm raised by Hansmukhi, they rushed for help and they saw the accused fleeing along with robbed ornaments. They chased him but he could not be apprehended.

7. P.W.-4 Constable Jarif Ahmad has prepared chik report and registered the case against the accused in General Diary. P.W.-5 S.I. S.P. Singh deposed regarding the recovery of looted items on pointing out of the accused Chunni Lal and recognized the looted ornaments as Ext. 1 to 3 and when produced before the Court.

8. The accused-appellant in his statement recorded under Section 313 Cr.P.C. He denied the charges levelled against him and stated that nothing has been recovered from his possession. He has been falsely implicated in the case on account of displeasure of the police with him.

9. The trial court after hearing the arguments advanced by both the parties and considering oral and documentary evidence on record returned the finding of guilt and convicted the accused for offence under Section 392 read with Section 397 I.P.C. and sentenced him to undergo three years of rigorous imprisonment.

10. Aggrieved with the judgment and order of conviction, this criminal appeal has been filed by the appellant.

11. It is submitted that the conviction and sentence of the appellant is against the weight and evidence on record and bad in the eyes of law. The sentence is too severe, therefore, it is prayed that this criminal appeal be allowed and accused be acquitted from all the charges.

12. Learned Amicus Curiae for the appellant submitted that the ingredients of Section 397 I.P.C. is not made out as no weapon was recovered and there

is no reliable evidence to establish use of a deadly weapon contemplated under the said provision. It is further submitted that the occurrence is more than 40 years old and the accused is facing the ordeal of appeal for a long time. He was detained in jail for few months during trial and at present he is detained in District Jail- Moradabad in execution of non-bailable warrant issued by the Court, therefore, it is prayed that the substantive sentence be modified to period already undergone.

13. Learned A.G.A. for the State supported the judgment and order of conviction but fairly considered that the occurrence is quite old.

14. Having heard learned Amicus Curiae for the accused appellant and learned A.G.A. on behalf of the State and perused the record.

15. Section 392 of I.P.C. prescribes punishment for robbery. It has been defined in Section 391 I.P.C. According to Section 391 I.P.C., theft is robbery if in order to commit the theft or in carrying away the property obtained by theft, the offender voluntarily causes or attempts to cause death, hurt or wrongful restrained or fear of instant death, hurt or wrongful restrained.

16. Section 397 I.P.C. reads as under :-

"Section 397:- Robbery or dacoity, with attempt to cause death or grievous hurt

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, so attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

17. Prosecution case as emerges from the evidence on record. The complainant while proceeding to her parental village upon receiving news of her grandmother's death was intercepted in the field by the accused appellant, who allegedly threatened her with a knife and forcibly took away her ornaments. On her alarm, witnesses, P.W.-2 Motilal and P.W.-3 Ramlal, who were working in the fields nearby came to the spot and saw the accused fleeing.

18. The complainant in her deposition supported the prosecution version and identified the accused. Other witnesses P.W.-2 Motilal and P.W.-3 Ramlal stated that they had seen the accused fleeing from the spot though they had

not recognized him and not witnessed the occurrence itself.

19. It is noteworthy that the first information report did not mention the name of the accused but refers to him as son of Aseyram. The identity of the accused was later established during investigation and trial. No knife alleged to have been used in the incident was recovered during investigation but the testimony of the complainant P.W.-1 Hansmukhi is consisted and duly corroborated by recovery of looted items from the possession of the accused.

20. However, so far as the applicability of Section 397 I.P.C. is concerned, this Court finds that the same is not attracted because there is no recovery of the alleged knife and the evidence on record does not conclusively established use of a deadly weapon in the manner required under section 397 I.P.C. but the prosecution has successfully proved the offence of robbery, punishable under Section 392 I.P.C. Accordingly, the conviction of the accused under Section 392 I.P.C. is maintained and the application under Section 397 I.P.C. is set aside.

21. Considering that the incident is of the year 1982 and the appellant has faced the ordeal of trial and appeal for more than four decades, this Court finds it appropriate to modify the sentence.

22. Accordingly, the conviction of the appellant under Section 392 I.P.C. is affirmed, while the conviction under Section 397 I.P.C. is set aside. The sentence of three years rigorous imprisonment is modified to the period already undergone.

23. It has been brought to the notice of the Court by the learned Amicus Curiae that the appellant is in custody on execution of non-bailable warrant issued against him vide order dated 11.02.2026 of in-charge, Chief Judicial Magistrate Sambhal at Chandausi is available on record.

24. Accordingly, the appeal is partly allowed with aforesaid modification.

25. In view of the modification of sentence to the period already undergone, no further incarceration of the appellant is warranted. The appellant shall be released forthwith from jail if not wanted in any other case.

26. The Superintendent of Jail District Mordabad is to ensure immediate compliance of the order.

27. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance.

28. This court appreciates the assistance provided by Sri Arvind Singh Sengar, learned Amicus Curiae, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

(Mrs. Vani Ranjan Agrawal,J.)

February 24, 2026
P. Pandey