



2026:AHC:91914

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### CRIMINAL APPEAL No. - 2704 of 1987

Lakhan

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|---|----------------------------------------------------------------------|
| Counsel for Appellant(s)  | : | , Abhay Singh Yadav, Mahender Pal<br>Singh Yadav, Ravi Shankar Yadav |
| Counsel for Respondent(s) | : |                                                                      |

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#### Court No. - 93

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

1. Heard Sri Mohan Kumar, Advocate holding brief for Sri Ravi Shankar Yadav, learned counsel for the appellant, and Sri Rahul Asthana, learned A.G.A. for the State-respondent.

2. The present appeal has been preferred against the judgment and order dated 11.11.1987 passed by V.C. Saxena VI, Additional Sessions Judge, Kanpur Dehat, in Sessions Trial No. 157/1984 (State vs. Lakhan and others), whereby the appellants were convicted under Section 394 I.P.C. and sentenced to five years of rigorous imprisonment.

3. The prosecution case, in brief, is that on the intervening night of 23/24.10.1977 at about 1:00 A.M., the accused persons committed robbery of ornaments, cash, clothes, and other articles in the house of Babu Ram, situated in village Ishwapur, Police Station Gajner, District Kanpur Dehat. During the commission of the aforesaid robbery, they caused injuries to Babu Ram. The First Information Report was lodged by the complainant Badri Prasad, brother of Babu Ram, stating that at the time of occurrence, he was lying in his house along with his family. At about 1:00 A.M., upon hearing the barking of dogs, he woke up and saw that three miscreants had jumped into the house of his brother Babu Ram from the northern wall. One miscreant was standing at the door while three others were inside the house committing theft of valuables. On hearing the alarm raised by Babu Ram and his wife, villagers namely Laxmi Narayan, Bharat, Kanhai, Chiranju, etc., rushed towards the house carrying lathis and torches. Due to the resistance, the miscreants fled away with the looted items. Two of them, namely

Chhotte Lal and Bashir, were recognized in the light of a lamp and torches.

4. On the basis of the written report, the First Information Report was registered and G.D. entries were made. The case was investigated by S.H.O. Shri Ram Shankar Mishra. During the course of investigation, he visited the spot, prepared the site plan, and recorded the statements of witnesses. After completion of the investigation, a charge-sheet was submitted against the accused persons.

5. Charges were framed and read over to the accused, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined the complainant Badri Prasad (P.W.-1), Babu Ram (P.W.-2), Laxmi Narain (P.W.-3), Chiranju (P.W.-4), and Rajaram (P.W.-5). The accused persons admitted the genuineness of the documents relied upon by the prosecution; therefore, their formal proof was dispensed with and they were exhibited. Documentary evidence (Ext. Ka-1 to Ext. Ka-14), along with material exhibits, are available on record and have been duly proved by the prosecution.

7. The eyewitnesses have categorically deposed that on the night of the occurrence, the accused persons committed robbery in the house of Babu Ram and assaulted him, as a result of which he sustained injuries. They have further stated that valuables belonging to Babu Ram were looted during the incident.

8. It is also alleged by the prosecution that at the time of arrest, an illegal country-made pistol and cartridges were recovered from the possession of the accused persons.

9. The learned trial court, after hearing the arguments advanced by both parties and considering the oral and documentary evidence on record, observed that none of the prosecution witnesses deposed even a single word regarding the recovery of illegal firearms from the possession of the accused persons. Moreover, there is no evidence to show that the looted property was recovered from the possession of any of the accused persons. Thus, the charges under Section 25 of the Arms Act and Section 411 I.P.C. were not proved by the prosecution beyond reasonable doubt. However, the trial court recorded conviction under Section 394 I.P.C. against all the accused persons

and sentenced them to undergo rigorous imprisonment for a period of five years.

10. Aggrieved by the judgment of conviction and sentence, the present appeal has been filed on the grounds that the conviction and sentence of the appellants are against the weight of evidence on record and are bad in the eyes of law. It is further contended that the sentence imposed by the learned trial court is too severe. Therefore, it is prayed that the judgment of conviction and sentence be set aside and the appellants be acquitted of all charges.

11. Learned A.G.A. supported the judgment and order of conviction and sentence.

12. The Section 394 of I.P.C. reads as under:-

*"394. Voluntarily causing hurt in committing robbery.—*

*If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."*

13. A perusal of the entire oral and documentary evidence on record reveals that, according to the prosecution, the accused persons allegedly entered the house of the informant's brother, namely Babu Ram, assaulted him, and committed theft of valuables. Upon an alarm being raised, villagers reached the spot carrying lathis and torches, whereupon the accused fled away with the alleged stolen articles. The injury report of Babu Ram (Ext. Ka-7) has been admitted; however, it is noteworthy that the doctor who prepared the injury report of the injured Babu Ram was not examined during the trial.

14. It is not clearly established that the injuries found on the person of Babu Ram were caused by the present appellants during the alleged incident. No prosecution witness has categorically deposed that he saw the accused persons assaulting, confining, or torturing Babu Ram in any manner.

15. On the contrary, the evidence indicates that the witnesses reached the

place of occurrence only after hearing the alarm raised by Babu Ram and his wife. Therefore, none of them is an eyewitness to the alleged act of assault or use of force by the accused persons.

16. The allegation of assault rests solely on the statement of the injured witness, Babu Ram, without any independent corroboration. In the absence of reliable medical evidence and direct or ocular testimony, the prosecution has failed to establish that the accused persons voluntarily caused hurt during the course of the incident.

17. Furthermore, the trial court itself disbelieved the recovery of stolen property from the possession of the appellants by acquitting them under Section 411 I.P.C., which further weakens the prosecution case.

18. Considering the totality of the evidence, facts, and circumstances of the case, this Court finds that the essential ingredients of the offence under Section 394 I.P.C. have not been proved.

19. However, from the overall evidence, it appears that some property was taken away from the house of Babu Ram without his consent. Thus the offence falls within the ambit of Section 379 I.P.C., which reads as under:-

**"Section 379.- Punishment for theft.-Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."**

20. In the facts of the the present case, the oral and documentary evidence on record indicates that the accused person had gone to the house of Babu Ram and took away some properties. It consitutes the offence of simple theft as defined U/s 379 I.P.C.

21. Accordingly, the conviction of the appellants under Section 394 I.P.C. is modified to one under Section 379 I.P.C. The conviction and sentence under Section 394 I.P.C. is liable to be set aside.

22. In the result, the appeal is **partly allowed**. The conviction and sentence under Section 394 I.P.C. is hereby set aside.

23. So far as the question of sentence is concerned, the record reveals that the applicant was sent to jail after passing of the impugned order of

conviction on 11.11.1987 and he was enlarged on bail vide order dated 17.11.1987. He also remained in jail for a few days during trial.

24. Considering the fact that the incident is about 50 years old and the appellant had undergone the ordeal of criminal proceedings for decade and in view of the long lapse of time and the facts and circumstances of the case, the appellant is sentenced to the period already undergone.

25. Since the appellant Ram Das is on bail, his bail bonds are cancelled and sureties are discharged.

26. Let a copy of this judgment along with the trial court record, if any, be sent forthwith to the court concerned for necessary compliance.

**April 24, 2026**  
Pravesh Mishra

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