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Reserved on 19.12.2025

Delivered on 12.05.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3271 of 1985

Bashiullah Alias Matru

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Kumar Ankit Srivastava (A.C.), H.N. Sharma

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

Court No. - 89

HON'BLE ANIL KUMAR-X, J.

1. This criminal appeal was filed on behalf of the appellant – Bashiullah @ Matru, with a prayer to allow the appeal and acquit the appellant by setting aside the judgment and order dated 4.9.1985 passed by Special and Additional District & Sessions Judge, Bulandshahr in Sessions Trial No 714 of 1984 (State vs. Bashiullah @ Matru), whereby the appellant was convicted and sentenced to undergo seven years' RI for offences under Section 393 IPC read with Section 398 IPC and five years' RI for offence under Section 307 IPC. Both sentences were directed to run concurrently.

2. It is to be noted that vide order of this Court dated 21.4.1988, the appellant was directed to be released on bail. However, during pendency of this appeal, it was listed several times but none appeared on behalf of appellant. Accordingly, the Court vide order dated 11.8.2025 issued fresh notice to the appellant, however, none appeared on behalf of appellant and a report was submitted by CJM, Bulandshahr that no person named Bashiullah (appellant) was residing at the given address. **Since the**

appellant could not be traced out, the Court vide order dated 13.11.2025 appointed Shri Kumar Ankit Srivastava as an Amicus Curiae to argue this case on behalf of the appellant.

3. According to the prosecution case, as stated in the written report (Ext. Ka-1) lodged by P.W.-5 Angan Lal s/o Baldev Saini, r/o Ahirpada, P.S. Khurja, District Bulandshahr, on 25.08.1984 at about 8:15 P.M., 4 - 5 robbers entered the house of his brother Jhamman Lal with intention to commit robbery. At that time, Khimman Devi w/o Jhamman Lal and her daughters P.W.-2 Prakashwati and P.W.-3 Guddi were sitting in the verandah where a lantern was burning due to dim electric light. One robber put a knife on the neck of Khimman Devi, while another, armed with a country-made pistol, threatened them. The robbers had uncovered faces. One robber asked the two girls to go inside and bring valuables, but all three women raised alarm. Hearing their cries, villagers including P.W.-4 Bhagwan Sahay, P.W.-1 Murari, Madan Lal Sharma and Nand Kishore Sharma reached there, due to which the robbers came out of the house and started fleeing.

4. The villagers chased them, during which one robber fired from his country-made pistol with intention to kill the chasers. The robbers ran through Mohalla Ahirpara towards Burji Police Outpost. One accused fell near the police outpost and was caught by the villagers after beating him. A country-made pistol containing one empty cartridge in its barrel (Material Ex.Ka-1) was recovered from him. Meanwhile, police personnel from the outpost also reached the spot and took the accused along with the recovered pistol to the police station. The accused did not disclose his name and his associates managed to escape. The accused along with the recovered country-made pistol was handed over to the police, and Angan

Lal lodged the FIR (Ex.Ka.-2) at Police Station Khurja on 25.08.1984 at about 8:55 P.M. Check FIR was prepared by Head Constable Shital Singh on the dictation of Angan Lal.

5. The country-made pistol and empty cartridge were sealed and recovery memo was prepared. The accused continued pretending to be unconscious even at the police station. As there were injuries on his body, he was sent for medical examination. Investigation was taken over by P.W.-6 S.I. Taran Singh, who recorded statements of the complainant and other witnesses and thereafter inspected the place of occurrence. He prepared the site plan of the house of Jhamman Lal (Ex.Ka-4) at the instance of witnesses. A “Katar” (Ex.Ka-5) allegedly left behind by the robbers was also recovered near the house of Vishan Swarup and taken into police possession. The Investigating Officer also inspected the place where the accused was apprehended by the villagers. On next day, accused was interrogated by I.O. and he told his name Bashiullah @ Matru. After concluding the investigation, charge sheet (Ex.Ka.-7) against this accused was submitted on 14-10-24.

6. In support of its case, the prosecution examined Murari Lal as P.W.-1, Smt. Prakashwati as P.W.-2, Smt. Guddi as P.W.-3, Bhagwan Sahai as P.W.-4, Angan Lal as P.W.-5, and S.I. Taran Singh as P.W.-6. Head Constable Shital Singh was examined as C.W.-1. No witness was examined in defence by the accused. After completion of investigation, the case was committed to the Court of Sessions, where charges under Sections 307, 393 and 398 IPC were framed against the accused. The accused denied the charges and claimed trial.

7. The Trial Court found that all the prosecution witnesses supported the

prosecution case except P.W.-1 Murari Lal and informant P.W.-5 Angan Lal to the extent that they could not identify the accused in the dock. However, both these witnesses supported the prosecution story regarding the occurrence and arrest of the accused at the spot. The Trial Court held that there was no prior enmity between the witnesses and the accused and, therefore, there was no reason for false implication. Relying upon the evidence on record, the Trial Court concluded that the accused was apprehended at the place of occurrence itself and accordingly held him guilty for offences punishable under Section 393 read with Section 398 IPC and Section 307 IPC.

8. Shri Kumar Ankit Srivastava, learned Amicus Curiae for the appellant argued that P.W.-1 Murari Lal and informant P.W.-5 Angan Lal did not fully support the prosecution case as they failed to identify the accused in Court. It was further argued that the accused was not previously known to the witnesses and, in absence of any test identification parade, his identity could not be said to have been proved beyond doubt. It was also submitted that the accused, in his statement, had specifically stated that he was arrested from Bulandshahr bus station and was falsely implicated in the present case by the police personnel. On the strength of the aforesaid submissions, it was argued that the appellant-accused is innocent and deserves acquittal.

9. Shri Acharya Rajesh Tripathi, learned A.G.A., on the other hand, argued that the prosecution witnesses have consistently supported the prosecution case regarding the incident, apprehension of the accused at the spot and recovery of country-made pistol from his possession. It was submitted that merely because P.W.-1 Murari Lal and informant P.W.-5

Angan Lal could not identify the accused in Court after lapse of considerable time, the entire prosecution case does not become doubtful, particularly when there was no previous enmity between the parties. It was further argued that the accused was apprehended by villagers immediately after the occurrence while fleeing from the spot after firing at the chasers and was handed over to the police along with the recovered weapon. The findings recorded by the Trial Court are based on reliable evidence and do not suffer from any illegality or perversity, therefore, the appeal deserves to be dismissed.

10. I have considered the submissions advanced by learned counsel for the parties and perused the records.

11. Before discussing the evidence on record, it would be appropriate to notice certain undisputed facts emerging from the case. Firstly, the appellant and the prosecution witnesses were not previously known to each other and there was no prior enmity between them. Secondly, the incident initially took place inside the house where P.W.-2 Smt. Prakashwati and P.W.-3 Guddi were present along with their mother, and thereafter the incident continued outside the house when the accused along with his associates attempted to flee after alarm was raised by the women and the villagers started chasing them. Thirdly, the occurrence took place at about 8:15 P.M., the accused was apprehended by the villagers near the police outpost along with a country-made pistol, and the FIR was promptly lodged within about 40 minutes at about 8:55 P.M. The cumulative reading of the aforesaid circumstances leaves no reasonable ground to infer false implication of the appellant.

12. So far as the argument regarding identification of the accused is

concerned, all the prosecution witnesses including P.W.-2 Smt. Prakashwati and P.W.-3 Guddi have consistently stated that they did not know the accused prior to the incident and had identified him after he was apprehended by the villagers near the police outpost at a short distance from the place of occurrence. Except P.W.-1 Murari Lal and P.W.-5 Angan Lal, no other witness failed to identify the accused in Court. Even the aforesaid two witnesses, who expressed their inability to identify the accused in Court, have fully corroborated the prosecution story on all material particulars including the occurrence, chase, apprehension of one accused near the police outpost and recovery of country-made pistol from him. Interestingly, from perusal of the depositions of witnesses, it also appears that the defence itself did not seriously challenge the identity of the accused during trial by seeking proper verification of his identity from the witnesses in Court. Though an attempt was made during cross-examination of P.W.-2, she successfully identified the accused in the dock.

13. A test identification parade is ordinarily required in cases where the accused is not previously known to the witnesses and his identity is doubtful or where the accused is arrested subsequently during investigation. However, in the present case, the accused was apprehended by the villagers immediately after the occurrence while fleeing from the spot and was handed over to the police along with the recovered weapon. The witnesses had sufficient opportunity to see the accused during the incident as well as at the time of his apprehension. In such circumstances, absence of test identification parade does not create any dent in the prosecution case.

14. In view of the discussions made above, this Court finds no illegality or perversity in the judgment and order passed by the Trial Court. The findings recorded by the Trial Court are based on proper appreciation of evidence available on record and do not call for any interference by this Court.

15. Accordingly, the **judgment of conviction and sentence** dated 4.9.1985 passed by Special and Additional District & Sessions Judge, Bulandshahr in Sessions Trial No.714 of 1984 (State vs. Bashiullah @ Matru) convicting and sentencing the appellant under Section 393 r/w 398 IPC and Section 307 IPC, **is hereby upheld** and the **present appeal is dismissed**.

16. It is further noticed that the whereabouts of the appellant were not known during pendency of the appeal and, therefore, an Amicus Curiae was appointed on his behalf to assist the Court.

17. The Trial Court is directed to take all appropriate steps, including coercive measures, for apprehending the appellant so as to send him to prison for serving out the remaining sentence awarded to him. In case, despite all possible efforts, the appellant still remains untraceable, the Trial Court shall issue permanent warrant against him and necessary entry thereof shall also be made in the General Diary of the concerned police station so that whenever the appellant is apprehended, he may be sent to prison for serving the remainder of his sentence.

18. Let the copy of this judgment as well as the trial court's record be transmitted to the concerned Trial Court forthwith for necessary compliance. Compliance report be submitted to this Court at the earliest.

Office is directed to keep the compliance report on record.

19. Shri Kumar Ankit Srivastava, learned Amicus Curiae, who has given his valuable assistance to the Court, shall be paid fees as admissible to an Amicus Curiae, as per rule.

(Anil Kumar-X,J.)

May 12, 2026
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