



2026:AHC:192449

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3289 of 1985

Raj Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	V.S. Chaudhary
Counsel for Respondent(s)	:	A.G.A.

Judgment Reserved on 10.9.2026

Judgment Delivered on 15.9.2026

Court No. - 90

HON'BLE ABDUL SHAHID, J.

1. Heard Mr. Atul Kumar Pandey, learned Amicus Curiae for the appellant and the learned A.G.A. for the State.

2. The present appeal arises out of the impugned judgment and order dated 03.10.1985, passed by the learned Additional Sessions Judge, Ghaziabad, in Sessions Trial No. 169 of 1982 (State v. Swaleen) and Sessions Trial No. 169-A of 1982 (State v. Shaukat and Others), Police Station Modi Nagar, District Ghaziabad whereby the appellant has been convicted and sentenced under Sections 399 and 402 of the Indian Penal Code and Section 25 of the Arms Act. The maximum sentence awarded to the appellant is four years' rigorous imprisonment under Section 399 of the Indian Penal Code.

3. The prosecution case, as unfolded from the record, is that on 21.02.1982, Shri M. L. Ghai, Station Officer, Modinagar, Ghaziabad, received information from an informer that certain dacoits would assemble in a Kothari situated on Sondha Road during the night with the intention of committing dacoity at the house of one Ram Saran in Sondha Village. Upon receiving the said information, the Station Officer constituted a police party and proceeded towards the alleged place of occurrence along with the informer. On the way, he also took three public witnesses, namely, Chhotey, Bharat Bhushan, and Dayaram, along with the police party. They reached near the said Kothari, situated in a grove, at about 09:40 p.m.

4. After ensuring that all members of the police party and the public witnesses had been frisked and that none of them was carrying any illegal article, the Station Officer divided the police party into three teams. The first

team was headed by M. L. Ghai, Station Officer, himself; the second team was headed by Bhagwat Singh, Assistant Sub-Inspector; and the third team was headed by Shri Rajkumar, Assistant Sub-Inspector. The three public witnesses and the remaining police personnel were also distributed among the three teams.

5. After giving the necessary instructions and directions, the members of the police party proceeded towards the place of occurrence. The first team took position on the southern side of the Kothari, the second team on the northern side, and the third team on the western side. They thereafter waited for the arrival of the alleged dacoits. Prior thereto, two police personnel had also been deputed, along with their rifles, for the protection of the house of Ram Saran in Sondha Village.

6. At about 10:15 p.m., three persons came from the side of the Rajwaha and entered the Kothari. After about 5–7 minutes, two other persons also arrived from the same direction, joined the others, and started conversing with them. The police party allegedly overheard their conversation. One of them stated that the time had come to commit dacoity and that their gang leader, Shyam Singh, had not yet arrived. Another person replied that they were sufficient in number, had enough weapons, and that there was no point in waiting any longer, as they had to commit dacoity.

7. Thereafter, when the said persons came out of the Kothari, M. L. Ghai, Station Officer, fired two shots from his gun, whereupon all three police teams surrounded and apprehended them. Five persons were apprehended. On being questioned, they disclosed their names as Swaleen, Chhotey, Shaukat, Rajkumar, and Rasheed, respectively. Illegal weapons were allegedly recovered from the possession of all five accused persons.

8. After taking samples of the recovered articles and preparing the respective recovery memos, all the accused persons, along with the recovered articles, were taken to the police station. On the oral statement of M. L. Ghai, Station Officer, a Check First Information Report was prepared, and the relevant entry was also made in the General Diary (G.D.). The investigation was thereafter entrusted to Sub-Inspector Om Prakash Sharma, who submitted a charge-sheet against all the accused persons. He also obtained the requisite permission from the concerned District Magistrate for prosecution of the accused under Section 25 of the Arms Act.

9. Charges were accordingly framed against the accused person, and the case was committed to the Court of Session. The accused denied the charges levelled against him and claimed to be tried.

10. To prove its case, the prosecution examined the following witnesses:

- (i) Sub-Inspector Rajkumar (P.W.1);
- (ii) Inspector Madan Lal Ghai (P.W.2);
- (iii) Bharat Bhushan (P.W.3);
- (iv) Chhotey (P.W.4); and
- (v) Sub-Inspector Om Prakash Sharma (P.W.5).

Out of these five prosecution witnesses, the first two are police personnel who gave evidence regarding the incident. P.W.3 and P.W.4 are public witnesses. P.W.5 investigated the matter and submitted the charge-sheet.

11. At the trial, besides the documentary evidence, the prosecution relied upon the oral testimony of five witnesses, out of whom two were public witnesses and the remaining were police personnel.

12. P.W.1, Sub-Inspector Rajkumar, deposed that on 21.02.1982, he was posted at Police Station Modinagar. At about 8:45 p.m., an informer gave information to the Station Officer of Police Station Modinagar that some dacoits would assemble at Sondha Road near a Pyau for committing dacoity in the house of Ram Saran at Village Sondha. Upon receiving this information, the Station Officer formed a police team and set off towards the said place along with the informer.

13. On the way, near Beema Hospital, they took three public witnesses, namely, Chhotey, Bharat Bhushan, and Dayaram, and at about 9:40 p.m., they reached the place indicated by the informer. After mutually frisking each other to ensure that no one was carrying any illegal article, certain instructions were given, and all the police personnel were divided into three teams. The first team was under the leadership of the Station Officer, the second team was under the leadership of Sub-Inspector Bhagwant Singh, and the third team was under his leadership. His team took position on the western side of the Kothari.

14. Two police personnel were also sent, along with their rifles, to the house of Ram Saran at Village Sondha for its protection. After some time, three dacoits came, and thereafter, after five minutes, two other dacoits also came. They started talking about committing dacoity. After being satisfied that they were a group of dacoits, the Station Officer challenged them, and two shots were fired by Head Constable Tejveer Singh, due to which the entire area was illuminated. At about 10:30 p.m., all three police teams, after

surrounding them, arrested five persons.

15. From the possession of one accused, Swaleen, one country-made pistol and four live cartridges were recovered, which were exhibited as Ex.1 to Ex.5, and the bag in which they had been kept was exhibited as Ex.6. From the possession of accused Chhotey, one country-made pistol, four live cartridges, and one bag were recovered, which were exhibited as Ex.7 to Ex.12. From the pants of accused Shaukat, one country-made pistol of .32 bore along with four live cartridges was recovered, which were exhibited as Ex.13 to Ex.17. From the possession of accused Rajkumar, one country-made pistol and five live cartridges were recovered, which were exhibited as Ex.18 to Ex.23. From the fifth person, Rasheed, one dagger (Kataar) and one torch, kept in a bag, were recovered, which were exhibited as Ex.24 to Ex.26.

16. This police witness also deposed that separate recovery memos of all the articles were prepared at the place of occurrence. Thereafter, they reached the police station along with the accused persons and the recovered articles, and the First Information Report was lodged.

17. P.W.2, Station House Officer Madan Lal Ghai, was posted at Modinagar Police Station. He supported the deposition made by P.W.1 regarding the manner of the incident, as well as the arrest of five accused persons from the place of occurrence and the recovery of weapons. He also proved the F.I.R. (Ex.Ka-7).

18. P.W.3, Bharat Bhushan, is a public witness. He deposed that on the night of the occurrence, he was sitting at a tea stall along with some other persons. From there, the police team took him, along with Chhotey and Dayaram, and told them that they had to assist in arresting some dacoits. In his evidence, this witness could tell the names of only two accused, namely, Rajkumar and Shaukat. With regard to the other accused, he stated that he did not recollect their names. He also identified the articles recovered from accused Rajkumar, Chhotey, and Rasheed. Regarding the other recovered articles, he stated that he did not recollect those articles, as several persons had gathered there.

19. P.W.4, Chhotey, is also a public witness. He did not support the prosecution version and was declared a hostile witness. He deposed that about three years prior, after returning from his factory, he was sitting at a tea stall near Beema Company when police personnel came there along with some arrested accused. They also took him to the police station. He stated that he had not gone to the forest and that no accused had been arrested in

his presence.

20. In his cross-examination, he admitted that the police had caught and brought all five accused persons there when he was sitting at the tea stall, but he did not recall whether those five individuals were the same persons, four of whom were present in court, or not. On seeing Ex.K-1 to Ex.Ka-6, he stated that he had put his signatures on those documents at the police station due to fear of the police.

21. P.W.5, Sub-Inspector Om Prakash Sharma, deposed that on the date of occurrence, he was posted at Modinagar Police Station. He conducted the investigation of the occurrence and submitted the charge-sheet. He proved the site plan and the charge-sheet. He also proved the charges filed under Section 25 of the Arms Act (Ex.Ka-10 to Ex.Ka-13). He further proved the permission granted by the District Magistrate, Ghaziabad, for prosecuting the accused under Section 25 of the Arms Act (Ex.Ka-14 to Ex.Ka-17).

22. All the accused denied the occurrence and stated that they had been falsely implicated in the case. Accused Chhotey did not make any specific statement regarding the reason for his false implication. Accused Rajkumar stated that he was going to Mohan Nagar Factory and that, after forcibly apprehending him, the police took him in a car and falsely implicated him in the present case. Accused Shaukat stated that the police personnel had caught him from his house during the night. Accused Swaleen stated that while he was going from New Ghaziabad to Muradnagar, to the matrimonial house of his brother, the police personnel caught him on the way and falsely implicated him. None of the accused adduced any other evidence in support of their statements.

23. Learned counsel for the appellant contended that the entire prosecution story is doubtful. As per the prosecution story, the police personnel took three public witnesses, but only two witnesses were examined at the trial. At the trial, one public witness, i.e., P.W.3, could tell the names of only two accused. He could identify the articles recovered from only two accused. The other public witness, i.e., P.W.4, wholly denied the prosecution version. He stated that on the date of occurrence, he was sitting at a tea stall when the police personnel came there along with five accused persons whom they had already apprehended, and they took him to the police station. He neither went to the forest, nor was any accused arrested in his presence. Thus, none of the public witnesses saw the accused persons while they were planning to commit dacoity. Therefore, the ingredient of making preparation to commit dacoity is not satisfied, rendering the conviction under the relevant provisions legally unsustainable.

24. Learned counsel further submitted that P.W.1, Sub-Inspector Rajkumar, in his testimony, stated that the accused were gathered at a Pyau, whereas P.W.2, Inspector Madan Lal Ghai, and P.W.3, Bharat Bhushan, stated that they had reached a Kothari in the forest. Thus, there are material contradictions in the evidence of these witnesses regarding the place of occurrence. Further, although P.W.2 and P.W.3 proved that the recovery memos were prepared at the place of occurrence, they failed to prove which articles were recovered from each of the accused separately.

25. Learned counsel for the appellant further submitted that, as per the prosecution case, the accused were planning to commit dacoity in the house of one Ram Saran at Village Sondha, and two police personnel were deputed at his house. However, Ram Saran was not produced at the trial to prove whether the police personnel had actually been deputed at his house.

26. Learned counsel for the appellant submits that no injury was caused either to the police personnel or to any of the accused, though some resistance or physical struggle would ordinarily be expected in the alleged incident. The absence of any such injury casts serious doubt on the prosecution story. It is further submitted that Criminal Appeal No. 2695 of 1985 and Criminal Appeal No. 2675 of 1985, preferred by the co-accused, have already been allowed. In view of the aforesaid circumstances, the prosecution case appears to be unreliable, and the appellant is entitled to acquittal.

27. Learned A.G.A. submitted that P.W.1, P.W.2 and P.W.5 consistently proved the receipt of prior information, formation of the police party, arrest of the accused, and recovery of firearms and ammunition. The recoveries were supported by recovery memos, site plan, Arms Act sanction, and material exhibits. Independent witnesses were also present. It was further submitted that the trial court rightly appreciated the evidence and recorded the conviction on reliable and cogent material. The findings are neither perverse nor contrary to the record. Hence, criminal appeal deserve to be dismissed.

28. The prosecution claimed that three public witnesses accompanied the police, but only P.W.3 and P.W.4 were examined. P.W.3 identified only two accused and the articles recovered from them, while P.W.4 completely denied the prosecution case and stated that he was taken to the police station from a tea stall. Thus, no public witness saw the accused preparing to commit dacoity. The essential ingredient of preparation was therefore not proved, making the conviction legally unsustainable.

29. The prosecution case also suffers from material contradictions and omissions. The alleged pistols were not sent for FSL examination, and no forensic report established that they were functional. Further, despite the accused allegedly being armed, no police personnel sustained any injury, casting doubt on the prosecution version.

30. The Patna High Court, in the judgment in the case of **Shridhar Koeri Vs. State of Bihar, 2001 (43) ACC 5**, held that the mere fact that an accused was arrested on the spot and some articles, including firearms, were recovered from his possession would not be sufficient to prove the charge that he had assembled for making preparations to commit dacoity. Further, the alleged gun and country-made pistol recovered from the accused persons were not sent to the FSL for examination. In the case of **State of Punjab Vs. Jagga Singh, AIR 1998 SC 3113**, the Hon'ble Supreme Court observed as under:

"Though the evidence of PW 1, HC Baldev Singh and PW 3, Basant Singh establishes that the respondent was found in possession of one 12 bore DBBL gun and found live cartridges, there is no satisfactory evidence to show that the said gun and the cartridges were sent for examination by the Central Forensic Scientific Laboratory. There is no report from the Forensic Scientific Laboratory nor any other evidence to prove that the said gun was in a working condition or that the said cartridges were live cartridges..... Therefore, in absence of any evidence to show that the respondent was found in possession of one .12 bore DBBL gun in a working condition and four live cartridges, the respondent cannot be convicted."

31. In view of the above, the instant case is also affected by the fact that the alleged guns and pistols recovered from the accused persons were not sent to the FSL, and there is no report to establish that these arms were in working order.

32. The prosecution witnesses claimed that they overheard the appellant talking, but the evidence does not clarify the distance from which the conversation was heard. It is also doubtful that the appellant was speaking loudly enough to be heard from such a distance. This creates serious doubt about the reliability of the witnesses and the truthfulness of the prosecution version.

33. In **Rambir Singh versus State of U.P. (Criminal Appeal No. 402 of 1983)**, the Supreme Court observed:

"It is also a settled legal proposition that merely because the prosecution witnesses are police personnel, that by itself cannot constitute a reason to discard or discredit their testimonies. In

the light of this cardinal principle, we find that PW-1, PW-2 and PW-3 are all police witnesses of the prosecution, whereas the trial court was informed of all the above-referred glaring illegalities and inconsistencies. The evidence was required to be examined with utmost care and caution rather than accepting it pedantically and ignoring the criticism without any valid reasons.

Now, turning to the evidence of the informant as well as the supporting prosecution witnesses, we find that it does not inspire confidence. During the incident, not even a single shot was fired by the dacoits, even when they were being chased. This itself is an unnatural conduct which does not appeal to reason at all. In respect of the recovery of country-made pistols and other firearms from the possession of the accused, the evidence in that respect is also very incredible and does not inspire any confidence. The Investigating Officer did not examine the said weapons either himself or through an expert to verify whether they were in working condition or not.

Further, as we have already observed, in spite of the accused being armed with deadly weapons, they did not use their weapons to retaliate against the police raid. That circumstance itself raises a question mark over the entire prosecution story. It is also relevant to mention that, as per the prosecution story, there were six accused persons, but only four of them were arrested, and two accused persons, who were allegedly armed with deadly weapons, ran away from the spot. There was no use of weapons either by the police party or by the accused party. This is another circumstance creating doubt about the prosecution story.

In such view of the matter, we find that there is no legal evidence to support the charge under Sections 399/402 IPC against the appellant, as there is no evidence on record as to the distance from which the prosecution witnesses had heard the conversation going on among the appellant. It is also doubtful that they were speaking so loudly that their conversation could be overheard. These facts and circumstances, as emerging from the evidence of the prosecution, clearly indicate that they were not telling the truth, and the possibility could not be ruled out that the appellant was apprehended on the basis of suspicion and later falsely booked for the offences under Sections 399/402 IPC."

34. It is thus evident that the prosecution has failed to prove its case beyond

reasonable doubt. Therefore, the appellant is entitled to the benefit of doubt. Reliance may be placed on the judgment in the case of **Pankaj v. State of Rajasthan, (2016) 16 SCC 192**, wherein the Hon'ble Supreme Court held thus:

"It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."

35. Upon careful consideration of the evidence on record, this Court finds that the prosecution has failed to establish beyond reasonable doubt that the appellant had assembled or made preparation for committing dacoity. The independent witnesses did not support the prosecution case in material particulars, and none of them witnessed the alleged preparation for dacoity. There are also material contradictions regarding the place of occurrence and the manner of arrest and recovery.

36. Further, the alleged firearms were not sent for forensic examination, and there is no evidence to establish that they were in working condition. The absence of any injury to the police personnel or the accused, despite the prosecution case that the accused were armed, also creates a serious doubt regarding the alleged occurrence. The evidence regarding the alleged overheard conversation is likewise not convincing, particularly in the absence of any evidence regarding the distance from which it was allegedly heard.

37. The fact that the appeals preferred by the co-accused have already been allowed is also a relevant circumstance. On an overall assessment of the evidence, this Court finds that the prosecution case suffers from material infirmities and does not inspire confidence. The possibility of false implication cannot be ruled out. The appellant is, therefore, entitled to the benefit of doubt.

38. Consequently, the impugned judgment and order dated 03.10.1985, passed by the learned Additional Sessions Judge, Ghaziabad, in Sessions Trial No. 169 of 1982, *State Vs. Swaleen*, and Sessions Trial No. 169-A of 1982, *State Vs. Shaukat and Others*, against appellant-Raj Kumar is hereby set aside.

39. The accused-appellant is acquitted of all the charges levelled against him by extending to him the benefit of doubt. The present criminal appeal is, accordingly, allowed.

40. The accused-appellant-Raj Kumar is on bail. His bail bonds stand discharged, and the sureties are released from their respective liabilities. He need not surrender.

41. Shri Atul Kumar Pandey, learned Amicus Curiae for the appellant, has rendered valuable assistance to the Court. He shall be paid a fee of Rs. 15,000/- for the able assistance rendered by him during the hearing of the present appeal.

September 15, 2026
M. Tarik

(Abdul Shahid,J.)