



2026:AHJ:77485

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 513 of 1985

Jhunni Lal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Arvind Kumar Tripathi
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 20.02.1985 passed by learned Special Judge, Anti Dacoity, Etawah, in Special Case No.164 of 1982 State Vs. Jhunni Lal, convicting the appellant under Section 395 I.P.C. and sentencing to 3 years rigorous imprisonment.
2. Heard Sri Chandra Jeet Yadav, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.
3. The prosecution case, as unfolded in the FIR registered by Hazari Singh, son of Moti Singh, resident of Kutharra, Thana – Phaphund, District-Etawah, is that on the night of 23.09.1981 at about 11.30 pm, while the informant was sleeping on a cot outside his house along with his son, about 8 - 10 miscreants came to the spot. It is alleged that two miscreants caught hold the informant and assaulted him. Three of them climbed onto the roof of his house through a fallen thatched roof, entered the house and opened the door from inside and all miscreants entered into the house. They assaulted the family members of the informant. The complainant, his son Sunder Singh, daughter-in-law Vimla Devi, Geeta Devi, and Chandra Rekha, all sustained injuries of lathi danda caused by the miscreants at the time of occurrence. Valuables including cash, ornaments, clothes and utensils were looted by the miscreants. Upon alarm, villagers gathered whereupon the miscreants fired several shots and fled away. Two of the miscreants were identified by them on the spot. One of them was Ganesh Banjara, resident of Dera Banjara (Kanauti) and other was Ram Prasad, son of Bihari, resident of Raidpur, both were having firearms in their hands.
4. On the basis of written report, FIR was registered and chik report was drawn. The matter was investigating after obtaining sanction for prosecution by the District Magistrate, Etawah. Upon completion of the investigation, a charge-sheet was submitted.
5. The prosecution has examined P.W.-1 Kaptan Singh, grandson of the

informant and P.W.-2 Ram Bharosey, a villager.

6. Documentary evidences including written report, carbon copy of G.D., FIR, recovery memo of lantern, ash, empty cartridges, torches identification memo, site plan, charge-sheet etc., are available on record.

7. P.W.-1 Kaptan Singh stated that he was sleeping on the roof of his house and was surrounded by four unknown miscreants. He did not initially name the accused among those four persons and stated that he saw the accused Jhunni Lal, moving from one room to another in his house at the time of occurrence.

8. P.W.-2 Ram Bharosey, however, categorically stated that when he reached the spot, after hearing noise, the dacoits had already fled. He did not witness the occurrence. He did not see the accused committing dacoity. This witness turned hostile and did not support the prosecution case.

9. In statement recorded under Section 313 Cr.P.C., the accused denied the allegations of loot and robbery and stated that he was falsely implicated in the case. He was known to the witnesses as a utensil seller, identification parade was manipulated at police station, where the complainant's grandson, P.W.-1 Kaptan Singh and Ram Bharosey, P.W.-2 falsely identified him as dacoit, who was also involved in the occurrence.

10. The accused examined himself as D.W.-1 and produced receipt No.62, showing prior dealings with P.W.-1 Kaptan Singh, suggesting a motive for false implication.

11. The learned trial court, after hearing the arguments advanced by both the parties and considering the oral and documentary evidences on record returned the finding of guilt and convicted the accused for offence punishable under Section 395 I.P.C. and sentenced to undergo 3 years' rigorous imprisonment.

12. Aggrieved by the order of conviction and sentence the appeal has been preferred on the ground that the conviction and sentence passed by the learned Special Judge, Etawah is against the weight of evidence on record and against the law. Moreover, the sentence imposed upon the appellant is too severe. It is prayed that the appeal may be allowed and the judgment and order passed by the Special Judge, Etawah, convicting and sentencing the appellant be set aside.

13. The primary issue arises for consideration that whether the ingredients of Section 395 I.P.C. is established and the prosecution has proved its case beyond reasonable doubt.

14. Section 395 I.P.C. provides for punishment for dacoity. The offence of dacoity has been defined in Section 391 I.P.C. It reads as under :-

"391. Dacoity :- *When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity"*

When robbery is either committed or an attempt to commit it is made by five or more persons then all such persons, who are present or aiding in its commission or in an attempt to commit it, would commit the offence of dacoity."

15. Section 395 I.P.C. requires that the offence must be committed by five or more persons conjointly. In the present case, although the FIR mentions 8-10 miscreants, only two were named in the FIR. No other miscreants were identified and tried. The prosecution has failed to establish by reliable evidence that five or more identifiable person committed the offence. In absence of such proof the very foundation of the offence under Section 395 I.P.C. fails. There is no recovery of firearm or weapon, no ballistic or forensic evidence has been produced, no independent witness supported the prosecution case. The allegation of firing were general allegation without specific attribution to the appellant.

16. The conviction is primarily based on the statement of P.W.-1 Kaptan Singh, and test identification parade. The identification memo is not duly proved by producing before the concerned Magistrate or Investigating Officer in the evidence.

17. The defence version that identification parade was manipulated by Investigating Officer by issuing him to witnesses at the gate of jail when he was going inside the jail for identification parade, remains unrebutted. No independent witness was examined despite the fact that the villagers were present. At the same, even Investigating Officer has not been examined.

18. The prosecution alleges that multiple persons were assaulted by the miscreants yet no injury report has been proved in evidence. No one has set to be medically examined. No medical evidence corroborates the alleged assault. There is no evidence regarding recovery of firearm and looted articles.

19. The investigation suffers from serious lapses, no recovery of empty cartridges was proved. No attempt were made to identify the other miscreants involved in the occurrence, such lapses go to the root of the prosecution case and rendered it highly doubtful. It is settled principle that the prosecution must prove its case beyond reasonable doubt. Suspicion,

however, strong cannot substantiate the prove.

20. The P.W.-1 Kaptan Singh has asserted that a villager Tej Singh set fire to straw near the southern side of his home thereby creating sufficient illumination in which the witnesses identified the dacoits. However, it is significant to note that Tej Singh who allegedly lit the fire has not been examined. No evidence has been produced to prove that any such fire was actually lit at the spot. There is no corroborative evidence to establish that adequate light was available for identification. The prosecution has failed to prove the very genesis of the alleged source of light.

21. Further, though it has been alleged that lanterns and torches were present, the prosecution has not produced any such articles before the Court. Their existence and functioning has not been proved thus the alleged source of light remain unsubstantiated and doubtful rendering the identification of the accused highly unreliable.

22. The appellant has taken a specific defence that he runs a utensil shop at Phaphund. He frequently visit the village to sell utensils. He was already known to the prosecution witnesses. He further stated in his deposition as D.W.-1 that the P.W.-1 grandson of the complainant Kaptan Singh has purchased utensils and amount of Rs. 29.50/- was due which has not been paid yet. Due to this enmity, he has been falsely implicated in the case.

23. In support of defence, he produced receipt No.62. The defence version finds support from the statement of P.W.-2 Ram Bharosey, who stated to the effect that he also used to purchase utensils from the shop of accused whose statement remain unchallenged in his cross-examination. Though P.W.-1 Kaptan Singh denied his signature on receipt No.62, the surrounding circumstances probabilise the defence version that the appellant was not a stranger but a known person in the village. Thereby increasing the possibility of false implication due to prior dispute.

24. The evidence adduced by prosecution is weak, inconsistent and uncorroborated. Material witnesses have not been examined. Essential ingredients of the offence of the dacoity is not proved. The conviction of the appellant is based on insufficient and unreliable evidence. The prosecution has failed to establish the involvement of the appellant in the occurrence beyond reasonable doubt. Appeal deserves to be allowed and the conviction and sentence recorded by the trial court is liable to be set aside.

25. The appeal is allowed. The conviction and sentence imposed by the trial court is set aside the appellant is acquitted all the charges under Section 395 I.P.C.

26. The appellant is on bail. His bail bonds and sureties has discharged.

27. All coercive actions, including non bailable warrant issued against the appellants vide order dated 17.03.2026, are cancelled/recalled.

28. Let a copy of this judgment be transmitted to learned trial court along with trial court record for necessary compliance.

April 6, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)