



2026:AHJ:78785

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1490 of 1996

Ram Bilas Dhobi And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Bharat Bhushan Dubey, V.K.Agnihotri
Counsel for Respondent(s)	:	Govt.Advocate

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed by the appellants against the judgment and order dated 17.08.1996 passed by learned Special Judge, Anti Dacoity Area, Etawah in Sessions Trial No.107 and 108 of 1991, convicting and sentencing both appellants for 3 years under Section 392 I.P.C. and 1 year under Section 411 I.P.C. and 3 months under Section 25 of Arms Act, Police Station-Sahson, District- Etawah.
2. Heard Sri Bharat Bhushan Dubey, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.
3. The prosecution case, in brief, is that in the intervening night of 15.08.87, the informant was sleeping on the roof of his house, while his daughter and daughter-in-law were sleeping inside the house. At about 2.00 a.m., upon hearing noise, the members of the house wake up and saw two accused persons namely, Ram Vilas Dhobi son of Badru Dhobi and Kamlesh Teli son of Sitaram Teli, leave from the house. On alarm being raised, villagers gathered and surrounded the house of Rameshwar Teli, where the accused person was hidden themselves, and lock the house from outside. Upon arrival of police, the accused persons were apprehended. Stolen silver ornaments along with illegal firearm and cartridges were recovered from their possession.
4. FIR was registered on the basis of written report. G.D. entries were drawn. After investigation of the case, charge-sheet was submitted. Charges were framed for offences under Section 392 and 411 I.P.C. and Section 25 of Arms Act. Charges were read over to the accused persons. They denied the allegation levelled against them and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 8 witnesses namely, P.W.-1 Bhagirath, the complainant, P.W.-2 Uma Singh, P.W.-3 Vimala Devi, P.W.-4 Shiv Sahay, P.W.-5 Sub Inspector Satyaveer Singh, P.W.-6 Sub Inspector Jang Bahadur P.W.7 Constable Nathu Singh

and P.W.-8 Shiv Narayan Pandey.

6. Documentary evidences, written report Ext. Ka-1, recovery memo of Maal Masruka Ext. Ka-2, Recovery memo of Tamancha, Cartridges Ext. Ka-3, Fard Supurdaginama Torch Ext. Ka-4, Site plan Ext. Ka-5 and Ext. Ka-6, Charge-sheet under Section 25 Arms Act Ext. Ka-7 and Ka-8, prosecution sanction Ext. Ka-9 and Ka-10, charge-sheet under Section 392 and 397 Ext. Ka-11 along with material Exts. are available on record.

7. After hearing the arguments advanced by both the parties and considering the evidences on record, the learned trial court returned the finding of guilt and convicted the accused persons for offences under Section 392 and 411 I.P.C. and Section 25 of Arms Act.

8. Aggrieved with the judgment of conviction and sentence, the appeal has been preferred alleging that the conviction of the appellants are against weight of evidence on record and bad in law. The sentence imposed upon the appellants are too severe.

9. Learned counsel for the appellants has submitted that the offence of robbery with use of deadly weapon is not made out. It is further submitted that no overt act of violence was committed at the time of incident. No injury was caused and the alleged use of firearm is not substantiated by any recovery of empty cartridges or damage on the spot.

10. Learned A.G.A. for the State supported the judgment of conviction and sentence.

11. Having heard, learned counsel for the appellants and learned A.G.A. for the State, this Court finds that the presence of accused persons at the spot and recovery of stolen articles from their possession soon after the occurrence stands proved by the evidences adduced by the prosecution before trial court. However, so far as the applicability of Section 392 I.P.C. is concerned, the evidence on record does not establish that the accused person had used force or fear of instant death, hurt or wrongful restraint at the time of commission offence.

12. Section 392 I.P.C. reads as under :-

" 392. Punishment for robbery :- Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years."

13. Dacoity has been defined in Section 391 I.P.C., which 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."

14. The prosecution case itself shows that upon being noticed, the accused person attempted to flee and subsequently hit themselves in another house belonging to Rameshwar Teli. The allegation of firing is also doubtful as no empty cartridges was recovered from the spot. No injury was caused to any person. No mark of damage due to firing has been found. The complainant, Bhagirath, himself stated that the house of Rameshwar Teli was locked from outside, making the alleged firing improbable.

15. It is also pertinent to note that the alleged firearm recovered from the possession of the accused persons were not sent for ballistic examination. It cannot be ascertained that whether the recovered weapon were in working condition at the relevant time.

16. Further, there is no evidence on record to show that the said firearm were actually used during the commission of offence for the purpose of causing fear, intimidation, or facilitating the alleged crime. None of the prosecution witness deposed that the weapons were used in a manner so as to attract the offence of robbery. In these circumstances the offence does not travel beyond theft and the conviction under section 392 I.P.C. cannot be sustained.

17. At this juncture, it is also relevant to mention Section 380 I.P.C. pertaining to theft in dwelling house. It reads as under:-

"380. Theft in dwelling house, etc:- *Whoever commits theft in any building tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"*

18. The oral and documentary evidences available on record clearly establish that the accused persons committed house trespass, entered into the house of complainant and committed theft of ornaments and attempted to flee from the spot and hide themselves in the vacant house of Rameshwar Teli, from

where they were arrested by the police and stolen articles were recovered from their possession. In these circumstances, the offence committed by the accused persons, at best, falls within the ambit of theft in dwelling house punishable under Section 380 I.P.C. Accordingly, the conviction of the appellant under Section 392 I.P.C. is liable to be altered to one under Section 380 I.P.C.

19. So far as the conviction under Section 25 Arms Act is concerned, according to prosecution, country made tamachas and cartridges were recovered from the possession of the appellants. It was stated that one empty cartridges of .303 bore was stuck in the barrel of firearm and one live cartridge of the same bore was also recovered. The prosecution examined P.W.-5 S.I. Satyaveer Singh and P.W-8 - S.I. Shiv Narayan Pandey, who supported the recovery of the firearm and cartridges from the possession of the appellants. P.W.-7 constable Natthu Singh proved the chik FIR and relevant General Diary increase. The investigation was conducted by the P.W.-6 Sub Inspector Jang Bahadur Singh. After investigation of the case, he submitted charge-sheet for offence under Section 25 Arms Act.

20. Upon perusal of evidence on record, certain material discrepancies and deficiency emerge:-

- (i) The Investigation Officer P.W.-6 has admitted that he does not know when the recovered articles were deposited in the Thana and when they were sent to Maalkhana.
- (ii) It has come in evidence that one constable Santosh Dixit brought the case property to the police station. Yet his statement was not recorded during investigation.
- (iii) Sub-Inspector Satyaveer Singh P.W.-5 stated that the recovered articles were sealed at the spot and a memo with signatures of witnesses was prepared and affixed. However, when the case property was produced before the court, no such paper or seal was found affixed. The explanation given by P.W.-5, the Investigating Officer that the paper be got detached due to passage of time does not inspire confidence.
- (iv) The prosecution has failed to establish the safe custody and proper sealing of the recovered articles thereby breaking the chain of custody.

21. These serious lapses create a serious doubt regarding the genuineness of the alleged recovery itself. The prosecution has failed to prove beyond reasonable doubt that the firearm and cartridges were recovered from the conscious possession of the appellants. It is settled principle of criminal law that where the recovery itself becomes doubtful due to improper handling

and lack of proof of custody, the benefit of doubt must go in favour of the accused. In view of the above, the finding of conviction under Section 25 of the Arms Act recorded by the learned trial court is not sustainable in law and liable to be set aside.

22. A perusal of order-sheet and report of Jail Superintendent, District Jail Etawah, it transpires that the appellants were confined in jail from 07.08.1996 to 06.09.1996 and from 17.08.1987 to 26.10.1987. Moreover he was confined in jail for some days during trial also. No fruitful purpose would be served in sending them jail again.

23. In view of the foregoing discussions, the conviction and sentence under Section 392 I.P.C. and Section 25 of Arms Act are set aside. The appellants namely, **Ram Bilas Dhobi and Kamlesh Kumar Teli** are convicted for offence under Section 380 I.P.C. Substantive sentence of imprisonment is reduced to the period already undergone with a fine to the tune of Rs.500/- each, which shall be deposited within one month from the date of receiving a certified copy of this judgment.

24. The appeal is accordingly, partly allowed.

25. Appellants are on bail. Their bail bonds and sureties are discharged.

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

January 30, 2026

P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)