



2026:AHC:206544

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3571 of 2022

Appu Yadav @ Anil Yadav

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Along with :

1. **Criminal Appeal No. 4326 of 2022:**
Dabloo Alias Mrityanjay and another
Versus
State of U.P.
2. **Criminal Appeal No. 3519 of 2022:**
Ambrish Rai @ Pintu
Versus
State of U.P.

Counsel for Appellant(s)	:	Jitendra Singh, Madan Mohan Srivastava, Sanjay Kumar Yadav, Shahroze Khan
Counsel for Respondent(s)	:	G.A.

Court No. - 92

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

Heard Sri N.I. Jafri, learned Senior Counsel assisted by Sri Sanjay Kumar Yadav, learned counsel for the appellants and Sri Ashish Kumar Srivastava, learned A.G.A. for the State respondent.

The present three appeals have been preferred against the judgment and order dated 07.05.2022 passed by the learned Additional Sessions Judge, Court No. 6/Special Judge (Gangster Act), Azamgarh, in Special Trial No. 4200093 of 2010, *State v. Ambrish Rai @ Pintu and Others*, arising out of Case Crime No. 294 of 2009, under Section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the "Gangsters Act"), Police Station Bardah, District Azamgarh.

By the impugned judgment, all the accused-appellants have been convicted under Section 3(1) of the Gangsters Act and sentenced to three years'

rigorous imprisonment along with a fine of Rs. 10,000/- each. In default of payment of the fine, they have further been directed to undergo three months' additional rigorous imprisonment.

Since all three appeals arise out of the same judgment and involve common questions of fact and law, they are being heard and decided together for the sake of convenience.

The prosecution case, in brief, is that on 15.05.2009, the informant, Sachhidanand Tripathi, Station House Officer, Police Station Bardah, along with other police personnel, was returning to the police station after performing rehearsal duty on the eve of the counting of votes. When they reached Thekma Bazar, certain members of the general public allegedly approached them and, in an apprehensive manner, complained that one Ambrish Rai was a habitual and notorious criminal operating an organized gang in the area.

According to the prosecution, Ambrish Rai, along with other members of the gang, was engaged in organized criminal activities for obtaining economic and material gains for himself and the members of his gang. The alleged activities included collection of goonda tax, murder, assault, creating terror, and committing offences with the aid of illegal arms, particularly offences falling under Chapters XXVI, XXVII and XXII of the Indian Penal Code. It was further alleged that, as and when required, the members of the gang were used for committing such offences and that, owing to the fear and terror created by the gang, the members of the public were living in a state of apprehension.

The prosecution alleged that the gang consisted of Ambrish Rai, Appu Yadav @ Anil Yadav, Dabloo @ Mritunjay and Dabloo @ Ravindra Gaur.

In support of the allegation regarding the criminal activities of the gang, the following criminal cases were referred to in the gang chart:

- i. Case Crime No. 274/2009, under Sections 447, 452, 504 and 506 I.P.C. and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh.
- ii. Case Crime No. 275/2009, under Sections 452, 384, 504 and 506 I.P.C. and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh.

- iii. Case Crime No. 276/2009, under Section 307 I.P.C., Police Station Bardah, District Azamgarh.
- iv. Case Crime No. 277/2009, under Sections 3/25 of the Arms Act, Police Station Bardah, District Azamgarh.
- v. Case Crime No. 245/2009, under Sections 493, 49 and 411 I.P.C., Police Station Bardah, District Azamgarh.
- vi. Case Crime No. 100/2009, under Section 307 I.P.C. and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh.
- vii. Case Crime No. 101/2009, under Sections 3/25 of the Arms Act, Police Station Bardah, District Azamgarh.

On the basis of the aforesaid allegations, the gang chart was prepared and approved by the District Magistrate, whereafter the present case was registered as Case Crime No. 294/2009, under Section 3(1) of the Gangsters Act, and the relevant entry was made in the General Diary. After completion of the investigation, the Investigating Officer submitted a charge-sheet against the accused-appellant under Section 3(1) of the Gangsters Act.

The learned Trial Court took cognizance of the offence, summoned the accused, and framed charges under Section 3(1) of the Gangsters Act. The accused-appellants denied the charges and claimed trial.

In order to prove its case, the prosecution examined P.W.1, S.H.O. Sachhidanand Tripathi, the informant; P.W.2, S.I. Mantu Ram; P.W.3, S.I. Ahsanullah; P.W.4, Ganpat Rai; P.W.5, Bhejan Khan; P.W.6, Ram Kripal Bharti; P.W.7, Lal Sahab Singh; and P.W.8, Ramdas Gaur.

The prosecution also relied upon documentary evidence, including the original copy of the gang chart, marked as Ext. Ka-1; the written report, marked as Ext. Ka-2; the charge-sheet in Case Crime No. 274 of 2009, marked as Ext. Ka-3; the certified copy of the F.I.R. in Case Crime No. 274 of 2009, marked as Ext. Ka-4; the recovery memo relating to one 9 mm pistol, two magazines, and ten live 9 mm cartridges, marked as Ext. Ka-5; the certified copy of the F.I.R. in Case Crime No. 276 of 2009, marked as Ext. Ka-6; the Chik F.I.R.s in Case Crime Nos. 100, 101 and Nil of 2009, marked as Ext. Ka-7; the original F.I.R. in Case Crime No. 294 of 2009, marked as Ext. Ka-8; the prosecution sanction and written report, marked as

Ext. Ka-9; the original charge-sheet in Case Crime No. 294 of 2009, marked as Ext. Ka-10; and the charge-sheet in Case Crime No. 275 of 2009, marked as Ext. Ka-11.

The statements of the accused-appellants were recorded under Section 313 Cr.P.C. They denied the formation or existence of any gang and alleged that the prosecution witnesses had falsely deposed against them.

In their defence, accused Anil produced certified copies of the judgments relating to Case Crime Nos. 274, 275 and 276 of 2009 under Defence Paper No. 181-Kha. He also produced certified copies of the judgments relating to Case Crime Nos. 77 of 2003, 97 of 2009, 442 of 2010, 397 of 2007, 330 of 2007, 321 of 2010, 344 of 2010, 100 of 2009 and 101 of 2009 under Defence Paper No. 188-Kha.

No other oral or documentary evidence was adduced by the defence.

Upon appreciation of the evidence available on record, the learned trial court convicted all the accused-appellants under Section 3(1) of the Gangsters Act and awarded the aforesaid sentence, giving rise to the present appeals preferred by the accused-appellants.

It has been submitted on behalf of the appellants that the impugned judgment is illegal, arbitrary, and contrary to the evidence available on record. The prosecution has failed to establish the charge against the appellants beyond reasonable doubt.

It is argued that the learned trial court has recorded findings of guilt on the basis of conjectures, surmises, and assumptions, without there being any cogent and reliable evidence establishing the existence of a gang or the involvement of the appellants in organised anti-social activities within the meaning of the Gangsters Act.

It is further submitted that the investigation was not conducted in a fair and proper manner and that the charge-sheet was not submitted fairly against the appellants. The gang chart, which constitutes the foundation of the prosecution case, refers to several criminal cases against the appellants; however, in almost all the said cases, the appellants were subsequently acquitted after a full-fledged trial. Thus, the very foundation relied upon for alleging that the appellants constituted or were members of a gang stood substantially demolished. It is also submitted that there is no independent

evidence demonstrating that the appellants had formed a gang or were acting either singly or collectively for any of the purposes contemplated under the Gangsters Act.

Learned counsel for the appellants has particularly drawn the attention of the Court to the judgments of acquittal passed in the cases mentioned in the gang chart. It has been submitted that in Case Crime No. 274 of 2009, under Sections 447, 452, 504 and 506 IPC and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh, the appellants were acquitted by the learned Additional Judicial Magistrate, Court No. 13, Azamgarh, vide judgment dated 04.03.2013.

Similarly, in Case Crime No. 275 of 2009, under Sections 452, 384, 504 and 506 IPC and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh, the appellants were acquitted by the learned Additional Sessions Judge, Court No. 2, Azamgarh, vide judgment dated 05.12.2012.

In Case Crime No. 276 of 2009, under Section 307 IPC, Police Station Bardah, District Azamgarh, the appellants were acquitted after trial by the learned Additional Sessions Judge, Court No. 2, Azamgarh, vide judgment dated 06.05.2011.

Likewise, in Case Crime No. 245 of 2009, under Sections 403 and 41/411 IPC, Police Station Bardah, District Azamgarh, the appellants were acquitted by the learned Sessions Judge, Court No. 2, Azamgarh, vide judgment dated 06.05.2011.

In Case Crime No. 100 of 2009, under Section 307 IPC and Section 7 of the Criminal Law Amendment Act, Police Station Bardah, District Azamgarh, the appellants were also acquitted after a full-fledged trial by the learned Additional Sessions Judge, Court No. 2, Azamgarh, vide judgment dated 06.05.2011.

It has further been pointed out that Case Crime No. 101 of 2009, under Section 3/25 of the Arms Act, was registered only against Dabloo @ Mritunjay, which resulted in his conviction. None of the other appellants was an accused in the said case.

Thus, the conviction in the said case does not furnish any material against the other appellants. The appellant Amrish Rai was shown to be involved in

Case Crime Nos. 274, 275, 276 and 277 of 2009; Appu Yadav was shown to be involved in Case Crime Nos. 274, 275, 276, 245 and 100 of 2009; Dabloo @ Mritunjay was shown to be involved in Case Crime Nos. 245, 100 and 101 of 2009; whereas Dabloo @ Ravindra was shown to be involved in Case Crime Nos. 245 and 100 of 2009.

The appellants have been acquitted in all the aforesaid cases, except that Mritunjay was convicted in the proceedings under the Arms Act. Even in that case, there is no evidence demonstrating that the alleged firearm offence was committed as a member of an organised gang or in furtherance of any object or activity of the alleged gang.

On the aforesaid basis, it has been argued that the mere existence of criminal cases, which subsequently culminated in acquittal, cannot, by itself, establish the existence of a gang or the commission of anti-social activities by the appellants. It has, therefore, been prayed that the appeals be allowed and the conviction and sentence awarded by the learned trial court be set aside.

Per contra, learned AGA has opposed the appeals and submitted that proceedings under Section 3(1) of the Gangsters Act are distinct from the proceedings in the predicate cases. According to him, even if the accused persons have subsequently been acquitted in some of the cases mentioned in the gang chart, the material available before the competent authority at the relevant time disclosed the existence of an organised gang and the activities of the appellants. It has further been submitted that the appellants had created fear and terror in the locality and that, owing to such fear, members of the public were not willing to come forward and depose against them.

Learned AGA has accordingly submitted that the proceedings under the Gangsters Act cannot automatically fail merely because the accused have been acquitted in some of the predicate cases and that the learned trial court, upon appreciation of the evidence available on record, has rightly recorded the conviction and sentence. Dismissal of the appeals has, therefore, been prayed for.

This Court has considered the rival submissions advanced by the learned counsel for the parties and has carefully scrutinized the entire evidence available on record.

The principal question which arises for consideration is whether, in the facts

of the present case, the conviction of the appellants under Section 3(1) of the Gangsters Act can be sustained when the criminal cases constituting the foundation of the gang chart, insofar as the present appellants are concerned, have subsequently culminated in judgments of acquittal.

The aforesaid question has to be examined in the light of the statutory scheme of the Gangsters Act and the law declared by the Hon'ble Supreme Court in ***Farhana v. State of Uttar Pradesh and Others, 2024 INSC 198, decided on 19.02.2024.***

Section 2(b)(i) of the Gangsters Act contemplates a "gang" as a group of persons who, acting singly or collectively, by violence, threat or show of violence, intimidation, coercion or otherwise, with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage, indulge in anti-social activities, including offences punishable under Chapters XVI, XVII and XXII of the Indian Penal Code.

Thus, the prosecution is not merely required to demonstrate the registration of criminal cases. The statutory ingredients relating to the alleged gang and its anti-social activities have to be established in accordance with law.

In ***Farhana (supra)***, the Hon'ble Supreme Court considered the precise question as to whether proceedings under the Gangsters Act would continue after the accused had been exonerated in the predicate offences forming the basis of such proceedings. The Court held that where the prosecution under the Gangsters Act is founded upon offences falling within Section 2(b)(i), and the proceedings in the predicate offences have been quashed, the very foundation for continuing the prosecution under the Gangsters Act stands removed. The Supreme Court consequently quashed the proceedings under Section 3(1) of the Gangsters Act.

At the same time, the decision in ***Shraddha Gupta v. State of Uttar Pradesh, 2022, 8 SCC 111***, makes it clear that the Gangsters Act does not require conviction in every predicate case as an absolute pre-condition for initiation of proceedings. The existence of a single FIR or charge-sheet can, in an appropriate case, furnish the basis for proceedings where the statutory ingredients are otherwise made out. The ratio of *Shraddha Gupta*, therefore, does not dispense with the requirement of proving the ingredients of the Gangsters Act. It has to be considered along with the subsequent decision in *Farhana*, particularly where the very cases relied upon as the foundation of

the alleged gang have ultimately ended in acquittal.

The present case stands on an even more significant footing. The material placed before this Court shows that Case Crime Nos. 274 of 2009, 275 of 2009, 276 of 2009, 245 of 2009 and 100 of 2009, which constitute the principal cases relied upon against the appellants in the gang chart, have culminated in judgments of acquittal in favour of the appellants after trial. The remaining Case Crime No. 101 of 2009 was admittedly against Dabloo @ Mrityunjay and does not implicate the other appellants. Even in that case, the conviction under the Arms Act, as stated before this Court, does not by itself establish that the alleged offence was committed as a member of an organized gang or in furtherance of the object contemplated under Section 2(b) of the Gangsters Act.

This aspect assumes significance because the prosecution has not brought on record any independent and substantive evidence, apart from the criminal cases incorporated in the gang chart, which establishes that the appellants were acting as members of an organized gang and were indulging in anti-social activities for obtaining undue pecuniary, material or other advantage or for disturbing public order.

The allegation that the appellants had created fear and terror amongst the members of the public also cannot, by itself, substitute proof of the statutory ingredients of the offence. A general assertion that the public was afraid of the accused must be supported by legally admissible and reliable evidence connecting the accused with organized activities constituting a "gang" within the meaning of Section 2(b) of the Gangsters Act.

The principle laid down in *Farhana (supra)* has also subsequently been followed by this Court in cases where the predicate cases forming the basis of the proceedings under the Gangsters Act had ended in acquittal.

In the present case, applying the aforesaid principle to the facts of the case, this Court finds that the prosecution has failed to establish, by reliable and legally admissible evidence, the foundational facts necessary to sustain the conviction of the appellants under Section 3(1) of the Gangsters Act. The criminal cases relied upon in the gang chart against the appellants have, for the most part, ended in their acquittal.

The prosecution has not been able to demonstrate any surviving substantive

material independently establishing the alleged organized gang activity of the appellants.

It is also significant that the criminal antecedents of each appellant have to be examined individually. The mere fact that certain cases were collectively mentioned in the gang chart cannot establish the guilt of any member in the absence of evidence connecting each accused with the statutory ingredients of the offence. The evidence on record, as noticed above, does not establish such a connection.

Consequently, the conviction of the appellants under Section 3(1) of the Gangster Act cannot be sustained. In the considered opinion of this Court, the learned trial court failed to properly appreciate the subsequent judgments of acquittal in the predicate cases and the absence of independent evidence establishing the alleged gang activity.

Accordingly, the appeals are **allowed**.

The judgment and order dated 07.05.2022 are hereby set aside.

The appellants are acquitted of the charges under Section 3(1) of the Gangster Act.

The conviction recorded by the learned trial court is hereby set aside and the sentence awarded to the appellants is also set aside.

The appellants are on bail. Their bail bonds and sureties stand discharged, subject to compliance with any statutory requirement.

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

October 1, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)