



2026:AHC:164431

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 347 of 1987

Reserved

Siya Ram and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent

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

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. This criminal appeal has been filed, under Section 374 (2) Code of Criminal Procedure, 1973 (in short Cr.P.C.), by appellants Siya Ram and Amrit Lal, against the judgment and order dated 29.01.1987, passed by Shri Imtiyajuddin IInd Additional Sessions Judge, Jaunpur, in Sessions Trial No.19 of 1986 (State Vs. Sattar and Others), arising out of Case Crime No. 191 of 1985, under Section 395 Indian Penal Code (in short I.P.C.), Police Station- Sarai Khwaja, District- Jaunpur.

2. By the impugned judgment and order dated 29.01.1987, the learned trial court has convicted the appellants for offence punishable under Section 395 IPC and has sentenced them to a term of three years rigorous imprisonment.

3. Brief facts of the prosecution case are that Shitla Prasad son of Durga Prasad resident of Harraiya, Police Station- Harraiya, District-

Jaunpur gave a written application, *tehrir* Ext.Ka.1 before the Superintendent of Police, Jaunpur, stating that on 26/27.10.1985 at about 01:00 a.m. his Truck No.UHU-702 while going towards south of Police Station- Sarai Khwaja, District- Jaunpur, then after about two kilometers its front tyre got punctured. As a result it was stopped and when the driver and the cleaner were repairing the punctured tyre, nine unknown persons reached there. One of them was armed with gun. Two were armed with *tangi* and the remaining six were armed with *lathis*. These *dacoits* forcefully looted cash, wrist watches and one *gamcha* of cleaner Sheo Pujan Gosai. Some of them forcefully looted Rs.12,390/- in cash, HMT wrist watch from driver Rajendra Prasad and some of them looted Rs.2,400/- cash and automatic wrist watch and woollen *gamcha* from the first informant. The *dacoits* threatened them to shoot if any alarm is raised, thereafter they managed to escape. It is also alleged that their faces were seen in the head light of truck and also in the moon light and torch. The *dacoits* were not known to them since before. Due to fear they did not go to the police station that night instead proceeded to his village Harraiya, Police Station- Harraiya, District- Jaunpur and informed his master/owner Omkar Prasad. Upon this application the Superintendent of Police, Basti sent the application to the Station House Officer, Police Station- Sarai Khwaja with an endorsement to register and investigate. Thereafter, the FIR was lodged on 28.10.1985 at 15:15 hours at Police Station- Sarai Khwaja and the investigation commenced.

4. The Investigation Officer N.P. Singh, recorded the statements of the driver, the cleaner and the first informant. He inspected the place of occurrence and prepared its site-plan (Ext.Ka.8). On 28.10.1985 the accused persons were arrested by Police of Police Station- Gaura Badshahpur, and upon receiving the information the I.O. proceeded to the police station where he recorded the statement of the accused persons. On 28.11.1985, he gave report for their test identification. He also recorded the statement of S.O. V.P. Singh, who had arrested the accused persons. He also inspected the place of arrest and prepared its site-plan (Ext.Ka.9). The accused were kept *bapurdah* at the time of

arrest and were sent to District Jail, Basti. The test identification parade (TIP) was conducted on 02.01.1986 by Shri Ramnath, Executive Magistrate, Jaunpur and after the test identification, charge-sheet against seven accused persons, to wit, Sattar, Hari Om, Gorelal, Rajesh, Siya Ram, Amrit Lal and Suresh was filed before the competent court.

5. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

6. The accused appeared before the learned trial court, where charge under section 395 IPC was framed against them to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined six witnesses, to wit, P.W.1 Ram Nath Executive Magistrate, before whom the test identification of the accused was conducted in District Jail, Jaunpur; P.W. 2 Shitla Prasad, the first informant who was present at the time of incident in the truck; P.W.3 Rajendra Prasad, who is the driver of the truck; P.W.4 Sheo Pujan who is the cleaner of the truck; P.W.5 S.O., V.P. Singh who arrested the appellants and P.W. 6 S.O. Narendra Prasad Singh, the Investigating Officer of the case, to prove its case.

8. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., in which they have denied the prosecution case and have said that they were arrested at about 03:00 p.m. on 22.11.1985 and were kept detained at the Police Station for four days and during this period they were shown to the witnesses. It was also stated that the police of Police Station- Gaura Badshahpur has misbehaved with the ladies of the accused regarding which they had protested due to which they have been falsely implicated in several cases including this one. The defence has filed a certified copy of judgment in Session Trial No.95 of 1986, a certified copy of judgment in Case

No.650 of 1986 and a certified copy of memo of arrest of Session Trial No.95 of 1986.

9. The learned trial court after perusing the evidence on record, found that in view of the statement of witnesses of fact and from identification of the accused in District Jail as well as before the court the prosecution has been able to prove its case against appellants Siya Ram and Amrit Lal, whom the witnesses have identified correctly and thus, they were convicted under Section 395 IPC and were sentenced to the term as indicated above. The rest of the accused were given the benefit of doubt and were acquitted of the offences to which they were charged.

10. Heard Shri Virendra Singh, learned Counsel for the appellants and Shri Rajiv Pandey, learned A.G.A on behalf of the State and perused the material on record.

11. It is submitted by learned Counsel for the appellant that the prosecution case is highly doubtful. The test identification was not conducted properly. It is also submitted that the accused were not kept *bapurdah* and they were shown to the witnesses at the police station. It is next submitted that the test identification was carried out after about two months since their arrest and such a long gap creates doubt over the test identification made by the witnesses. It is also submitted that there is no public witness of the arrest and thus, the learned trial court has not appreciated the evidence on record correctly and thus, the impugned judgment and order is liable to be set aside.

12. Per contra, learned A.G.A. has submitted that prosecution has proved its case beyond reasonable doubt. The witnesses have identified both the appellants in District jail, as well as before the court. Their testimony is consistent, reliable and trustworthy. In view of the above, the appellants have been rightly convicted and this appeal has no force and is liable to be dismissed.

13. The prosecution case is that on 26/27.10.1985 at about 01:00 a.m. in the night, the appellants along with other co-accused committed *dacoity* by looting cash and other articles of Shitla Prasad, Rajendra Prasad and Sheo Pujan, on the road under Village- Devkali, Police Station- Sarai Khwaja, District- Jaunpur. According to the prosecution, at the time of incident Shitla Prasad's Truck No.UHU-702 was running on the road and when it reached at the place of occurrence, its left front tyre got punctured and when the driver and the cleaner were changing the tyre, then nine unknown persons came and looted them. Admittedly, the FIR was lodged against unknown persons and the miscreants/ *dacoits* who had committed *dacoity*, were not previously known to the witnesses. P.W.2 Shitla Prasad is the owner of the truck, P.W.3 Rajendra Prasad is the driver and P.W.4 Sheo Pujan is the cleaner of the truck and all the three of them have supported the prosecution case and their testimony is consistent on the point that at the alleged date, time and place they were looted by 9 unknown persons.

14. The question is whether the appellants were one of the member of the gang of the *dacoits* who committed *dacoity* as alleged by the prosecution. The prosecution case is based on the identification conducted in jail and also before the Court.

15. In regard to test identification in **Tukesh Singh and Others v State of Chhatisgarh, 2025 INSC 683**, the Hon'ble Supreme Court had held in para 21 as under:

“21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that “he had seen A, B and C killing X and he knew A, B and C”. Such a statement in the

examination-in-chief is not sufficient to link the same to the accused. The eye witness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that "he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased." In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved."

16. In **Jayan v State of Kerala**, LL 2021 SC 582, the Hon'ble Supreme Court has held that :

"18. It is well settled that T.I Parade is a part of investigation and it is not a substantive evidence. The question of holding T.I Parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, T.I Parade may make the identification of the accused by the witness before the Court trustworthy.

17. In **Kattavellai v. State of Tamil Nadu**, 2025 SCC Online SC 1439, it has been held by Hon'ble Supreme Court that:-

"no provision of law casts an obligation upon the investigating authorities to conduct a test identification parade. If it is conducted, the provision that governs is Section 162, Cr.P.C. The onus to show that the T.I.P. has been conducted in accordance with law lies on the prosecution, and only after this burden stands prima facie discharged, does the question of considering objections in this regard arise. It is not a substantive piece of evidence. Its only purpose is for the investigating authorities to analyse the correctness, or lack thereof, of the direction in which they are steering the investigation. The

prosecution must establish that prior to the test identification parade being conducted, the witness had no opportunity to see the accused. In other words, the accused must be kept 'baparda'. If the above has not been ensured, the evidence of the T.I.P. becomes inadmissible. It has also been held that if, prior to the T.I.P. the witness has the opportunity to see even the photograph of the accused person, such process becomes inconsequential".

18. In view of the above legal position, if we examine statement of P.W.2 Shitla Prasad then it shows that he could not identify the miscreants/*dacoits*. because he was inside the truck and it was dark, so the statement of P.W.2 Shitla Prasad is not very material, so far as the identification of the appellants are concerned.

19. P.W. 1 Ram Nath, is the Special Executive Magistrate, before whom, on 02.01.1986, the test identification (TIP) of the appellants, other co-accused and suspects was undertaken in District Jail, Jaunpur. He has stated about the procedure he adopted during the time of test identification and has proved the test identification memo as Ext.Ka.1. He has stated that witness Rajendra Prasad identified Sattar, Gorelal, Hariom, Rajesh, Siya Ram, Amrit Lal and Suresh correctly and Witness Sheo Pujan, identified Siya Ram and Amrit Lal correctly.

20. In cross-examination, P.W.1 has said that witness Rajendra Prasad identified Salig Ram incorrectly and witness Sheo Pujan identified Gorelal, Siya Ram, Hariom, Sattar, Rajesh, Salig Ram and Suresh, incorrectly.

21. In view of the above statement of P.W.1, it is clear that out of all the accused who were put for identification in jail, P.W.3 Rajendra Prasad identified all except one correctly out of eight persons put forward for identification. Therefore, his identifier percentage is about 90 percent. So far as witness P.W.4 Sheo Pujan is concerned, he has identified only two accused, i.e. the appellants- Siya Ram and Amrit Lal, correctly and has incorrectly identified six other co-accused. Therefore,

his identifier percentage is about twenty percent. The other witness P.W.2 Shitla Prasad, himself has stated that he could not identify any of the *dacoits* as it was dark and he was inside the truck. So far as Sheo Pujan is concerned, he could identify correctly only two accused Siya Ram and Amrit Lal and has incorrectly identified rest of the six accused, hence, his identifier percentage is about twenty percent, therefore, his identification is not reliable. So the identification by single witness, Rajendra Prasad, is not sufficient to rely upon and hold the appellants guilty based upon their identification.

22. It is also relevant to mention that as per prosecution case, the appellants were arrested during investigation on 26.11.1985, thereafter, test identification in district jail was conducted on 02.01.1986 meaning thereby, after a gap of about 38 days the identification was conducted. The prosecution has not explained the delay, why the test identification could not be conducted at the earliest. It is generally experienced that, the memory of a person fades with the passage of time, so in such type of cases it was necessary for the prosecution to conduct the test identification of the suspects at the earliest. Non-explanation of such delay in conducting the test identification in district jail, adversely affects the prosecution case.

23. It is also relevant to note that the prosecution has not adduced any reliable evidence that after the arrest the accused were kept *bapurdah* and there was no occasion for any witness or any person to see them, while they were in custody. By not producing any such link evidence of accused being kept *bapurdah* after their arrest till they were lodged in district jail also raises serious doubt over the prosecution case.

24. It is also relevant to note that there is no public witness of the alleged arrest and even P.W. 5 S.O. V.P. singh, who has arrested the appellants, has stated that there is no lockup at the Police Station and only one room is there, which has office and the public comes there normally. It raises serious doubt over the prosecution case that all the

precaution were taken to keep the accused *bapurdah* and thus, the entire identification process is flawed and not reliable.

25. Here, it is also relevant to note that the statements of P.W.3 Rajendra Prasad, the driver and the P.W.4 Sheo Pujan, the cleaner of the truck, were recorded in the court on 22.11.1986 i.e., after about more than one year since the incident occurred and the manner in which the *loot* took place, it is highly doubtful that these witnesses would remember the faces of the *dacoits* in their memory for such a long time that they would identify them correctly in the court. Therefore, the identification of the appellant and the other co-accused before the court cannot be relied upon.

26. According to the prosecution, at the time of incident the source of light was only the moon light and the head light of the truck, which was kept on by the driver while repairing the tyre. As the incident occurred while they are changing the tyre or repairing the tyre, then the headlight of the truck and the moonlight is not sufficient to identify the miscreants/ *dacoits*, because the incident has not occurred in front of the truck, but on the side of truck and in the cabin, where the flash of the headlight of the truck would not create sufficient light. Therefore, the source of light at the time of incident is also not sufficient which could enable a person to identify the miscreants/ *dacoits*.

27. It is also relevant that according to P.W.3 Rajendra Prasad, only one of the *dacoits* committed loot of cash and other articles and rest of the *dacoits* were keeping them surrounded while to the contrary P.W.4 Sheo Pujan has stated that all the *dacoits* committed loot.

28. It has come in the statement of P.W.4, the Investigating Officer, that he went at the place (dera) where the accused reside and then there he found 10-12 women present and it is a case of the defence that the police came at their place and misbehaved with the women and when they objected they were falsely implicated in this case. In view of

evidence led the prosecution case is highly doubtful so, it probalises the defence version.

29. In view of the above discussion, I come to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt and the identification of the appellants by the witnesses is not reliable and trustworthy and thus, the prosecution has not been able to to prove that the appellants were one of the members of the gangs of *dacoits*, who committed *dacoity* at the alleged date, time and place with Shitla Prasad, Rajendra Prasad and Sheo Pujan. Therefore, it appears that the trial court has failed to appreciate the evidence on record correctly and reached at the wrong conclusion of the guilt of the appellants and as such the impugned judgment and order is liable to be quashed and this appeal deserves to be allowed.

30. In view of the above, the instant criminal appeal is, accordingly, **allowed**. The impugned **judgment and order dated 29.01.1987** passed by the Trial Court in Sessions Trial No.19 of 1986 (State Vs. Sattar and Others), is **set aside** and the conviction of the appellants **Siya Ram** and **Amrit Lal** is also **set aside** and they are **acquitted** of the offence under Section 395 IPC.

31. The appellants **Siya Ram and Amrit Lal** are on bail. They need not surrender. Their personal bonds and surety bonds are cancelled and sureties are discharged of their liabilities.

32. Let a copy of this judgment alongwith record of the trial court be returned to the court concerned for information and necessary compliance.

(Sanjiv Kumar,J.)

August 06, 2026
AdityaG