

A.F.R.

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2026:AHC:33355

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 2044 of 1983

Ali Hasan And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Brij Raj, Narendra Kumar, Sanjive Kumar Gupta, Tejram
Counsel for Respondent(s)	: A.G.A.

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard Sri Brij Raj and Sri Sanjive Kumar Gupta, learned counsel for the appellants and Sri Chandra Badan, learned A.G.A. for the State. Perused the record.

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2. The oldest criminal appeal has been preferred by seven accused-appellants in the year 1983 under Section 374(2) CrPC from District Badaun, on being aggrieved by the judgment of conviction and sentence passed by the court of Special Sessions Judge, Badaun on 29.08.1983 in Special Sessions Trial No.157 of 1982, arising out of Case Crime No.321 reported on 27.07.1982 at 6:30 a.m. at Police Station Ujhani, District Badaun for offence under Section 395 (punishment for dacoity) and 397 (dacoity with attempt to cause death or grievous hurt), whereby the trial court has convicted accused-appellants 1 to 3, Ali Hasan, Narain and Nandey, respectively for offence under Section 395 I.P.C. and accused-appellants 4 to 7 Omkar, Harpal, Latoori, Mehndi, respectively for offence under Sections 395 I.P.C. read with Section 397 I.P.C. Therefore, appellants Omkar, Harpal, Latoori and Mehndi were punished for imprisonment of 7 years rigorous imprisonment, whereas accused Ali Hasan, Narain and Nandey were punished with 5 years rigorous imprisonment.

3. During the pendency of appeal, four appellants, Narain s/o Gindu, Nandey s/o Jhammn, Omkar s/o Dhoom Singh and Mehndi s/o Chunni have passed away and by order dated 21.02.2019, the appeal was abated for appellant no.2, Narain, appellant no.3 Nande, appellant no.4 Omkar and appellant no.7 Mehndi.

4. The prosecution case has its genesis from the written information given by Dhanpal (P.W.-1), scribed by Jagdish s/o Bhole Nath disclosing therein that in the intervening night of 26/27.07.1982 at about 1:00 a.m. while he and his brother, Ishwari, were sleeping in the cattle shed near the house, they heard the shrieks of his mother and sisters. His brother Ishwari and he ran towards the house accompanied by Nanhey Singh, Ram Lal, Prakash and other villagers with lighted torch in their hands and found that the miscreants were beating their mother and sisters and looting the valuables. The informant and other villagers including his brother have challenged the miscreants, on which, the miscreants came out from the house, who have been identified in the light of torch.

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Mehndi was carrying gun, Harpal, Omkar and Latoori had country-made pistols and other accused were carrying lathi in their hands. While exiting the accused made two fires and threatened the informant and other villagers, not to chase them. In exchange Ganga Ram has also shot three fires from his licensed gun. The accused then sprinted away towards South. In the dacoity, the mother and sisters of informant were badly injured. It is further revealed from the F.I.R. that the informant was having cash of Rs 6,000/- at his residence. Rs.3,000/- was the proceeds from onion sale and Rs.3,000/- was the advance money for selling his land. The accused had looted Rs.3,000/-, but could not find other Rs.3,000/-, which was kept hidden. The accused have also looted nine items. One Hasali of silver (2.450 gm); one Hasli silver (2.400 gm); one phool for nose; one pair bara silver; 16 pair of lachche silver for toes; one pair pahunchi of silver; one shirt taricoat yellow colour with lines; one Tehmad of Khadi white colour 2.25 meters; and one Baniyan with sleeves of white colour. The F.I.R. further reveals that the accused had left at the place of incident one lathi, one aguncha, one pair of shoes, one cheni and one summi. The informant was accompanied to police station with his injured mother and sisters.

5. The F.I.R. got registered against seven named persons, who are residents of same village.

6. Smt. Jaya Devi (mother of informant) was examined at District Hospital Badaun on 27.07.1982 at 12:30 p.m. In the medical examination, the doctor found contusion and swelling 8 cm x 8 cm and lacerated wound 1cm x ½ cm x ¼ cm in middle and left forearms (X-ray advised); the second injury was lacerated wound 6cm x 1/2 cms ¼ cm on middle of head, 7 cm above nasion; and the third injury was contused swelling on dorsum of right hand with (X-ray advised). It is mentioned that injury nos.1 and 3 are kept under observation and X-ray advised. Injury no.2 is simple in nature and all the injuries are caused by hard and blunt object and duration is about ½ day. In supplementary medical

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report, it is found that there is fracture in the middle third of ulna bone. This medical report is not exhibited.

7. Smt. Ishwarwati (sister of informant) was examined on the same day at 12:45 p.m. at District Hospital Badaun. Three injuries were reported. Injury no.1 is lacerated wound 2 ½ cm x 1 cm bone deep on the right side of forehead just above medial end of right eyebrow; the second injury is contusion 3 cm x 1 ½ cm on lateral side of right knee; and the third injury is contused swelling on right side of upper lip. It is reported that all the injuries are simple in nature caused by hard and blunt object with duration about half day old. This injury report is also not proved by the prosecution. Nanhi the second sister of informant, though stated to be taken to the police station and hospital, but her injuries have not been examined.

8. The charge has been framed on 18.01.1983 for offence under Section 395 I.P.C. against Ali Hasan, Narain, Nandey, whereas, for offence under Section 395 I.P.C. read with Section 397 I.P.C. against accused Omkar, Harpal, Latoori and Mehndi. They have denied the charge and opted for trial.

9. The prosecution has placed Dhanpal as P.W.-1, who is informant of the case; Ishwari as P.W.-2, brother of informant; Ishwarwati, P.W.-3 sister of informant and Nanhey, P.W.-4 as independent witness. These four are the witnesses of fact. The prosecution has produced Shiv Shankar Sharma, S.I., who has investigated the case, as P.W.-5.

10. The appellants have produced Shankar Lal, the village Pradhan as defence witness-1 and in documentary evidence has filed, copy of application carrying the signatures of Sarpanch Jagat Pal dated 10.02.1982 of Gram Panchayat Adwalganj, in Case No.1 of 1982, which was filed by Mehndi Hasan against Dhanpal, Nanhe, Ramlal and Ram Prakash stating therein that on 10.01.1982 these accused had taken away two chenni, one summi, 15 Hathoras, 25 dhan, 5 sadasi, total 48 items from the shop of Mehndi Hasan, who is a blacksmith and by doing this work, he used to nurture his family.

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11. It is submitted by the learned counsel for these surviving appellants that the trial court in its judgment has not deliberated on the point whether in actuality dacoity took place in the house of Dhanpal. On the contrary, the trial Judge has presumed that the dacoity took place in the house of Dhanpal. The only point deliberated by the trial judge is about the involvement of accused in the said dacoity. Further submits that all the witnesses of fact produced by the prosecution are related and interested witnesses, namely, P.W.-1 Dhanpal, P.W.-2 Ishwari and P.W.-3 Ishwarwati are real brothers and sister. Moreover, there is inconsistency in the statements. Ishwarwati P.W.-3 has stated that accused Harpal, Omkar and Ali Hasan had beaten her, who have been identified by her, whereas, P.W.-4 Nanhey has identified Mehndi, Ali Hasan and Harpal. He has stated to be with the informant, whereas, the informant has identified all the seven accused, though in his examination-in-chief, he has stated that there were 10 to 11 dacoits, who entered his house for dacoity. Therefore, the witnesses are not reliable, but were considered as reliable by the trial court. Further submits that the trial court must have considered evidence on record on the point of dacoity being committed or not in the house of Dhanpal because without deciding the basic question of committing of dacoity, the accused-appellants cannot be convicted for committing dacoity. Further submits that the F.I.R. version if considered to be true, there were five gun shots fires at the place of incident; two fires were shot by the dacoits and three fires by the Ganga Ram through his licensed gun. Ganga Ram has never been produced before the trial court. Even his licensed gun was not checked to see that the fire has been shot from his licensed gun or empty cartridges were collected. The Investigating Officer has neither collected any document pertaining to proposed sale of land by the informant and getting the advance of Rs.3,000/- nor the same is produced before the court. In the same way, the proceed of Rs.3,000/- from the sale of onion is also not examined by the Investigating Officer, which has been narrated specially in the F.I.R. Further submits that the accused-appellants are of same village and are family persons. The trial court has negated this argument

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of the accused-appellants that the persons of same village can never commit dacoity bare faced if they are not known dacoits and the accused appellants had no criminal history. Further submits that the trial judge has also negated the arguments of the accused that they have been falsely implicated in the case due to village party-bandi and previous animosity nurtured by the informant Dhanpal and scribe of F.I.R. Jagdish. Lastly, because of Pradhani election, wherein the candidate of accused, namely, Shankar Lal D.W.-1 was declared victorious and the candidate of the informant, namely, Ram Prakash was defeated in the election was the cause of false implication. Further submits that there is no recovery of the booty. The informant has specifically stated about the weapons, accused were carrying and has stated that Mehndi was carrying gun, Harpal, Omkar and Latoori had countrymade pistols and all others were carrying lathis, which means that three accused were carrying lathi. If the three accused carrying lathi were seen while exiting from the house of informant then how a lathi was left by the accused in the house of informant. Further submits that the informant has not stated anything about the bundle, wherein the booty was carried away by the accused and who was carrying that bundle. Further submits that the accused-appellants have been falsely implicated in the case of dacoity, who are of same village and four of the appellants have already passed away and surviving appellants are more than 70 years of age. Hence, submitted that the accused-appellants be acquitted in the false case of dacoity and their appeal be allowed.

12. Learned counsel has relied on the judgments of **Balbir and others Vs. State of U.P.** decided on 09.07.2020 in **Criminal Appeal No.648 of 1983** (relied particularly paragraph nos.6, 9, 10, 11, 12), **Ram Singh Vs. State** decided on 31.08.2018 in **Criminal Appeal No.3152 of 1982** (relied particularly paragraph nos.7, 8, 11, 19, 20, 21) and **Rama Shanker and another Vs. State of U.P.** decided on 19.07.2022 in **Criminal Appeal No.2269 of 1982** (relied particularly paragraph nos.18, 20, 21, 22, 23). The judgments of **Balbir** (supra) and **Rama Shanker**

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(supra) are not applicable in the present set of facts because in these judgments the issue was dacoity by less than five persons.

13. **Per contra**, learned A.G.A. for the State submits that the F.I.R. has been lodged by the P.W.-1 Dhanpal against seven persons, who have been identified while exiting the house of informant. The injured witness Ishwarwati and independent witness Nanhey have specifically identified three accused each. Ali Hasan and Harpal have been identified by both of these witnesses, whereas, Omkar is identified by P.W.-3 Ishwarwati and Mehndi is identified by P.W.-4 Nanhey. The involvement of accused-appellants and their committing dacoity is explicit from the statement of witnesses. It is a general trend of the society that all the persons, who have seen the incident of dacoity, are not inclined to appear as witness in court, because they fear rivalry and the accused-appellants are of same village. Further submits that the trial court has rightly appreciated the evidences adduced by the prosecution and recorded conviction. Further submits that the torch light was sufficient to identify the accused. The police has prepared the memo of recovery of torch and it's return recovered from Nanhey Singh, Ram Lal, Ram Prakash, Nanhey Ram and Dhanpal. Further submits that the lantern was lit in the house of Dhanpal, which was the source of light to identify the accused. Even if there is no source of light, the villagers could easily identify co-villagers. The point of false implication has rightly been dealt by the trial court in the judgment, considering that the witnesses were not aware whether the accused-appellants are the man of Shankar Lal, village Pradhan and negated political or village rivalry between the two. Therefore, submitted that the appeal is liable to be dismissed.

14. This Court has taken into consideration the rival submissions made by the parties and perused the record.

15. The point of concern in the present appeal is whether the learned trial judge has rightly appreciated the evidence on record and convicted accused-appellants for the offence of dacoity and attempt to cause death or grievous hurt for attempting dacoity.

16. The trial court at the very start of judgment has made observation that the factum of dacoity is not a subject of any controversy. This observation has been made because according to the trial judge, the factum of dacoity has not been challenged by the accused. This observation of the learned trial judge is against the basic principles of law of appreciation of evidence, because the accused-appellants at the very start of the trial have denied the allegations of committing dacoity in the house of informant Dhanpal, moreso, they have stated false implication because of party politics and previous enmity between them. Therefore, it is the first and foremost duty of trial court to look into the evidences as to where the incident of dacoity took place in the house of informant Dhanpal.

17. Certain glaring facts, which is derived from the evidence adduced by the prosecution like F.I.R., the site plan and the statements of witnesses of fact, are pointed out below:-

I. P.W.-1 Dhanpal, the informant has stated in his examination-in-chief that there were 10 to 11 dacoits entered his house for committing dacoity, though in the written information the specific names of only seven dacoits, who belong to the same village, were named. P.W.-3 Ishwarwati also stated the number of dacoits as seven, who have committed dacoity. It is found in the statement of Ishwarwati P.W.-3 that the dacoits have fired from the gun during the course of dacoity, whereas, P.W.-1 Dhanpal has stated that while exiting after the dacoity, the dacoits had fired two shots and in retaliation Ganga Ram has fired three shots. The investigating Officer has not collected the pellets and empty cartridges of the bullets shot either by the accused or by Ganga Ram. It is specifically averted in the written information as well as in the statement of P.W.-1 Dhanpal that Ganga Ram had fired shot from his licensed gun. The main purpose of inspecting the gun of Ganga Ram by Investigating Officer was to look into the veracity

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of the statement of informant whether or not dacoity took place in the intervening night of 26/27.07.1982.

II. The Investigating Officer has also not collected the broken lock, which was stated to be broken by the dacoits, while committing dacoity.

III. The Investigating Officer has not investigated on the point of informant having Rs.6,000/- as cash at his residence, which the informant has specifically stated to have received from the proceed of selling onion and received as advance for selling his land, which is stated to be the reason for committing dacoity in the house of informant.

IV. The informant Dhanpal has mentioned in the F.I.R. and stated in his statement that P.W.-1, with precision stated about the weapons being carried by the accused-appellants. Like, Mehndi was carrying gun, Harpal, Omkar and Latoori had countrymade pistols and other accused were having lathis in their hands. The Investigating Officer P.W.-5 Shiv Shankar Sharma, S.I. has made the memo of recovery of all the items, which were stated to be left by the accused-appellants at the house of informant and lathi was one of the item. If the lathi is left in the house then how the informant has seen lathi in the hands of three accused. Contrary to this, P.W.-3 Smt. Ishwarwati has stated that one of the accused was having knife in his hand and she got injury by knife. It is to be made clear at this juncture that Ishwarwati did not suffer knife injury, as is reflected from her medico legal examination carried out at District Hospital Badaun. This medico legal examination is not proved by the prosecution, but is on record and reveals that all the injuries to Ishwarwati were simple in nature and caused by hard and blunt object.

V. The point of concern in respect to the dacoity is also reflected from the bare perusal of F.I.R., which reveals that nearly 9 items have been looted by the dacoits, but none of the witnesses have seen the bundle of those items and how the accused have

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carried it. This fact is neither reflected from the statement of P.W.-1 Dhanpal nor from the statement of P.W.-3 Smt. Ishwarwati, who was stated to be inside the house.

18. All these points are the matter of concern and the trial judge has not examined the evidence on the point whether the dacoity took place in the house of informant Dhanpal or the accused-appellants, who are of same village have falsely been implicated in a fake dacoity. All the above mentioned infirmities in the evidence are material in nature, because at one hand, it is the dacoity, which has been carried out and on other hand, the accused-appellants stating false implication.

19. The trial judge while appreciating the evidence has given credence to the testimony of witnesses of fact, who have specifically named the accused-appellants, for committing dacoity, without considering the veracity of statement of witnesses through their cross-examination.

20. Hence, the statement of witnesses are required to be dealt with one by one.

21. P.W.-1 Dhanpal has stated that in the intervening night of 26/27.07.1982, there was dacoity at his residence. He was sleeping at the cattle shed when he heard the shrieks of his mother and sisters, hearing which, he came to the house. There is nothing on record either in the site plan to show where the cattle shed is situated, wherein the informant Dhanpal and Ishwari were sleeping or whether there is possibility of hearing the shrieks of his family members, coming from his house to the place where he was sleeping. He further submits that hearing the shrieks of his mother and sisters, he along with his brother Ishwari, Nanhey Singh, Ram Lal, Prakash and other villagers lit their torches and ran towards the house and found that dacoits were beating his mother and sisters and looting the valuables. This statement shows that this witness has entered the house while the dacoits were committing the dacoity. During his cross-examination, he has admitted

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that the scribe of F.I.R. Jagdish is the son of Bhole. There was dacoity in the house of Bhole some 12 years back, wherein the father of accused Harpal was made accused, but was acquitted by the court. Further submits that in the recent Pradhani election, he stated to have supported Ram Prakash, who has lost to Shankar Lal, but has no idea whether Narain, Omkar, Nandey and Latoori were on the side of Shankar Lal. The village party politics and political rivalry has been stated behind the false implication. He further stated that he knew all the accused and their families. He has also stated that Rajwati is daughter of Ram Lal, but has no idea whether the sister of Latoori has entered into the some land deal with Rajwati, which was not finalized and there was dispute between the two pertaining to return of advance amount. He has stated to have seen the incident from the door of Ram Lal and Ishwari was with him. According to the site plan, two houses of Ram Lal are situated on the north of the lane and the door of one house is shown open towards east on north south lane of the lane and the second house of Ram Lal the door is open towards south of east west lane. The house of this witness is situated on the south of the lane and the doors of his house was shown open towards east on north south lane. The site plan further shows that the accused-appellants had exited from this door, which is opening on east and went away towards South. If it is taken to be true that the witnesses were standing at the door of the house of Ram Lal, either the western or eastern house, they could not see the faces of accused. Moreover, the place where witnesses have seen the accused is not shown in the site plan. P.W.-3 Ishwarwati has stated that four of the accused were covering their faces and therefore, she could not see the faces of other accused except Harpal, Omkar and Ali Hasan, who had beaten her. P.W.-1 further stated that after the incident of dacoity, Mehndi Hasan has filed a compliant at Panchayat. This complaint has not been taken into consideration by the learned trial judge, which is exhibited as Kha-1. The copy of complaint reveals that it is filed by Ali Hasan, the blacksmith against Dhanpal, Nanhey, Ram Lal, Ram Prakash for the incident dated 10.01.1982 for the theft of his Chenni, Summi, Hathora,

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ghan and sadasi, which was witnessed by Lakhi and Murari. The trial Judge has observed that there is no date and time mentioned in the application about its moving, but it contains the signature of Jagpal, Sarpanch with the date 10.02.1982 and it is the copy of complaint, which is registered as Case No.1 of 1982. Therefore, this application is prior to the date of occurrence.

22. P.W.-2 Ishwari has stated that the dacoits have fired during dacoity; his mother did not disclose the name of any dacoit; his sister suffered knife injury; seven dacoits entered the house, they were carrying guns, lathis and knives; he has not stated about the accused carrying countrymade pistols, which is stated by P.W.-1 Dhanpal, but stated about the knife being carried by the accused merely because P.W.-3 Ishwarwati has stated that she has suffered knife injuries.

23. Ishwarwati P.W.-3 has stated to have suffered knife injury and not the injury by the lathi. Her medical examination reveals that she suffered; (1) lacerated wound 2 ½ cm x 1 cm bone deep on right side forehead just above medial end of eyebrow; (2) contusion 3 cm x 1 ½ cm on lateral side of right knee; and (3) contused swelling on right side of upper lip. As all the injuries were caused by hard and blunt objects, as per the opinion of the doctor mentioned in the medico legal examination, the injuries does not corroborate with the statement of this witness; she further stated that she did not suffer any injury when the dacoits have snatched her hasli from her neck.

24. P.W.-4 Nanhey has stated that he could identify only three persons, namely, Mehndi, Ali Hasan and Harpal. Mehndi was holding gun, Ali Hasan and Harpal were carrying countrymade pistol. During his cross-examination, he has stated that Dhanpal is his brother by virtue of caste. He has also stated that out of seven dacoits, three were identified and four had covered their faces. Hence, could not be identified.

25. If the statement of all witnesses of fact is taken into consideration, then the points which is culled out from their statements are material inconsistencies on the point of covering of face by the accused, holding the weapon and injuries caused, where P.W.-1 Dhanpal has stated both his sisters had suffered injuries, in his written information and in his statement before the court, he stated that only Ishwarwati and his mother suffered injuries. The accused-appellants are of same village and they are known to the informant and witnesses, most of them are labours and were inimical to the informant, because of recent Pradhani election or the previous complaint or because of land deal. It is hard to believe that the accused, who are having their families in the village, will enter the house of any person of the village bare faced to commit dacoity. Moreover, despite the arrest of the accused, there was no recovery of any item of dacoity. The Investigating Officer has collected only the torch from the witnesses and returned it to them on the same day. The recovery of torch is not sufficient evidence that the witnesses have identified the dacoits.

26. After marshalling the entire evidence on record, this Court found material inconsistencies in the testimonies of witnesses, the benefit of which should be given to the accused. Moreover, the accused-appellants were not the known dacoits, against whom any other case of dacoity was registered, who would fearlessly to enter the houses bare faced. Thus, the observation of the trial judge is not appealing the conscience.

27. In the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh***¹ Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

¹ (2024) 2 SCC 666

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28. Therefore, the surviving appellants cannot be held guilty for offence of dacoity or any other minor offence and liable to be acquitted for the offence of dacoity and attempt to cause death or grievous hurt, while committing dacoity, giving benefit of doubt, as the trial court has incorrectly adduced evidence. Thus, the judgment of conviction dated 29.08.1983 in Special Sessions Trial No.157 of 1982, arising out of Case Crime No.321, reported on 27.07.1982 for offences under Sections 395, 397 IPC at Police Station Ujhani, District Badaun, is set aside.

29. The appeal is **allowed**. The appellant no.1 Ali Hasan is acquitted for offence under Section 395 I.P.C.; whereas, appellant no.5 Harpal and appellant no.6 Latoori are acquitted of offence under Sections 395 read with 397 IPC.

30. Record be remitted back forthwith alongwith the copy of judgment.

(Avnish Saxena, J.)

February 16, 2026

Shivangi