

also need not to surrender as they have already been released on remission.

71. So far as the appellant Chunni Lal Kahar is concerned, he appears to be on bail. He will surrender before the trial court within 15 days from today to serve out the sentence as imposed by the trial court.

72. Shri Rajesh Kumar Dwivedi, who has represented appellants- **Raj Kumar Yadav** and **Chunni Lal** as Amicus Curiae will get Rs. 11,000/- as honorarium, which would be paid by the Uttar Pradesh State Legal Services Authority within 60 days from today.

73. A copy of this order be sent to the trial Court along with the trial court's record as well as to the Member Secretary Uttar Pradesh State Legal Services Authority for compliance.

(2025) 1 ILRA 104
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.11.2024

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Appeal No. 651 of 1983
 With
 Criminal Appeal No. 652 of 1983

Jagdish Singh & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
 Keshav Sahai, Apul Misra, Dileep Kumar,
 Rajrshi Gupta, Satyendra Narayan Singh,
 Upendra Vikram Singh

Counsel for the Respondent:
 D.G.A.

Criminal Appeal-Eye Witnesses-Eye-
 witnesses were not there on the spot at all- eye witnesses not recognized the dacoits and only to implicate certain known inimical persons, the first information report got lodged-FIR was also ante-timed-the case of the prosecution does not inspire confidence - cooked up story only to implicate known persons who were impugned judgment set aside.

Appeals allowed. (E-9)

List of Cases cited:

1. Iqbal & anr. Vs St. of U.P. reported in (2015) 6 SCC 623
2. Lakshman Prasad Vs St. of Bihar reported in AIR 1981 SC 1388
3. Prem & ors. Vs St. of U.P. reported in 2022 (6) ADJ 529 (DB)
4. Shrishti Narain Vs Bindeshwar Jha & ors., 2009 (6) SCC 457

(Delivered by Hon'ble Siddhartha Varma, J.
 &
 Hon'ble Syed Qamar Hasan Rizvi, J.)

1. When an incident which allegedly took place in the night of 12/13.01.1977, a first information report was lodged on the very same day at around 4:30am on the 13th January 1977. As per the first information report, which had been got lodged by one Harihar Singh son of Jung Bahadur Singh, in the night of 12/13th January 1977 while he himself had gone to sleep after having food etc., in the varandah of the house along with his son Hridya Narayan Singh and other elderly relatives by the names of Deo Nath Singh and Ramagya Singh then at around 1:30AM in the night Jagdish Singh, Amardeo Singh, Durvasha Singh, Jai Shankar @ Dondha Singh, Deo Narayan @ Bhukhad Singh, Munda @ Raj Narayan Singh, Sriram Singh, Siyaram Singh, Rama Singh, Sagar

Singh, Vijendra along with 7 to 8 other dacoits entered the premises which contained the Baithaka and quarters where women were sleeping. When the dacoits entered as per the allegations made in the first information report, the dogs of the first informant started barking which made the first informant and his son wake up. When the first informant and his son started making a hue and cry, one of the dacoits chased the son of the first informant and hit him by a lathi which had injured the right wrist of the son. Of the so many dacoits who had entered the premises of the first informant, the dacoits Deo Narayan Singh, Jagdish Singh, Raj Narayan Singh, Sri Ram Singh and 2 or 3 other dacoits entered the room where the two elderly persons namely, Ramagya Singh and Deo Nath Singh were sleeping and asked for the keys of the locker. The other dacoits kept guard outside the place where the two elderly persons were sleeping. They were throughout saying that if the elderly persons were not giving the keys then they be shot dead. Thereafter the dacoits shot at Ramagya Singh and Deo Nath Singh and they were killed. Thereafter the dacoits went towards the tenements where the ladies of the house were sleeping. They broke open the door and entered the premises and started looting the valuables. The locker (tijori) was brought out in the courtyard, which the dacoits tried to open with various tools which were available with them. They were kudal, farsa and chheni. In the first information report it had been stated that in order to frighten the villagers intermittently the dacoits were also firing in the air. It has also been stated in the first information report that while the looting was being done the dacoits were saying that they had taken the revenge of the murder of Deena Nath Singh. Because of the hue and cry raised by the first

informant and the various ladies of the house, the cousin of the first informant Janmey Singh (P.W.3) and the nephew of the first informant Govardhan @ Radhey Shyam along with the Pradhan of the village, Shyam Bihari Yadav and Ram Surat Singh came on the spot. They saw the dacoits looting and rummaging the house. They had recognized the dacoits in the light of torches and in the light which came out of the burning "pual". The ladies of the house had also recognized the dacoits in the light of the lanterns and the various torches which they possessed. It had been stated that the wife of the first informant was also injured by one of the dacoits. The Pradhan of the village Parmanand Singh and one Rama Nand Singh fired from their firearms and thereafter the dacoits went away. The first informant and the other villagers chased the dacoits but all the time the dacoits turned around and warned them with dire consequences. It had been categorically mentioned in the first information report that vis-a-vis Jagdish Singh and others there was old enmity existing and it was for that reason that they had killed the two elderly persons, namely, Ramagya and Deo Nath. In the first information report, the lost articles which were stolen were also mentioned. The investigation thereafter commenced and such torches and lanterns which were to be found on the spot were taken into the custody and the recovery memos of things taken into custody were prepared and were numbered as exhibit - ka3. The locker and the locks which had been broken by the dacoits were also taken in the custody of the Police and their recovery memo was prepared and numbered as Exhibit - Ka4. Such articles which were left behind by the dacoits were also recovered by the Police and memo of which were prepared and exhibited as Exhibit - Ka 11 and 12. The

police had also recovered certain lathies and shoes and recovery memo with regard to them was prepared as Exhibit Ka36. The empty cartridges and pads etc. of the bullets which were fired were also recovered and the memo with regard to which was prepared and exhibited as Exhibit Ka37. The clothes which had blood on them of Deo Nath Singh were also taken into custody and their memo was prepared and exhibited as Exhibit ka 34. Ramagya's clothes were also similarly taken into custody and memo with regard to them was prepared and exhibited as Exhibit Ka 35.

2. Thereafter, as per the case of the prosecution, a panchayatnama was conducted on 13.1.1977 which commenced at 6:35am and concluded at 7:05am. Thereafter, the two dead bodies were sent for post mortem and post mortem was conducted on the dead bodies on 14.01.1977 at 11:00am. The police after it had concluded its investigation submitted its report and the Magistrate took cognizance of the case.

3. The Trial Judge, namely, Sri N.S. Shamsbery, the 6th Additional Sessions Judge, Varanasi, on 23.09.1978 framed charges against the various accused persons. Vis-a-vis Jagtoo and Ram Dhani charges were framed under Section 396 IPC; vis-a-vis Smt. Sahdeiya and Kalawati charges were framed under Section 412 IPC; vis-a-vis Jagdish Singh, Amardeo Singh, Durbasa Singh, Jai Shankar @ Dhondha, Deo Narain @ Jhakkar, Munda @ Raj Narain, Sri Ram Singh, Siya Ram, Rama Singh, Sagar Singh, Bijendra Singh, Lakshmi Noniya, Dulare Singh, Kamla Singh, Lallan @ Lalla Singh and Kattal @ Katwaru Mahhal charges were framed under Section 396 IPC. Thereafter when the accused denied the charges, trial commenced.

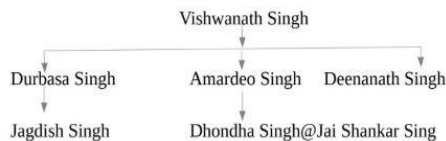
4. From the side of the prosecution as many as 25 prosecution witnesses were examined. When the trial concluded and the judgement was delivered on 11.3.1983 whereby Jagdish Singh, Amardeo Singh, Durbasa Singh, Jai Shanker Singh @ Dhondha, Deo Narain @ Jhakkar, Raj Narain Singh @ Munda, Siya Ram Singh, Shri Ram Singh, Sagar Singh, Brijendra Singh @ Bijendra Singh, Rama Singh and Kattal alias Katwaroo were sentenced to undergo life imprisonment for offences committed under Section 396 IPC, they preferred criminal appeals being criminal appeals No. 651 and 562 of 1983 in this Court.

5. Jagdish Singh, Durbasa Singh, Deo Narain Singh, Raj Narain Singh, Sri Ram Singh and Kattal @ Katwaroo filed Criminal Appeal No. 651 of 1983; whereas Amar Deo, Jai Shankar Singh, Sagar Singh and Brijendra Singh filed Criminal Appeal No. 652 of 1983. The other accused persons were acquitted of the charges as were levelled against them.

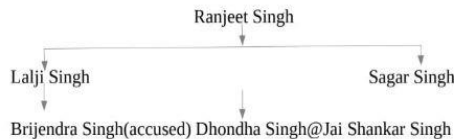
6. During the pendency of the Appeal in Criminal Appeal No. 651 of 1983, Jagdish Singh, Durbasa Singh, Deo Narain Singh and Raj Narain Singh and Kattal died and, therefore, the Criminal Appeal vis-a-vis them have abated. For the appellants, Sri Ram Singh, Siya Ram and Ram Singh, the Appeal was argued by **Sri Apul Mishra** and **Sri Rajrshi Gupta**.

7. In Criminal Appeal No. 652 of 1983, the appellants Amar Deo Singh and Sagar Singh died during the pendency of the appeal and the appeal vis-a-vis them has already abated. For the appellants no. 2 and 4 Jai Shankar Singh and Bijendra Singh, the appeal was argued by **Sri Apul Mishra** and **Sri Rajrshi Gupta**.

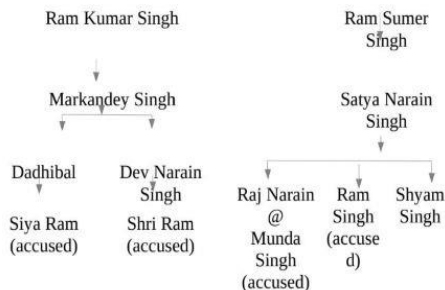
8. During the trial, the P.W.-1, Harihar Singh, appeared in the witness box and very emphatically and graphically described about the relationships which existed between the accused persons. With regard to the appellants Durbasa Singh, Amar Singh, Jagdish Singh and Jai Shankar Singh through his statement he illustrated as to how they were descendents through one Vishwanath. As per the statement before the Court, the following pedigree emerged :-



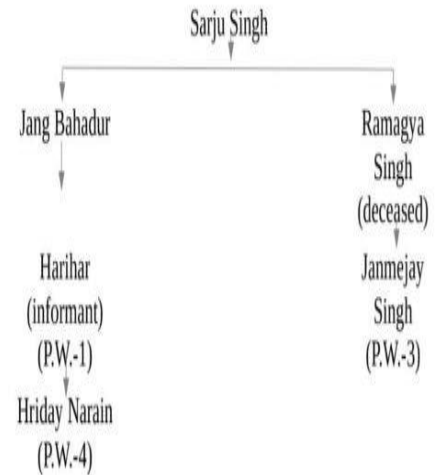
9. For the accused Brijendra Singh, as per the statement made by the P.W.-1, the following pedigree emerged:



10. For the accused Deo Narain Singh, Siya Ram Singh, Sri Ram, Raj Narain, Ram Singh and Shyam Singh a third pedigree emerged from the statement of P.W.-1:-



11. From the side of the complainants also a pedigree as has been shown below which emerged from the statements made by the P.W.-1:



12. The P.W.-1 has, in fact, stated after giving out the relationships between the accused persons that all the accused were known to each other and he has very categorically stated that P.W.-1 was inimical to all the three families. He has in so many words also narrated the enmities which existed between the informants' side and the accused. They are being enumerated here as under: -

1. An occurrence took place on 9.5.1973 in which Deena Nath brother of accused Durbasha was murdered. Informant Harihar Singh was accused and accused Deo Narain was prosecution witness.

2. Prior to the present occurrence on the application of accused Jagdish license of informant Harihar Singh was cancelled (Kindly see exhibit Ka-8 & Ka-9).

3. During the pendency of murder case proceedings under Section 107/116 were initiated between the parties.

4. In the year 1972 proceedings under Section 133, Cr.P.C. were initiated in which Harihar Singh was on one side,

accused Deena Nath, accused Durbasha, accused Amar Deo and accused Jagdish Singh were arrayed on other side.

5. A civil suit no. 405/1975 was filed in the court of Munsif Hawali Varanasi (Harihar Singh Vs. Durbasha) and the Suit related to a passage and the civil suit was pending at the time of incident.

6. Ram Nandan was the father of P W. Shyam Bihari.

7. In the year 1951 Ram Nandan father of P.W Shyam Bihari was prosecuted under Section 302 I.P.C. for causing death of one Shanker in which Lalji father of accused Sagar and Brijendra was a prosecution witness against Ram Nandan Singh.

13. In the statement before the Court P.W.-1 had stated that Ramagya's hands were tied at the back and, thereafter, he was shot at and in a similar manner Deo Nath Singh was also shot at. He has once again reiterated that the named persons in the first information report had stated that they had taken revenge of the murder of Dina Nath Singh (Dina Nath Singh was the real brother of Durvasa Singh and Amar Deo Singh as is clear from the pedigree given above).

14. He has stated that Amar Deo was living in a house which was 20 steps away from the house of the first informant. Shyam Bihari was living around 200 latthas away. To the east of the house of Amar Deo, Harihari Singh's (P.W.-1) new house was located. He has further stated that around 150 latthas away from his khalihan, Shyam Bihari's house (P.W.-2) was situate. He has stated that he was surrounded by the houses of his own enemies. He has further stated in his evidence that all the houses of the named accused persons were adjoining

the house of P.W.-1. He has very categorically stated that when the firing was being done, he was standing at a distance of around 20 steps. He has also stated that none of the accused persons had covered their faces with dhata. He has stated that no accused was trying to hide his or her face. He has stated that he had not mentioned anything in the first information report with regard to the fact that the hands of Deo Narain Singh were tied behind him.

15. In paragraph no. 34 of the statement made by P.W.-1 on 5.7.1980, he had stated in his cross-examination, upon a pointed question being asked by the Court as to whether faces of the accused persons were covered. He had averred that in fact they were not hiding their faces. He has in paragraph no. 35 stated that while the dacoity and the shooting etc was taking place he had called Jagdish Singh, Deo Narain Singh and Sri Ram Singh by their names and yet the accused persons had not fired at him.

16. Upon being asked as to whether, he had given the description of the dacoits whose name he had not mentioned in the first information report, the P.W.-1 had stated that he had not given any description of those persons whom he had not named.

17. The P.W. -2, Shyam Bihari, lived in the neighborhood of P.W.-1. P.W.-1 in his testimony before the Court had given a reason as to why there was enmity between Shyam Bihari and the accused. He had stated that in 1951 Ram Nandan, the father of the P.W.-2, was prosecuted under Section 302 IPC for having caused the death of one Shanker and in that case Lalji the father of the accused and Bijendra Singh had come to the Court as prosecution

witnesses against Ram Nandan Singh and the father of Shyam Bihari. In this context, the statement of P.W.-2 becomes relevant. He has also very categorically stated that he had been knowing all the accused persons from before and that they were all of his village. He has also stated that he had gone for the test identification parade to the jail for identifying such of the accused whose names had not been mentioned. He has, upon a pointed question being asked that why he had not mentioned about the descriptions of the accused who were not mentioned in the statement under Section 161 Cr.P.C., he had replied that he did not know as to why he had not mentioned about their descriptions under Section 161 Cr.P.C. He has, in paragraph no. 17 of his cross-examination, upon being questioned as to why he had not mentioned about the names of the persons who were already named in the first information report in his statement under Section 161 Cr.P.C., he had replied that his statement was taken on 13.1.1977 at 8:00am but till that time he had not known the names of the dacoits who had done the dacoity the previous night. He had also reiterated the fact that none of the dacoits had covered their faces.

18. The P.W.-3, Janmejay Singh, is a cousin of P.W.-1. He has also mentioned about the enmity which he bore vis-a-vis the accused Deo Narain Singh and he has stated that the accused Deo Narain Singh had given evidence against him in a murder case. He had also reiterated that the dacoits had also not covered their faces. He had also stated that the accused Deo Narain Singh had a gun in his hands and Jagdish had a lathi in his hands. Munda Singh @ Raj Narain Singh was carrying a ballam. Ram Singh was also carrying a lathi. He has stated that the dacoits had also fired towards the place where he was standing.

19. The P.W. - 4, Hriday Narain Singh s/o Harihar Singh, the P.W.-1, while giving his testimony, also reiterates what his father had stated and has described the manner in which the dacoits had hit him on his wrist. In his statement in the Court he had also mentioned the names of the accused persons. He, in his cross-examination, admitted that before the incident had occurred there was a definite enmity between the accused and him and because of the statement given by him and his father earlier in another case the accused had been in jail for five year. He had also reiterated the fact that none of the accused persons had tied/covered their faces.

20. Since the P.W.- 1, 2, 3 and P.W.- 4 were witnesses of facts their statements have been looked into in detail. The statements of P.W.-24 who was the investigating officer, is also relevant for the decision of this case and therefore the relevant portion of his statement is being reproduced here as under:-

“चिक एफ०आई०आर० इक्ज क-20 पर सी०ओ० के हस्ताक्षर है और यह 20-1-77 के है। मैं कारण नहीं बता सकता कि सी०ओ० के दस्तखत 20-1-77 के क्यों हुये। यह गलत है यह देर से भेजा गया था इसलिये देर से दस्तखत हुये।”

21. At page 230 of the paper book, in paragraph no. 24, he had stated that the chik FIR, Exhibit Ka-20 contained the signature of the Circle Officer, which was dated 20.1.1977. He has, however, stated that he did not know as to why the signature of the Circle Officer was made on the chik FIR on 20.1.1977 with regard to the compliance of Section 157 Cr.P.C.. The investigating officer had stated that he had no idea as to when exactly the special report was sent. Also with regard to the fact as to whether when the dead body was sent

for post mortem whether the chik report had accompanied the papers, he had stated that there was no law/rule to send the first information report along with the post mortem. He, however, had stated that traditionally the first information report was sent with the post mortem and had, thereafter, categorically stated that along with the exhibit ka-16 and ka-15 i.e. the letters which were sent for the post mortem of the two dead bodies no first information report had been sent. At page 32 of the paper book, he had mentioned that he had not prepared the memo with regard to the ashes which he had found at the place of incident which were supposed to be there because of the fact that haystack (puwal) was burnt. He has stated that he had definitely not shown the place in the site plan where the ash was to be found. He has stated that on the papers Exhibit Ka-13 and Ka-14 which were prepared on 13.1.1977 nowhere was the fact written that it pertained to the case “State vs. Jagdish and others”.

22. Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. In the statements under Section 313 Cr.P.C., the accused persons had denied having committed the crime.

23. When the appeals were argued, the learned counsel for the appellants had submitted that the case as had been brought forth by the prosecution was a highly improbable case. To substantiate this argument, learned counsel made the following submissions:

I. Learned counsel for the appellants states that when a dacoity takes place and specially when the dacoits were known to the informant's side then definitely they would try to conceal their

identification and in the instant case he submits that none of the accused had covered their faces.

II. Learned counsel for the appellants further states that, in fact, the P.W.-1, P.W.-2, P.W.-3 and P.W.-4, all have stated that they had called the accused persons by name. Learned counsel for the appellants submits that this calling the dacoits by name would have been suicidal and the statement made in this regard shows that the prosecution witnesses were, in fact, not there and they were only trying to show their presence at the place.

III. Learned counsel for the appellants states that enmity was writ large between the accused persons and the people on the side of the first informant. He has submitted that, in fact, if a simple case of dacoity had taken place the informant would not know as to who was the accused. However, he states that the first information report was lodged and the accused had given out the names of the persons who were living in an around their village near the houses of the first informant and their relatives and thereafter they had tried to take revenge from them. In this regard, learned counsel for the appellants relied upon a judgement of Supreme Court in the case of **Iqbal & another vs. State of U.P** reported in **(2015) 6 SCC 623** Since the learned counsel read out the paragraphs no. 10, 16 and 17 of the judgement, they are being reproduced here as under:-

10. In cases of dacoity, usually, the offence is committed by unknown persons with the criminal background. It is only in very few cases, are the accused dacoits known to the victim. PW 1 Patia Singh and PW 2 Jay Singh have stated that they had witnessed the incident from a distance of three-and-a-half yards. PW 3

Begraj also stated that he had witnessed the incident from a distance of five-six yards in the feeble torchlight. Admittedly, according to the witnesses, there was no electricity at the time of incident in their houses. They claimed that they could see the accused persons with the help of their torchlights. In the courts below, on behalf of the accused persons, it was argued that the night of incident was an amavasya-new moon night. On a perusal of calendar of that month in that year, it is seen that the intervening night of 21-9-1979/22-9-1979 was a new moon night i.e. "amavasya".

16. It is pertinent to note that in the present case no recovery of articles which are the subject of dacoity was made from the appellants or other non-appealing accused persons. In his complaint, PW 1 gave a list enumerating fifty expensive items, such as gold jewellery, silver articles, sarees and clothes and also cash. As per the recovery memo, what was recovered was just three kilograms of ghee in a claypot. In his deposition, PW 8 Nepal Singh (investigating officer) has stated that at the instance of Kripa, he had recovered a "chaptaghu" and an "attire". However, in the recovery memo, only three kilograms of ghee is mentioned which is said to have been recovered on the disclosure statement of accused Kripa. From the appellants as well as from the non-appealing accused persons, not a single valuable item out of the whole list of stolen articles was recovered. It is quite unbelievable that within a short span of time i.e. from 21-9-1979 (date of incident) to 9-10-1979 (date of arrest), the accused would have converted or sold out all the valuable items. Even if we accept that they had done so, the prosecution ought to have adduced evidence as to how and in what manner the articles which were the subject-matter of dacoity were either disposed of or

converted. Murder and robbery were part of the same transaction. Consequent upon the disclosure statement, only three kilograms of ghee was recovered.

17. In order to bring home the guilt of the accused persons, it is the duty of the prosecution to prove that the stolen property was in the possession of the accused persons or that the accused had knowledge that the property was a stolen property or the accused persons had converted the stolen property. No such recovery was made to connect the appellants and other non-appealing accused persons with the crime.

Further learned counsel for the appellants relied upon **Lakshman Prasad vs. State of Bihar** reported in AIR 1981 SC 1388. Since the learned counsel has specifically relied upon paragraph no. 3 of the judgement, the same is being reproduced here as under:-

3. The central evidence against the appellant consisted of the testimony of PWs 1 and 2 who were the servants of complainant PW 4 Baijnath Prasad. It appears from the evidence that Baijnath Prasad was a rich businessman of the locality and the accused-appellant Lakshman Prasad was his next door neighbour having a double storey house. Both the courts below have accepted the prosecution case that a dacoity took place in the house of Baijnath Prasad in the course of which cash and other articles were stolen away. In the instant case, counsel for the appellant has not challenged this finding of the courts below. We are also satisfied that a dacoity undoubtedly took place in the house of Baijnath Prasad. The only question that falls for consideration is whether or not the appellant participated in the crime. PWs 1,

2 and 4 have supported the prosecution case that the appellant clearly participated in the dacoity and was, in fact, the leader of the dacoits. After going through their evidence, we do find that there is some amount of consistency in their evidence but mere congruity or consistency are not the sole test of truth. Sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. This appears to be one of those cases. There are many inherent improbabilities in the prosecution case so far as the participation of appellant is concerned. In the first place, admittedly the appellant was a respectable man in the sense that he was possessed of sufficient means and was a well known homeopath doctor and also the neighbour of the complainant. In this view of the matter, it is difficult to believe that he would commit dacoity in the house of his own neighbour and that too in the early hours of the evening, so that he may be caught any moment and take the risk of a conviction under Section 395 of the Penal Code, 1860. Secondly, the evidence of the complainant PW 4 clearly shows that the dacoits had no doubt concealed their identity but they did it in such a way that their faces were visible. Indeed, if the appellant had participated in the dacoity and taken the precaution of concealing his identity, then he would have seen to it that his face was fully covered so that identification by the complainant or the witnesses would become impossible. If he was a dare-devil, then he would not have concealed his identity at all. Thirdly, FIR having been lodged the same evening the police visited the house of the appellant next morning and found him there. If the appellant had really participated in the dacoity, he would have at least made himself scarce. The house of the accused was also searched

and nothing incriminating was at all found. Finally, there was the important circumstance that in view of a dispute between complainant Baijnath Prasad and the appellant, there was a clear possibility of the appellant having been falsely implicated due to enmity. The complainant himself admits that there is a boundary wall around the house of the appellant and there is a road which runs to the east of his house and the mill of the complainant is situated to the west of the house. There is evidence of DW 2 that there has been some dispute between Baijnath Prasad and accused Lakshman Prasad two or three years before the occurrence of dacoity in respect of a passage near the house of accused Lakshman Prasad through which he used to go to his mill. The evidence of DW 2 does support what the complainant has himself admitted. The gravest provocation which the complainant must have felt was the fact that Lakshman Prasad bought a piece of land near his house from Kishori Lall, the nephew of Baijnath Prasad. This is proved by Ex. Kha and the evidence of DW 4. The High Court also observed that the sale deed executed by the nephew of the complainant in favour of the appellant was executed only a month before this occurrence. This therefore furnishes an immediate motive for the false implication of the appellant. Another important circumstance which seems to have been overlooked by the courts below is that PW 4 has clearly admitted in his evidence at p. 44 of the paper-book that immediately after the occurrence, a number of people near the mosque assembled, of whom he recognised Suba Raut and Moti Raut, but they never came to his help. The witness also says that when he came from the west, he saw 40 to 50 persons at a little distance, including Ganesh Raut, Achhelal, Mathura Ram and Rameshwar. Obviously,

if an occurrence of dacoity had taken place in the early hours of the evening, the near neighbours must have assembled and yet none of these neighbours have been examined to support the complainant's version that the appellant had participated in the occurrence. It seems to us that the reason why these persons did not choose to support the complainant was that perhaps the appellant had been falsely implicated and hence the persons who had assembled may not have relished the idea of supporting the complainant if he had gone to the extent of falsely implicating the appellant in the dacoity. These intrinsic circumstances speak volumes against the prosecution case and raise considerable amount of suspicion in our minds regarding the complicity of the appellant in the dacoity. It is well-settled that while witnesses may lie, circumstances do not.

Still further learned counsel for the appellants relied **upon Prem and others vs. State of U.P** reported in **2022 (6) ADJ 529 (DB)**. Since the learned counsel for the appellants has read out paragraphs no. 25 and 26 of the judgement, they are being reproduced here as under:-

"25. Before we proceed to analyse the submissions, it would be useful to notice a decision of the Supreme Court in somewhat similar situation where the accused had allegedly participated in the commission of dacoity at his neighbour's house and the factum of dacoity was duly proved and the eye-witnesses, apparently, were congruous and consistent in their deposition yet, upon finding the possibility of false implication very high, the apex court allowed the appeal of the convicted accused and acquitted him of the charge upon finding that intrinsic circumstances of the prosecution case raised considerable

amount of suspicion regarding the complicity of the appellant in the dacoity. The relevant observations of the Supreme Court in that case i.e. Lakshman Prasad v. State of Bihar : 1981 (Supp) SCC 22, contained in paragraph 3 of the judgment, are extracted below:-

"3. The central evidence against the appellant consisted of the testimony of PWs 1 and 2 who were the servants of complainant PW 4 Baijnath Prasad. It appears from the evidence that Baijnath Prasad was a rich business man of the locality and the accused-appellant Lakshman Prasad was his next door neighbour having a double storey house. Both the courts below have accepted the prosecution case that a dacoity took place in the house of Baijnath Prasad in the course of which cash and other articles were stolen away. In the instant case, counsel for the appellant has not challenged this finding of the courts below. We are also satisfied that a dacoity undoubtedly took place in the house of Baijnath Prasad. The only question that falls for consideration is whether or not the appellant participated in the crime. PWs 1, 2 and 4 have supported the prosecution case that the appellant clearly participated in the dacoity and was, in fact, the leader of the dacoits. After going through their evidence, we do find that there is some amount of consistency in their evidence but mere congruity or consistency are not the sole test of truth. Sometimes even falsehood is given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. This appears to be one of these cases. There are many inherent improbabilities in the prosecution case so far as the participation of appellant is concerned. In the first place, admittedly the appellant was a respectable man in the sense that he was possessed of sufficient

means and was a well-known homeopath doctor and also the neighbour of the complainant. In this view of the matter, it is difficult to believe that he would commit dacoity in the house of his own neighbour and that too in the early hours of the evening, so that he may be caught any moment and take the risk of a conviction under Section 395 Indian Penal Code. Secondly, the evidence of the complainant PW 4 clearly shows that the dacoits had no doubt concealed their identity but they did it in such a way that their faces were visible. Indeed, if the appellant had participated in the dacoity and took the precaution of concealing his identity, then he would have seen to it that his face was fully covered so that identification by the complainant or the witnesses would become impossible. If he was a dare-devil, then he would not have concealed his identity at all. Thirdly, FIR having been lodged the same evening the police visited the house of the appellant next morning and found him there. If the appellant had really participated in the dacoity, he would have at least made himself scarce. The house of the accused was also searched and nothing incriminating was at all found. Finally, there was the important circumstance that in view of a dispute between complainant Baijnath Prasad and the appellant, there was a clear possibility of the appellant having been falsely implicated due to enmity. The complainant himself admits that there is a boundary wall around the house of the appellant and there is a road which runs to the east of his house and the mill of the complainant is situated to the west of the house. There is evidence of DW 2 that there has been some dispute between Baijnath Prasad and accused Lakshman Prasad two or three years before the occurrence of dacoity in respect of a passage near the house of

accused Lakshman Prasad through which he used to go to his mill. The evidence of DW 2 does support what the complainant has himself admitted. The gravest provocation which the complainant must have felt was the fact that Lakshman Prasad bought a piece of land near his house from Kishori Lall, the nephew of Baijnath Prasad. This is proved by Ex. Kha and the evidence of DW 4. The High Court also observed that the sale-deed executed by the nephew of the complainant in favour of the appellant was executed only a month before this occurrence. This therefore furnishes an immediate motive for the false implication of the appellant. Another important circumstance which seems to have been overlooked by the courts below is that PW 4 has clearly admitted in his evidence at page 44 of the paper-book that immediately after the occurrence, a number of people near the mosque assembled, of whom he recognized Suba Raut and Moti Raut, but they never came to his help. The witness also says that when he came from the west, he saw 40 to 50 persons at a little distance, including Ganesh Raut, Achhelal, Mathura Ram and Rameshwar. Obviously, if an occurrence of dacoity had taken place in the early hours of the evening, the near neighbours must have assembled and yet none of these neighbour have been examined to support the complainant's version that the appellant has participated in the occurrence. It seems to us that the reason why these persons did not choose to support the complainant was that perhaps the appellant had been falsely implicated and hence the persons who had assembled may not have relished the idea of supporting the complainant if he had gone to the extent of falsely implicating the appellant in the dacoity. These intrinsic circumstances speak volumes against the prosecution case and raise considerable

amount of suspicion in our minds regarding the complicity of the appellant in the dacoity. It is well settled that while witnesses may lie, circumstances do not.

(Emphasis supplied)".

26. From the observations of the apex court, extracted above, what becomes clear is that mere consistency or congruity in the testimony of the prosecution witnesses is not the sole test of truth as even falsehood can be given an adroit appearance of truth, so that truth disappears and falsehood comes on the surface. Therefore, what the court has to look at, and assess, is whether the prosecution evidence coupled with the surrounding circumstances has a ring of truth about it or there arises a strong suspicion and high probability of false implication of the accused put on trial. Bearing this in mind, when we embark upon the exercise to assess the prosecution evidence, we find that, no doubt, on record, the prosecution case is instituted on a prompt first information report and is supported by testimony of a person injured but, interestingly, no one disputes the factum of dacoity in the village on that fateful night. What is disputed is the accused-appellants being part of the gang of dacoits. When we see the evidence in this light, we find that the prosecution evidence is completely silent as to what the accused-appellants did at the time of dacoity. Except in the statement of one witness (i.e. PW-1) that Bhagwan Singh was carrying a gun and he fired a shot, there is no disclosure about the role of any of the accused appellants save that, that they were noticed. In fact, PW-1 who deposed about that, in the FIR, which was lodged by him and with which he was confronted, made no such disclosure. Even in respect of gunshot alleged to have been fired by Bhagwan Singh, it is not disclosed as to

whom it was aimed at and who sustained what injury from it. Importantly, two persons were reported to have been examined for their injuries, one is PW-4 and the other is Champa Devi. Champa Devi has not been examined as a witness and PW-4 has sustained incised wounds, the author of which has not been disclosed by him. Interestingly, the only witness (i.e. PW-3) with whom the accused-appellants had no enmity and whose house was also looted, does not support the prosecution case either with respect to the number of dacoits who participated in the dacoity or in respect of their identity. Further, we find that there is no recovery of any incriminating material from any of the accused-appellants to lend credence to the accusation against them. Another important feature that we notice from the testimony of the prosecution witnesses is that various houses in the village were looted and after the dacoits had left, the villagers had collected at one place. This suggests that there were independent witnesses also who were affected by the dacoity but the prosecution deliberately chose not to examine them. When we see all of this, coupled with the fact that the accused-appellants are residents of the same village where the dacoity had been committed yet, they chose not to cover their faces and nothing incriminating has been recovered from them, as also that all the accused do not appear to be of the same family or of the same village, it gives us a feeling that the dacoity in the village has been taken as an opportunity to falsely implicate the accused with whom the informant and the prosecution witnesses of fact except PW-3, who was declared hostile, had strong enmity.

IV. Learned counsel for the appellants further state that, in fact, the first

information report was an ante-timed first information report. They submit that the first information report, to begin with, was registered as a first information report under Section 396 IPC. He states that when, however, the names of the accused persons were known and that the first informant wanted to implicate them for the crime of murder also then definitely the first information report had been got lodged under Section 302/34 IPC also. Learned counsel further relying upon the statements of P.W. - 24 had stated that the first information report had not accompanied the post mortem report. He submits that from the testimony of the various witnesses it became clear that since the chik FIR was not prepared and had not accompanied the Panchayatnama when the dead bodies were sent for post mortem, it clearly showed that though the case crime number of the case was allotted there was no first information report in existence for a very long time.

V. Learned counsel for the appellants further submits that when the prosecution witnesses had stated in so many words that the accused persons were known to the first informant and the other prosecution witnesses and as per them the accused had come to commit dacoity in the house of an acquaintance then it was but natural that they should have covered their faces. In the instant case, he submits that when the faces were not covered then the only logical conclusion would be that in fact they had not gone at the place of incident and only because the informant had been an enmity with the accused persons they had been implicated in the case after a simple case of dacoity had taken place on the date of incident by unknown persons.

VI. Learned counsel for the appellants states that in the first

information report it was not mentioned that the hands of Ramagya Singh were tied behind him and thereafter he was shot at. However, after he had seen the dead body at the time of the panchayatnama wherein the bodies were tied, he had tried to improve his case by saying so in the court that the hands of the deceased Ramagya Singh were tied behind him.

VII. Learned counsel for the appellants further states that had the persons who were bearing enmity come to the place of incident and had also committed dacoity then they would have not just shot at Ramagya and Deo Nath Singh but would have killed, all the younger lot which were very much present as per the prosecution case and would have finished off all their enemies in one go. In the instant case, he submits that just because Ramagya and Deo Nath had resisted the dacoity, the unknown dacoits had tied the hands of Ramagya and thereafter when he was still resisting the dacoity he was shot at and killed. Learned counsel states that even Deo Nath was done away in the same manner.

VIII. Learned counsel for the appellants states that there was absolutely no recovery of any looted items from the possession of any of the named accused persons.

IX. Learned counsel for the appellants further submitted that 8 accused persons who were not named in the first information report and were acquitted of the charges levelled against them were also, to begin with, charged for the same offences for which the named accused were charged but the court below failed to apply the logic for which the acquittal had taken

place in the cases of the persons who were convicted.

24. Learned counsel for the appellants thereafter submitted that if the entire case is seen it would become evident that the prosecution had come up with a most unnatural case. Human behaviour would not have made the eye-witnesses call out the names of the accused when the incident was happening and that too when there was an acute enmity existing between the two sides. This learned counsel for the appellants states was unnatural as when the names were called out, the accused would have definitely aimed at the place from where the names were being called out and would have tried to shoot down the person who was calling the names. In this regard, learned counsel for the appellants relied upon the judgement in **Ram Lakhan Singh and others** reported in **1977 (3) SCC 268** and had relied upon paragraph no. 27. Since the learned counsel for the appellants had relied upon paragraph no. 27 of the judgement, the same is being reproduced here as under:-

“27. The Sessions Judge wrongly accepted the prosecution case that “the assailants had come to destroy the entire family” and that “in the present case the main intention of the known assailants was to murder Shiv Bahadur Singh and other members of his family”. It is difficult to appreciate how this alone can be the object when we find that Udairaj Singh and Ram Naresh Singh who were all along shouting from the roof and were focusing a torch upon the intruders, who even fired towards them, were spared. If the Sessions Judge is right about the object of the attack, it will only be consistent with the absence of Udairaj Singh and Ram Naresh Singh in which case the evidence of Ram Naresh

Singh will be open to grave suspicion. Even Udairaj Singh has not been examined by the prosecution as a witness although the Sessions Judge has referred in his judgment “that Udairaj Singh told them (people who gathered) that Rameshwar Singh and others had killed his father and son...” In the absence of Udairaj Singh this statement is of course inadmissible, but this is pointed out only to show that the culprits named, at that stage, were “Rameshwar Singh and others” and not all the accused and that withholding of his evidence was deliberate. If the killing of the persons is the main intention, it is difficult to appreciate why it was necessary for the accused Shitla Baksh Singh and another unknown person to have caught Ram Jas Singh while he was running away and brought him back to the courtyard for the purpose of firing at him in order to kill him. He could have been killed while he was running away. The reason why the witnesses have stated that Ram Jas Singh was brought to the courtyard was perhaps to enable Ram Naresh Singh and others to see the killing. The Courts have not taken note of this at all.”

25. Similarly, to prove the point that if the enemies of the first informant side had come on the spot, they would have tried to do away with the entire family, learned counsel relied upon paragraph no. 33 of the above judgement which is being reproduced here as under:-

“33. Again if the object of the accused was to murder and wipe out the entire family, as has been found, by the Sessions Judge, there is no reason why in spite of their noticing Udairaj Singh and Ram Naresh Singh on the roof they would have left them without a scratch in spite of

the fact that Ram Naresh Singh stated that the accused had fired towards them."

26. Still further to bolster his point that no prudent person would conduct himself in the manner which has been reported by the prosecution in the case, learned counsel for the appellants relied upon a judgement of the Supreme Court reported in **2009 (6) SCC 457 : Shrishti Narain vs. Bindeshwar Jha and Ors.** and he specifically relied upon paragraphs no. 13 to 20 of the judgement which is being reproduced here as under:..

"13.The evidence of investigating officer that he found a plank of door broken and fallen on the floor which is also against the evidence of PW 1 who has clearly said that the appellants had made a hole in the plank of the door of her room by tengari and by inserting hand to that hole, opened the latch of the door. This also does not support the case of prosecution regarding the manner in which door of her room was opened. The investigating officer (PW 12) in his evidence has stated that he recorded the statements of PWs 1 and 2 on 7-7-1981 because on 6-7-1981 when he met them, they were not in a position to give their statements because they were engaged in weeping.

14. PW 2 has admitted that the police came on the next day of dacoity but on that day, her statement was not recorded because she was weeping on that day and on the next day her statement and statement of her mother-in-law were recorded. This has also created a very strong doubt to accept the evidence of PWs 1 and 2 that they are eyewitnesses to the occurrence. When PW 1 was in a position to give the details of the occurrence to her son who is the informant immediately after the occurrence, there was no reason for her

not to give her statement on the next day of occurrence when police had come to her house. PWs 1 and 2, said to be eyewitnesses to the occurrence, in their evidence, have stated that they were also assaulted by dacoits and had received injuries but there is nothing on record that like other injured persons, they were also examined by any doctor.

15. The investigating officer (PW 12) does not say that on the next day in the morning when he visited the place of occurrence, he found any injury on PWs 1 and 2. Although he has said that he prepared injury certificate but has not made it clear for whom such certificates were prepared by him. He, in his cross-examination, has said that by the time, he reached the place of occurrence, injured Gopal Narain Jha (PW 4) and Naresh Narain Jha (PW 6) had already been sent to the hospital and he, after going to the hospital, saw injuries on their persons. The injuries certificates, prepared by him, may be for these two injured persons and no definite opinion about the injury certificate, said to be prepared by him, can be given in the absence of naming the injured by him or in absence of bringing these injury certificates on record.

16. Amod Devi (PW 1) has said that later one Bahuran Devi gave her a sum of Rs 320 saying that she found the money thrown on the bank of a river and on the next day, one Ram Master informed that some boxes were lying in katai area which were brought by Budhan Sahni and others. None of the persons, named above, were examined.

17. The prosecution witnesses have claimed that they identified the appellants in the light of lantern but the investigating officer, during investigation, did not find any lantern or sign of lighting the lantern which usually appear in the

surrounding areas. Accused Bharat Lal Jha was not identified by PWs 1 and 2, accused Binod Jha by PW 2 and accused Umesh Jha by PW 6. Besides this, PWs 4 and 6 have added names of Ashok Jha, Somendra Jha and Ram Ballabh Jha who are not among the accused persons.

18. The medical evidence showing that the death of deceased was homicidal and the evidence of the investigating officer who found bloodstains at the place of occurrence and some marks of violence on a wooden box kept at the place of occurrence may suggest the factum of dacoity in the house of informant but so far as the manner of dacoity and participation of the accused in that dacoity is concerned, that appears quite doubtful. The evidence of prosecution witnesses is that besides the accused, there were some other dacoits also with them who could not be identified. The possibility of false implication of the appellants in this case on account of long-standing enmity utilising the incident of dacoity cannot be ruled out.

19. In this case, accused Vijay Jha and Binod Jha were examined under Section 313 of the Code of Criminal Procedure on 31-3-1987 and 20-4-1987 respectively when their ages were estimated by the court below as about nineteen years and twenty-two years respectively. The occurrence is said to have taken place in the night between 5-7-1981 and 6-7-1981. It means that at the time of occurrence the age of accused Vijay Jha was about thirteen years, three months and the age of appellant Binod Jha was about sixteen years two months. They both are brothers and accused Bindeshwar Jha is their another brother. It looks very unnatural that the accused would go to commit dacoity in their neighbourhood taking with them such minor and young boys as Vijay Jha and Binod Jha when they

were sufficient in number and accompanied by some other persons also.

20. Besides this, the age of accused Bhai Lal Jha was estimated by the court on 31-3-1987 when he was examined under Section 313 of the Code of Criminal Procedure as eighty years. The defence has brought on record a voters' list (Exhibit A) showing that in this voters' list which was received in the year 1983 the age of co-accused Dahaur Jha (since dead) is recorded as seventy-two years, since Dahaur Jha is dead now so this document does not help the case of any one now but then accused Bhai Lal Jha, admittedly at the time of occurrence was aged about seventy-four years. So, we find that the accused included an old man aged about seventy-four years as well as a boy aged about thirteen years and, as stated above, the accused were neighbours of the informant with whom the family of the informant had long-standing dispute."

27. Learned AGA Sri Amit Sinha opposed the appeal tooth and nail and submitted that when there were any number of eye-witnesses then it would matter little that there was enmity existing between the accused persons and the first informant and, therefore, the accused were implicated in the case. He submits that enmity itself could not have been a reason for the commission of the crime. Learned AGA also submitted that the evidence of injured witnesses and eye-witnesses could not be brushed aside casually.

28. Having heard the learned counsel for the appellants Sri Apul Mishra and Sri Rajarshi Gupta and the learned AGA Sri Amit Sinha, we are of the view that definitely when the case was taken by the prosecution that the accused persons had reached the place without any dhata(cover),

specially when they were known to the first informant's side then the case of the prosecution becomes weak and unbelievable. Also, we are of the view that the eye-witnesses from the side of the prosecution were, in fact, coming up with a cooked up story and that they were in fact not there on the spot at all. Had they been there then they would have at least known that before Ramagya was killed his hands were tied behind him. We are also of the view that even if the eye-witnesses were there they had definitely not recognized the dacoits and only to implicate certain known inimical persons, the first information report was got lodged. We are further of the view that the first information report was also ante-timed. In the first information report, there was no mention of the fact that the hands of the Ramagya were tied before he was killed. Also, the P.W.-2 had very categorically stated that under the statement recorded under Section 161 Cr.P.C., he had not mentioned the names of any of the accused but we find from the first information report that the names were mentioned in the first information report and if the P.W.-2 who was so close to the P.W. -1 had known of the names mentioned in the first information report then he would have definitely mentioned the names of the accused persons in the statement made under Section 161 Cr.P.C. Also, we are concluding that the first information report was ante-timed as the documents which were sent for the post mortem along with the panchayatnama did not contain the chik FIR, meaning thereby that the first information report was ante-dated after sometime had passed and the informant's side had made up its mind to implicate all the accused whom they wanted to implicate. We are of the view that the statements of the P.W. -1, P.W.-2, P.W. - 3 and P.W. 4 as had been stated by them before the Court were unrealistic. They had stated that they had called the names of the accused persons from the roof tops. In the case they were aware of the fact that their enemies had

come their would have instead of calling out the names of known enemies who were carrying guns and firearms, would have tried to hide themselves and would not have made them vulnerable to the firearms which they were carrying.

29. In the instant case, we definitely find that all the accused persons were neighbors who were inimical to the prosecution side and, therefore, they were implicated in the case in hand. We, thus conclude that, in fact, the case of the prosecution does not inspire confidence and, in fact, the prosecution had come up with a cooked up story only to implicate known persons who were inimical to him.

30. For all the reasons mentioned above, we are of the view that the judgement and order dated 11.3.1983 passed by Ivth Additional Sessions Judge, Varanasi, in S.T. No. 111 of 1978 (State vs. Jagdish Singh and others) & in S.T. No. 357 of 1979 (State vs. Ramdhani Tiwari @ Dhani and others) cannot be sustained in the eyes of law and, therefore, the same is set aside. Both the appeals are, accordingly, allowed. The appellants are already on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

(2025) 1 ILRA 120
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.11.2024

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Appeal No. 659 of 1984

Iqbal Singh & Ors.	...Appellants
State of U.P.	...Respondent
Versus	