



2026:AHC:74257

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2425 of 1982

Bhopal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Dharendra Kumar Agrahari (Ac), Bipin Pal Singh

Counsel for Respondent(s) : A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed against the judgment and order dated 25.09.1982 passed by Additional Sessions Judge, Muzaffarnagar in Sessions Trial No.14 of 1988, convicting and sentencing the appellant under Section 392 I.P.C. to four years rigorous imprisonment.

2. Heard Sri Dharendra Kumar Agrahari, learned Amicus Curiae appearing on behalf of appellant and Sri Rahul Asthana, learned A.G.A. for the State.

3. The prosecution case, in brief, is that the informant Om Pal Singh and his colleague Pratap Singh, while returning from their duty on bicycle on 02.12.1981 at about 5.00 p.m., beyond the Bhainswal Jhal were intercepted by 4 miscreants who robbed them of cash, wrist watches and other articles at gunpoint. On alarm being raised, villagers arrived and chased the miscreants leading to the apprehension of three accused persons namely, Lal Singh, Indrajeet Singh and Bhopal. One of the miscreants managed to escape. A pistol and two cartridges were recovered from the accused Lal Singh.

4. On the basis of written report of complainant Om Pal Singh, an FIR was registered, a chik report was prepared and G.D. entries were drawn. A recovery memo of the recovered articles was prepared. After investigation of the case, charge-sheet was submitted.

5. The prosecution has examined as many as five witnesses to prove its case. P.W.-1 Om Pal Singh, P.W. 2 Rishi Pal, P.W.-3 Chand Khan, P.W.-4 head Moharrir Ram Bhagwan, P.W.-5 Sub-Inspector Chander Shekhar.

6. Documentary evidences, written report Ext. Ka-1, recovery memo Ext.

Ka-2 and Ka-3, carbon copy of G.D. Ext. Ka-4, site plan Ext. Ka-5 and charge-sheet Ext. Ka-6, Ext. Ka-7 and sanction for prosecution under Section 25 of Arms Act against Lal Singh, Ext. Ka-8 is on record.

7. The accused persons in their statements recorded under Section 313 Cr.P.C., denied the charges levelled against them and produced D.W.-1 Dr. R.K Sharma and D.W.-02 Dr. D.C. Mobar.

8. The trial court, after appreciation of evidence, convicted the accused Lal Singh for offence under Section 392 I.P.C. read with Section 397 I.P.C. and sentenced him to undergo rigorous imprisonment for a period of seven years. He was further sentenced for offence under Section 25 Arms Act to undergo rigorous imprisonment for a period of one year. Accused Idris and Bhopal is convicted for offence under Section 392 I.P.C. and sentenced to undergo rigorous imprisonment for a period of four years.

8. This criminal appeal has been preferred by appellant Bhopal assailing conviction and sentenced imposed by the trial court. During the pendency of the present appeal, the lower court record was summoned.

9. The learned Amicus Curiae on behalf of the appellant submitted a copy of judgment dated 29.09.2015, passed in criminal appeal No.2397 of 1982 that has been preferred by co-accused Idris arising out of same judgment dated 25.09.1982 passed in Sessions Trial No.14 of 1982.

10. A perusal of the judgment passed in criminal appeal No. 2397 of 1982, Idris Vs. State of U.P. transpires that the record of the trial court had been weeded out. A report was also called from District and Sessions Judge as to whether the reconstruction of the record is possible. The District Judge, Muzaffarnagar has sent his report dated 28.09.2015, stating therein that reconstruction of the record is not possible as no document pertaining to the present case is available either in the record room or at the police station.

11. Learned Amicus Curiae for the appellant has placed reliance upon the judgment of Apex Court, passed in the State of **Uttar Pradesh Vs. Abhay Raj Singh, (2004) 4 SCC 6**, wherein it has been held that when the record is not available and reconstruction is not possible, the appellate court has no option but to allow the appeal. The conviction cannot be sustained in the absence of record.

12. It has also been brought to the notice of the Court that in a connected

appeal No.2397 of 1982, Idris Vs. State of U.P. decided on 29.09.2015, the co-accused was acquitted on the same ground of non-availability of record and no possibility of the reconstruction.

13. The Court has considered the submissions and perused the material available on record. It is an undisputed position that the original trial court record is not available and despite efforts, the same could not be reconstructed. In the absence of the record, it is not possible for this Court to reappraise the evidence and to examine the correctness of the findings recorded by the trial court.

14. The right of the appeal is a valuable statutory right and meaningful adjudication of an appeal is not possible in absence of trial court record.

15. The Hon'ble Apex Court in **State of Uttar Pradesh Vs. Abhay Raj Singh, (2004) 4 SCC 6** has categorically held that when the record is lost and reconstruction is not possible, the only course open is to set aside the conviction and allow the appeal.

16. In view of the aforesaid settled legal principle and considering that the prosecution also suffers from complete absence of record, the Court is left with no option but to extend the benefit to the appellant- Bhopal.

17. The appeal is allowed. The judgement and conviction dated 25.09.1982, is hereby set aside and accused acquitted of charges under section 392 I.P.C.

18. The appellant is on bail. His bail bonds are cancelled and sureties are discharged.

19. A copy of this judgment be transmitted to trial court concerned for necessary compliance.

20. This court appreciates the assistance provided by Sri Dharendra Kumar Agrahari, learned Amicus Curiae, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

March 30, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)