



2026:AHC:60353

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RESERVED ON 22.01.2026

DELIVERED ON 24.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1796 of 1984

Rakesh Pal And Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Rajesh Kumar, B.R. Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 78

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Sri Rajesh Kumar, learned counsel for the surviving appellant no. 2, Sri Ratan Singh, learned AGA-I for the State and perused the record.
2. The instant appeal under Section 374 Cr.P.C., has been preferred by the appellants against the judgement and order of conviction dated 04.06.1984 passed by III Additional Sessions Judge, Mainpuri in Sessions Trial No. 236 of 1982 and Sessions Trial No. 472 of 1982 whereby the appellants were convicted under sections 399/402 IPC and Section 25 of the Arms Act. Each of the appellant was sentenced to undergo rigorous imprisonment for three years under section 399 I.P.C., rigorous imprisonment for two years under section 402 I.P.C. and rigorous imprisonment for one year under section 25 of the Arms Act. All the sentences were ordered to run concurrently.
3. As the Appellant No. 1, Rakshpal and Appellant No. 3 Sahab Singh had died during the pendency of the appeal, therefore, the appeal in respect to the said appellants stood abated on 27.10.2025 and 22.9.2025 respectively.
4. Only surviving appellant Ramesh S/o Chimni Lal is before the Court through his counsel challenging his conviction passed by the learned Trial Court.
5. Brief facts of the case, as discernible from record, appears to be that, on 13.11.1980 at 8:15 P.M., the Station House Officer, Santosh Kumar

Awasthi, posted at Police Station- Khairgarh, District- Mainpuri, S.I. B.L.Varma, PW-2, along with Constable Prem Pal Gautam, PW-3, and Constables Raj Kumar, Keshri Singh, Chiranji Lal, Narayan Singh, Hakim Singh, Ram Khilari and Harish Chandra went in search of wanted accused persons in Crime No.74 of 1980 under section 396 IPC and also in Crime No.-76 of 1980 under Sections 395/397 IPC. During the search, at about 12 P.M., the Station House Officer received an information that 8 to 10 miscreants armed with deadly weapons were making preparation for committing dacoity in Village Kuri, District Mainpuri, near the shala of Chhotey Baba. When the Police Party reached the spot, all persons tried to escape however, the Station House Officer challenged the dacoits and directed constable Raj Kumar to fire VLP, immediately two shots of VLP were fired and there was sufficient light and three accused namely Sahab Singh, Ramesh S/o Chimani Lal, R/o Village-Indumai and Rakshpal were arrested and rest of the accused escaped. The arrested accused disclosed the name of co-accused who fled away from the spot as Ratan Singh, Ram Snehi, Sunahri, Ram Singh, Ramesh S/o Tula Ram and two companion of Ramesh who were known to Ramesh. From the possession of Sahab Singh, one country made pistol of 12 bore and four live cartridges were recovered and from the possession of Ramesh S/o Chimni Lal, one country made pistol of 12 bore and three live cartridges were recovered. From the possession of Raksha Pal, one country made pistol of 12 bore and five live cartridges were recovered. The cartridges recovered from the accused were sealed on the spot and Ex.-ka-3 was prepared by B.L. Varma (PW-2).

6. Accordingly, the Station House Officer got the case registered as Case Crime No. 217 of 1980 under Sections 399/402 IPC on 14.11.1980 at 6.30 A.M., vide GD No. 5 dated 14.11.1980.

7. The Investigation was conducted by PW-4, S.I. N.K Sharma, who was then posted at Police Station Kisni, District Mainpuri and recorded the statement of the first informant and other witnesses under section 161 Cr.P.C., made spot inspection and submitted the charge-sheet against the accused Sahab Singh, Raksh Pal and Ramesh S/o Chimni Lal under sections 399/402 IPC. The accused were further, charge-sheeted under Section 25 of the Arms Act. Rest of the accused namely Sunahri, Ratan Singh and Ram Singh, were charge-sheeted on 06.04.1981 under sections

399/402 IPC. On 29.06.81, charge-sheet was submitted against the accused Ram Snehi and Ramesh S/o Tula Ram under sections 399/402 IPC as absconders. The prosecution sanction was sought from the District Magistrate, Mainpuri against the accused persons namely Sahab Singh, Ramesh S/o Chimni Lal and Raksh Pal under section 25 of the Arms Act.

8. Charges were framed under sections 399/402 IPC and section 25 of the Arms act against all the appellants who pleaded not guilty and claimed to be tried.

9. The prosecution in order to prove its case produced as many as four witnesses. All of whom supported the prosecution case. PW1, Girwar Singh was the Head Mohrir, who proved the Chik FIR and the General Diary. P.W2, B.L. Varma, the Sub-Inspector was examined as an eye-witness, who supported the prosecution case and proved the recovery memo of case properties. PW-3, Prem Pal Gautam, the member of the Police Party, was also examined as an eye-witness who supported the prosecution case and the case property recovered. P.W.-4, N.K. Sharma, the Investigating Officer, proved the charge-sheets submitted under sections 399/402 IPC and Section 25 of the Arms Act and the prosecution sanction obtained from the District Magistrate.

10. The learned Trial Court found the prosecution evidence reliable and trustworthy and convicted the three appellants under Sections 399 and 402 IPC and Section 25 of the Arms Act.

11. The surviving Appellant No. 3, Ramesh, in his defence, denied the prosecution case and asserted that he had been falsely implicated due to enmity.

12. Learned counsel for the surviving appellant argued that there was insufficient light at the spot and it was not possible for the Police Officers to have recognized the appellants in the dark winter night which makes the prosecution case highly doubtful and unbelievable. Further, it has been submitted that all the four prosecution witnesses produced by the prosecution were police personnel and no independent public witness was examined. The first informant S. K. Awasthi, who was the Head of the raiding team was not examined, even the police constable, Raj Kumar who is stated to have fired VLP was not examined which makes the incident highly doubtful. The prosecution even failed to prove any conspiracy between the accused and the evidence about the meeting and

making preparation for dacoity was also very bleak. In case, the appellants were making preparation for dacoity, the country-made pistols recovered from their possessions were not found loaded with a live cartridges and there was no FSL report that the pistols were loaded.

13. It has been submitted that the prosecution could not establish its case under sections 399/402 IPC as regards the participation of the rest of accused whose presence was not found and were not arrested on the spot and were finally acquitted by the Trial Court.

14. In such circumstances, the total number of persons who were arrested on the spot and actually participated in the crime, were only three in number namely Rakesh Pal, Ramesh S/o Chimani Lal and Sahab Singh. As the number of the accused who actually participated in the crime, were less than five, therefore the basic ingredient of Section 391 IPC of dacoity was not fulfilled and the conviction of the accused-appellant No. 2 under Section 399/402 IPC is bad in the eyes of law.

15. Considering the submissions advanced above and from the perusal of records, the appeal deserves acceptance in part.

16. The conviction of the surviving appellant as recorded by the trial Court for the offence under Section 399/402 IPC is hereby quashed and set aside. The appellant No. 2 Ramesh S/o Chimani Lal is hereby acquitted of this charge.

17. The conviction of the appellant Ramesh under Section 25 of the Arms Act by the learned Trial Court does not warrant any interference as the weapon was recovered from the possession of the appellant at the time of spot arrest and the Investigating Officer N. K. Sharma had proved the prosecution sanction, granted by the District Magistrate, Mainpuri and no such plea was taken by the accused-appellant in his statement under Section 313 Cr.P.C. Thus, the Court is not inclined to interfere in the order of conviction recorded by the trial Court for the offence under Section 25 of the Arms Act, which is hereby affirmed.

18. Adverting to the facts of the present case, there is nothing on record to indicate that the appellant Ramesh was a previous convict and that the alleged incident took place on 13.11.1980 and more than 45 years have been passed. Therefore, having regard to the age, character and antecedents of the appellant, the Court is of the opinion that the appellant should be extended the benefit of probation while maintaining the

conviction as recorded by the trial Court.

19. It is directed that instead of sentencing the appellant under Section 25 of the Arms Act, the appellant shall be given the benefit of probation under Section 4 of the Probation of the Offenders Act, 1958 upon entering into a personal bond of Rs. 10,000/- and surety in the like amount to the satisfaction of the trial Court to keep peace and maintain good behaviour for the period of one year. The appellant shall also furnish an undertaking to the trial Court that he shall not commit any offence during the said period. The seized arms stand confiscated to the State.

20. In case, there is breach of any of the conditions, the appellant shall be taken into custody and shall be called upon to undergo sentence imposed by the Trial Court. The bonds and sureties aforesaid be filed by the appellant within two months from the date of the judgment.

21. The appellant is on bail, his bail bonds stand discharged.

22. The appeal is *partly allowed* in the above terms.

23. The trial Court record be returned forthwith.

(Nand Prabha Shukla,J.)

March 24, 2026
Puspendra