



2026:AHC:171222

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2015 of 1985

Chhotey And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Mahesh Prasad Yadav, R.K. Singh. Rajput, Ram Prasad Singh
Counsel for Respondent(s)	: A.G.A.

AFR

Reserved on 14.7.2026

Delivered on 14.8.2026.

Court No. - 90

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellants and the learned AGA for the State.
2. The present criminal appeal has been filed against the judgment and order dated 24.7.1985, passed in Session Trial No. 301 of 1984 by learned Special Judge (DAA), Kanpur Dehat convicting and sentencing the appellants under Sections 392 IPC to undergo RI for five years and fine of Rs. 1000/.
3. Learned counsel for the appellants has submitted that the appellants were not named in the FIR. They have been arrested on the statement of the informer. There is only recovery of one Kambal and one Mosquito net from appellant Chhotey and Ram Balak, respectively. They are easily available in the market. There is no iota of evidence against the appellants/accused. Neither any weapon nor any incriminating material, arms has been recovered from the appellants/accused persons. There was no source of light at the time of commission of offence. The finding recorded by the learned trial court is perverse and the impugned judgment and order is liable to be set aside. The appellants are entitled to be acquitted and the appeal is liable to be allowed.
4. On the other hand, learned AGA has opposed the appeal and he submitted that the prosecution witnesses has fully supported the

prosecution story. Even the victim had recognized their belongings which were looted. There was proper identification parade done and the accused/appellants was duly identified. The appellants have committed a serious and heinous offence. The criminal appeal is liable to be dismissed.

5. Learned counsel for the appellant has relied on the law laid down by the Supreme Court in **Iqbal and another Vs. State of U.P.; 2015 LawSuit(SC) 445**. He has submitted that the evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are subject matter of dacoity and the alleged weapon used in the commission of the offence.

6. He has further relied on the law laid down by the Supreme Court in **Satrughana alias Sastrughan Parida Vs. State of Orissa; 1992 LawSuit (SC) 829**. He has relied that identification parade was held on 10.12.1982 i.e. more than 15 days after the arrest of Rabin Kandy and almost a month after the arrest of the other two accused. The prosecution has not advanced any reason for not holding the identification parade promptly. In other words the prosecution has not placed on record the reason why it was not possible for it to hold the identification parade with promptitude. i.e. soon after arrest. Where the fate of the accused persons hangs solely on the identification by the witnesses who claim to have seen them almost 1 and half months prior to the date of identification. It is the duty of the prosecution to state why the identification parade could not be arranged immediately after the arrest of the accused and without loss of time. Unless there is good reason for the delay, the value regarding the evidence of identification gets adversely affected. This dilution of the evidentiary value of identification by witnesses who claim to have seen the accused at night almost 1 1/2 months back but who did not in their statements before the police or in the first information report reveal any special features for identification is a matter which weighs against the prosecution. It must be remembered that the accused persons are required to be produced before the court latest within 15 days of their arrest and,

therefore, it would be reasonable to infer that they were so produced.

7. Learned counsel appearing for the appellants has further relied on the law laid down by the Supreme Court in **Nirmal Pasi Vs. State of Bihar; 2002 LawSuit (SC) 648**. He relied that in the matter of section 395 and 396 IPC read with Section 9 of the Indian Evidence Act, dacoity with murder, where delay of more than one month in conducting the test identification parade, un-explained, identification not reliable.

8. He has further relied on the law laid down by the Allahabad High Court in **Shyam Singh Vs. State of U.P.; 2002 (2) JIC 490**, that the identification parade was conducted after 35 days of the arrest of the appellant and in all probability the appellant must have been produced twice before the Court for remand to judicial custody. There is no link evidence in this case to show that prosecution had taken all precautions and care to ensure that identity of the appellant was not revealed when he was taken to the Court and produced as required by law. In view of delay in conducting the identification, the possibility that the memory of witnesses regarding face of the appellant would have diminished, cannot be easily ruled out. The Cumulative effect of above facts and circumstances of the case is that no implicit reliance can be placed on the identification made by the witnesses at the test identification parade. Therefore, appellant Shyam Singh is also entitled to benefit of doubt.

9. He further relied on the law laid down by the Allahabad High Court in **Bhup Singh and others Vs. State of U.P.; 2015 (1) JIC 669**, where it is held that non production of torch in the Court also creates a doubt regarding truthfulness of the statements of the witnesses that they had recognized the accused persons in the torch light. In this regard, the Hon'ble Supreme Court in the case of **Manzoor v. State of Uttar Pradesh, AIR 1983 SC 295**, held that the accused persons were identified by the witnesses in torch light but the torch was not produced in Court, the Hon'ble Apex Court held that torch has not been produced in evidence and Investigating Officer PW-12 says in his evidence that he saw those torches and returned them to Home guards. It is not known why the Investigating Officer PW-12 thought it fit to return the torch with the help of which the Home Guards are said to have seen the persons running

away from the scene of occurrence though it was a relevant piece of evidence.

10. In the present case, the FIR had been lodged on 12.8.1978 at 10.30 am, whereas the incident took place on 11/12.8.1978 at 11.00 pm in the night. The FIR has been lodged by Rajendra Singh against four accused persons under Section 392 and 397 I.P.C.

11. Section 392 and 397 IPC are as follows:-

"392. Punishment for robbery.-Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.-If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

12. As per FIR, the complainant has stated that in the night in between 11/12.8.1978 at about 11.00 PM, when he was returning after attending call of nature, I had seen that there were two persons on the roof of my brother, Kunwar Singh. I had doubt that they are miscreants and I had went to call co-villagers. Ram Gopal, Sihan Singh, Balwant Singh, Nanhey, Basant Singh and several other persons came there. They came alongwith torch. We had made noise and on the noise of ourselves, the miscreants by threatening to my Bhabhi ran away alongwith looted property which are being mentioned herein below. They ran way towards north east side and they were four miscreants.

13. These miscreants had been identified and seen by us in the light of torch as well as by the female of the house in the light of burning lantern. We had seen and identified them and if they could put before us, we could identify them and looted goods could be identified by myself as well as female of our family, if looted goods were presented before us for identification. The goods which were looted is as under:

"Saree 2. Blows 3. Kambal 3, Mosquito net white colour 1, Bed sheet 2, Ring golden 1, Nakbesar golden, Chain golden, wrist watch ladies HMT, Transistor, Cash 700/, Passbook. etc.

14. After investigation, charge sheet has been filed against Chhotey and Ram Balak which is Ext. Ka-15. The charges have been framed against them under Section 392 and 411 IPC. No offence was found under Section 397 IPC, hence no charges were framed against the appellants/accused under Section 397 IPC.

15. The complainant/Rajendra Singh-PW-1 has deposed his statement before the learned trial court on 11.5.1983. He deposed in his examination-in-chief that the incident was around 3-4 years ago. It was 10-11 in the night. I was returning from attending the nature call, then I had saw that there were two persons were standing on the roof my brother's house Kunwar Singh. After seeing them I had doubted that they are miscreants. I had returned and called several co-villagers viz. Ram Gopal and others. We had raised huge voice near the house of Balwant. Myself and witnesses had stand towards east side of my house. House of my brother is infront of my house. At the same time, there was voice of firing came from the inside of the house and four miscreant came out from the door of the house. I and witnesses were torches which were lighted. We had seen the faces of miscreants properly. We had tried to catch the miscreants, then the miscreants had made two fires towards ourselves then we had stepped back. The miscreants ran away towards north east. At the time of incident, my brother Komal Singh was not present. His wife and other were present. The miscreants had looted the jewellery which are described in the FIR. Written complaint is verified as Ext. Ka-1. The mosquito net is Ext. K1 and Kambal is Ext. 2. These are identified by me and only these were identified by me. At the time of identification, the four other goods were mixed in the said goods, which were equally appeared to be same. I had not seen the material prior to identification. I had seen these goods in the house of my brother prior to the incident and thereafter saw at the time of identification and now today. I had not seen them in between. There is my signature on the identification memo which is Ext. K-2. We had went to jail for identification of the accused persons. He had put hands on the accused

Ram Balak and Chhotey and stated that they have identified them in jail. At the time of identification, ten accused persons, who were similar to the accused persons were also with the accused person. On the identification memo there is my thumb impression which is Ext. Ka-3. I had seen both the accused person at the time of incident and thereafter seen at the time of identification and today again and apart from it, I had never seen them.

16. The accused persons had left a Lathi in the house of my brother which is present in court which is Ext. Ka-3. The Police Inspector has took it in his possession and made entry in the record. During investigation, the Inspector had seen my torch which I had lighted up at the time of incident and he had returned it to me on running condition in my 'supurdgi' which is Ext. Ka-4. The lantern was lightening at the time of incident inside the house.

17. PW-1 further deposed that the accused persons, Ram Balak and Chhotey are resident of Nahuwa Naugaon which is situated 3-4 Km away from my village. It is belied to state that the agricultural field of my village are adjacent to that village. It is belied to state that Nahuwa Naugaon is situated at a distance of half km. The pradhan of my village resides at Gadaipur. Boys of my village went to Neoran for study. It is belied to state that my niece is studying at village Nahuwa Naugaon. The Inspector has recorded my statement. There is a 'gali' in between my house and house of Kunwar Singh. I had not raised voice after seeing the miscreants. The house of Kunwar Singh is towards north of the village. The house of Ram Gopal, Balwant and Jaswant are towards south side of the village. The village is consisted of 10-12 houses. There was no house towards north side of house of Kunwar Singh. There is no house is adjacent to his house. On the west side, house of Balwant and others are existed. We had constantly raised voice and reached on the spot. When we came, at that time, the accused persons were coming out from the house. The door of Kunwar Singh is towards west side. I had reached at my house, then first time my eyes were gone on the accused person. They were running towards east side. The distance between myself house and Kunwar Singh is 10-15 paces. I was on my door and witnesses were also there. The house of my door is towards east side. It was dark, but I was having torch. I had seen four persons. I could not able to tell which

accused persons was behind. Chhotey and Ram Balak had wore underwear. I could not able to say what was in the hands of these accused person. The accused fled away after firing. I had hidden myself due to fear of the accused. The accused had made two fires. We had chased the accused persons around 50 yards. Two fires were made by them just after coming out from the door of the house. Thereafter, I had not put my torch towards them. Today, I had not brought that torch. I had shown the torch to Inspector. These kind of mosquito are easily available in the market. The accused persons was not arrested before me. I had seen goods in the court at the time of identification. There were 8 Kambal and 5-6 mosquito net, they were mixed with goods. No information has been sent to myself regarding arrest of the accused persons. There were 10-12 persons were also standing up alongwith the accused persons. It is belied to state that I had known to the accused persons prior to it and it is also belied to state that agricultural field of my village is adjacent to the agricultural field of their village. It is belied to state that I was not present at the place of incident. It is belied to state that I am giving false evidence.

18. PW-2. Lejam Singh has deposed in his examination-in-chief that the incident is approximately four years ago at 11 pm in the night. On the day of incident, Rajendra singh has called myself, Sohan Singh, Jaswant Singh, Balwant Singh and Ram Gopal and others, that there are miscreants has entered into the house of his brother. We had went to the house of Rajendra Singh alongwith Torch and Lathi. The house of Kunwar Singh is infront of his house. We had made noise after torching the light. We had heard voice of firing inside the house and four miscreants came out from the door. I had identified them by their faces in the light of torch. We tried to catch the miscreants, but the accused persons had made two round fire towards us, hence due to fear we had stopped and the accused persons fled away towards east side alongwith goods. Kunwar Singh was not present at the house. His wife was present. She has told about details of looted material which have been mentioned in the report. At the place of incident, the accused persons had left their Lathi on the spot which is Ext.- 3 which was taken into possession. The mosquito net and blanket which is present in the court Ext. 1 and Ext. 2. They are belong to Kunwar Singh. The accused persons had looted these

materials alongwith other goods. I had identified them. At the time of identification 4-4 goods were mixed with this goods which are similar to these materials. My thumb impression is on the memo which is Ext.K-2. I had seen the goods in the house of Kunwar Singh prior to the incident. Thereafter, I had seen it after identification, meanwhile I had not seen these goods. I had went to jail for identification of the accused persons, where I had identified the accused. He put his hands on the accused Chhotey and Ram Balak that these were the persons who were involved in the said loot and I had identified both of them in jail. I had not saw them anywhere else.

19. In his cross-examination, he stated that I do not know Nauha Naugaon which is 3 and 3 1/2 mile away. It is belied to state that Nauha Naugaon village is situated at a distance of half mile. Rajendra Singh, complainant is my brother. My house is infront of house of Rajendra Singh. It was month of sawan and night was dark. When I had exited from the house, then accused persons were ran away. when we had chased them, then the accused persons had fired by the country made pistol. The accused Chhotey Lal was having pistol. He had fired by pistol. What is in the hands of other accused persons, I could not able to see. I had not told that Chhotey Lal had committed fire by pistol.

20. In the cross-examination, he has further stated that when the miscreants were running, at that time, he was inside the house. On the call of several persons, after 4-5 minutes I came outside. I do not have any torch. I had chased the miscreants. The miscreants were 200 yards away and they were running. I had chased the miscreants upto one agricultural field. We were having lathi and danda. The miscreants had committed fire by moving on backside, then we had hided ourselves. When miscreants had fired, then we were approximately 100 yards away from the miscreants. When we reached to the house of Kunwar Singh, then his wife told that we were looted. Thereafter we had chased the miscreants. I am dewar of Saraswati Devi. Rajendra Singh is my real brother. I routinely come into the house of Saraswati Devi. After seeing the mosquito net in court Ext.-1, the witness stated that these kind of mosquito net is easily available in the market, but this net is of Armed forces. After arrest of the accused, the information was sent by the police

for identification. At the time of identification, 4-4 and 5-5 mosquito and kambal were mixed with these material. it is belied to state that mosquito Ext. K-1 and blanket Ext.-2 were shown to me at the police station prior to the identification. It is also belied to state that the accused person were also shown to us at the police station prior to identification. Nauha Naugaon is approximately 3, 3 1/2 mile away from my village. It is belied to state that Nauha Naugaon is only 1 1/2-2 furlong from my house. I had not seen Nauha Naugaon, because I never used to go there. I had never visited to. None of the girls of of Saraswati had studied in Nauhanaugaon. The police has recorded my statement after 5- 5/12 years of the incident. The signatures were also made by myself by the Inspector on the said statement. I had not told physical description of accused persons to anybody. It is belied to state that neither I had seen the accused persons at the time of alleged dacoity nor they had committed any act of dacoity.

21. Smt. Saraswati Devi has deposed as PW-3 before the learned trial court. She has stated that approximately six years ago, it was 11 pm in the night, four miscreants has committed loot in my house. Two miscreants were having country made pistol and two miscreants were having Lathi. At the time of incident at night, myself and my sister Jaleshwar were present in the house. The miscreants had shown country made pistol to myself and threatened to myself and get opened the lock of Kachcha room and they took myself into that room and thereafter opened the lock of the Box. the miscreants had looted four sarees, three blows, watch, radio, gold chain of neck, golden bala, golden rin and golden besar and 700 cash. The blanket and mosquito net, passbook and other were looted. The lantern was on at that time in my house. when miscreants had took myself into the room for purposes of loot then it also took the lantern. The miscreants were having the torches. There were light by that torches too. I had seen the faces of the miscreant in the light of lantern and torch. After going of the miscreants, I had provided all details of looted goods to my dewar Rajendra Singh and he had given information to the police station regarding it. The Inspector came to the village. he had enquired. He had saw my lantern and prepared its memo. After seeing her signature on the memo, she identified that it is that memo which is ext. ka-5. I had

identified the miscreants in jail. After seeing the accused persons in court, the witness stated that they are the same miscreants who had been identified by her in jail. I had seen first time in my house when they have looted in the house. Thereafter, i had seen them in jail at the time of identification; in between I had not seen them in jail. I had not known them prior to the incident. I had not seen them prior to incident. She further stated that I came for identification of blanket and mosquito net which were recovered from the accused persons. Both these looted material were in the house of myself prior to the incident. I had seen both these material after loot at the time of identification. I had not seen those material in between loot and proceedings of identification. She had verified her signature on the memo of recovery Ext. -2. She further stated that my daughter went to study to adjacent village Nauha Naugaon. The accused are residents of Nauha Naugaon. There is Bamba towards east side of my village. After crossing Bamba, there is Nauha Naugaon. there is user in between my village and Nauha Naugaon. The agricultural field of both the villages are adjacent to each other. there is no other agricultural field in between them. I do not know whether distance between both the villages is 1 km or less than one km. My sister was sleeping near to me. Due to month of Sawan as well as fear, lantern was burning. Lantern was always on. None of my real sister is married in village Nauha Naugaon. My husband had went to Nauha Naugaon for admission of my daughter in the school. Neither myself nor Rajendra Singh are used to visit Nauha Naugaon. The fee of school is deposited by my daughter. there are several persons of my village are studying in Nauha Naugaon. The panchayat of my village is held in Nauha Naugaon. I was sleeping in pakka room and lantern was also on at that place. The door is towards north side. Lantern was on, in between the door. At the time of sleeping I use to slow down the light of lantern. I had not brought that lantern today. The lantern was hanging on pin. When the Inspector came at the place of incident, then also the lantern was there. I had frightened when miscreants came. After arrival of miscreants, I had done whatever direction were given by the miscreants to myself. After put down my neck. The miscreants had committed loot-pat approximately one hours. My house is situated outside of the village around 3-4 field away. There are 4-5 houses near to my house. The houses of witness Balwant,

Jaswant and Nanhey are adjacent to my house. The house of Ram Gopal is towards north of my house. There is pit between them. At the south side there is house of my uncle, but no one is residing in that house. At the time of incident, my uncle was residing in that house. The field of Mewa Lal Yadav is situated towards east side. After the field, there is no house in east side. Houses of Ram Singh, Balwant Singh and Sohan Singh are towards south west of my house. The house of Jaswant and Nanhey are towards south side of my house. My agricultural field is near to my house. the miscreants had hit one Lathi. When Rajendra Singh, Balwant Singh and Jaswant came, at that time I was weeping. My sister was also weeping. We were weeping inside the house. When the witnesses came to my house, the miscreants had ran away prior to half hour on arrival of them. Rajendra Singh is my real dewar. When the witnesses came, then I had told them that I had been looted. The entire goods of myself had gone. The witnesses after their arrival saw the boxes and other goods. Rajendra is doing business of sale and purchase of Galla from the neighbour village. I had narrated the description of mosquito net and Kambal to Rajendra. I do not know whether these type of items is available in the market or not. They are not manufactured in my house. I had described the feature of the accused persons to Rajendra on his arrival and also told to the Inspector. The witness Lejam Singh is also my Dewar. I had also narrated the feature of miscreants to him. These persons/witnesses had asked the feature of the miscreants. I had also told age of dacoits to the witnesses and Inspector. If feature of miscreants had not been recorded by the Inspector in my statement, then I am unable to give any reason to it. No body has told this fact to me that Ram Balan and Chhotey of Nauhanaugaon were among the dacoits. Both the miscreants were wearing white waist (Baniyan) and due to darkness, the colour was not visible. I had got no information about arrest of the accused. After six month, I had got information from the police station that the accused had been arrested. I had not visited to the police station. It is belied to state that the accused person had shown to me at the police station. I had went to jail after six month for identification of the accused person. It is belied to state that both the accused had been shown to me prior to their identification in jail. I had seen the accused person in jail at the time of identification only. I came to Kanpur for identification of goods. It is

belied to state that the accused persons were residing nearby to me, hence i had known to them prior to the incident. It is belied to state that the accused person had not committed any dacoity in my house. It is belied to state that I am recording false evidence due to pressure of the police.

22. PW-4, Raghuraj Singh. S.I. Police Station Kotwali, Banda, district Banda. He had prepared check FIR and prepared GD entry and verified as Ext. Ka-6 and Ext. Ka-7 and prepared site plan which is Ext. Ka-8. I had prepared memo of Lathi which has been left by the accused person. I had prepared memo of three Khokha from the spot which is Ext. Ka-9 and 10. The lantern that was on at the time of incident, I took it in possession which is Ext. Ka-5 which is given in the supurdgi of Saraswati Devi. After seeing the torch of Rajendra Singh, I had took it my possession and thereafter I had given the torch in his supurdgi. The memo is Ext. Ka-4. I had also took the torch of witness Ram Gopal and after seeing it given the torch in his supurdgi which is Ext. Ka-11. I had also seen the box which were broken by the miscreants and prepared Ext. Ka-12. I had recorded the statement of Balwant Singh, Kunwar Singh on 28.8.1978. I had recorded the statement of witness Lejam Singh and other witness on 29.12.1978. I had arrested the accused Chhotey and Ram Balak. I had arrested the accused Chhotey from his house. I had also recovered on his pointing out the looted goods from the box and prepared its memo Ext. Ka-13 and returned to the accused and made memo on the spot. I had arrested Ram Balak from his house. The accused had recovered one blanket under one bag of Bhusi in his house which was taken into possession and memo was prepared which is Ext. Ka-14. I had put veil on the accused Ram Balak and thereafter, we took the accused persons to police station and deposited the goods at Malkhana and the accused persons were detained in Hawalat. The accused persons were remained in veil at the police station and thereafter, they have been sent to District Jail, Kanpur. Thereafter, I had submitted charge sheet which is Ext. Ka-15 and prepared site plan of recovered goods from the house of accused which is Ext. Ka-16 and 17. I had recorded statement of Surjan Singh and Onkar Singh, witness of recovered goods on 22.12.1978. He further stated that the case was registered in his presence at the police station. I had visited the place of incident. Lejam Singh was not met me on the spot on

12.8.1978. I had recorded the statement of Lejam Singh after one and half month of the incident because he was not available prior to it. Whatever statement was recorded, prior to 29.12.1978, none of the witnesses has stated that Lejam Singh had seen the incident. Firstly, Lejam Singh had told on 29.12.1978 that he had also seen the incident. In the statement of Rajendra Singh, he told that at the time of incident, he was coming after attending call of nature. It is belied to state that I had not recorded statement of Lejam Singh. The villages of accused persons were approximately 3 and half km away from the spot and there was no village in between them. It is belied to state that village of accused person is only one km away from the incident and the agricultural field of that village are adjacent to each other. There was no search were took place prior to 22.12.1978 because prior to this date, name of accused persons were not came into existence. The informer had told the name of accused. I had recorded about informing of informer in the case diary. the houses of accused, Ram Balak and Chhotey are near to each other. The house of Ram Balak is in between village and the house of accused Chhotey is in between abadi of the village. It is belied to state that there was no recovery from the house of Chhotey Lal and Ram Balak and I had shown its recovery falsely. It is belied to state that the accused person were shown to the witnesses at the police station. It is belied to state that I had not conducted proper investigation and recording false evidence against the accused persons.

23. Hargovind Sahai has deposed as PW-5. He deposed that on 12.2.1979, he was posted as Special Executive Magistrate. On that date, I had conducted the identification of the accused persons, Ram Balak and Chhotey in district Jail Kanpur. the name of the witnesses had been read over to the accused persons and whatever they has stated that had been recorded in the memo in column no.1. The special identification of the accused persons were recorded in column no. 3 of the memo. There was 10 under trial prisoners were mixed with each accused persons. The witnesses were called one by one and after identification each was put to sit at separate place. From that place, they would not be able to contact with the witnesses nor made any sign. The conclusion of the proceedings of the identification is that the witnesses Rajendra has duly identified

Ram Balak and Chhotey and committed no fault. The witness Smt. Saraswati has duly identified Ram Babal and Chhotey and she has committed no fault. The witness Lejam Singh has also properly identified the accused and has not committed any fault. On 12.2.1979, I had completed identification. the proceedings of recovered goods was made in the closed room of the court. Both the item i.e. Blanket and mosquito net were properly identified by witness Rajendra Singh, Lejam Singh and Smt. Saraswati. None of the witnesses recorded any statement about accused, hence, no statement is recorded in the memo.

24. Surjan Singh has recorded his statement as DW-1. He is resident of Nauhanaugaon. He has stated that both the accused persons belong to his village Nauhanaugaon. There was no recovery made of any looted material of them before himself from their houses. The Inspector of the police station has called me at the police station and made my signature on the paper. What was written on the paper that has not been read over to me. There was no person in the name of myself as well as in my father's name in the village. Approximately 6 1/2 to 7 years ago, I had made signature on a paper on the instructions of the police. I had made signature on 2-3 pages. Said pages was of line. I had made my signature on left side on these three papers. Signature was made on the back i.e. behind, it is not in my memory. I am not much educated that I can ask the police why are they taking signature on these papers. Both accused persons ware of my village. It is belied to state that I have recorded this false statement to save the accused persons.

25. The statement of both the accused persons were recorded under Section 313 Cr.P.C. They have denied all the allegation and stated that they have been implicated falsely in the said case due to enmity. The police had arrested myself Chhotey from the house. The accused Ram Babal has also denied all the evidences made against him.

26. Having considered the submissions of learned counsel for the parties and carefully examined the evidence on record, this Court finds that the prosecution case rests substantially upon the identification of the appellants by the prosecution witnesses and the alleged recovery of one mosquito net and one blanket.

27. The incident admittedly occurred during the night. Although PW-1 and PW-3 have stated that the appellants were identified in torch and lantern light, the torch allegedly used by the witnesses was not produced before the Court. Further, the prosecution witnesses did not give any distinctive physical description of the assailants at the earliest opportunity. The statement of PW-2 was also recorded after considerable delay, which creates doubt regarding his presence and identification.

28. The test identification parade was conducted after several months of the incident and arrest of the appellants. In the absence of a satisfactory explanation for such delay and in view of the possibility that the accused persons may have been exposed to the witnesses before the identification proceedings, the identification evidence cannot safely be treated as sufficient to sustain the conviction by itself.

29. The alleged recovery of the blanket and mosquito net also does not furnish strong corroborative evidence, particularly when the witnesses themselves admitted that such articles were readily available in the market and no distinctive identifying mark was shown. No weapon alleged to have been used in the occurrence was recovered from either appellant.

30. In these circumstances, the identification evidence, the delayed test identification parade and the alleged recovery, when considered cumulatively, do not establish the guilt of the appellants beyond reasonable doubt. The appellants are, therefore, entitled to the benefit of doubt.

31. The prosecution has failed to prove its case beyond reasonable doubt against the appellants. In view of all the discussions made herein above, the impugned judgement and order dated 24.7.1985, passed in Session Trial No. 301 of 1984 by learned Special Judge (DAA), Kanpur Dehat, is liable to be set aside and is hereby set aside, accordingly. The appellants are acquitted of all the charges. They are on bail. Their bail bonds are hereby cancelled and sureties are discharged.

32. The appeal is **allowed** accordingly.

33. Before parting with the matter, this Court records its appreciation for

the sincere assistance rendered by Mr. Shazib Ali Khan (Research Associate) in researching the legal issues involved.

(Abdul Shahid,J.)

August 14, 2026

sfa/