



2026:AHC:179062

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2921 of 1982

Krishna Pal and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: A.b.l.gaur, Shashi Kumar Mishra
Counsel for Respondent(s)	: A.G.A.

A.F.R.

Reserved on: 15.07.2026

Delivered on: 25.08.2026

Court No. - 76

HON'BLE SAMIT GOPAL, J.

1. This appeal under Section 374 (2) Cr.P.C. has been preferred by the appellants- Krishan Pal, Santu, Ram Lal, Chandrapal and Munshi Singh against the judgment and order dated 02.11.1982 passed by the Additional District & Sessions Judge (Special Court), Etah in Special Sessions Trial No. 11 of 1982 (State Vs. Krishan Pal and 04 others) convicting and sentencing the accused-appellants for offence under Section 396 I.P.C. for 10 years rigorous imprisonment.

2. During the pendency of this appeal the appellant no.1- Krishan Pal, appellant no.3, Ram Lal and appellant no.5 Munshi Singh died and thus their appeal stood abated vide order dated 19.08.2016. The appeal of the appellant no.4 Chandrapal also stood abated vide order dated 16.09.2021. The appeal thus survives with regard to the appellant no.2- Sattu only now.

3. An application dated 30.12.1981 was given by Dharendra Pal Singh s/o Atar Singh of which Chandrabhan Singh s/o Tilak Singh was

the scribe alleging therein that his village is near Swargdwari. Mahavira Ahir of Swargdwari is a miscreant since before and for his arrest by the police Atar Singh the father of the informant had helped the police due to which he had an enmity with his father and family members. Since the last some days Mahavira has formed a gang due to which his father mostly used to live in Etah. Today he, his father Atar Singh, chacha Raghunath Singh and persons of village namely Jwala Prasad, Badam alighted a bus and were going towards village on foot wherein at about 4 pm when they reached a culvert in front of Chehka village then from the side of Chehka village Mahavira along with 12 miscreants who were armed with firearms came and told his father that they were in search of him since long and today they have met him and fired on his father immediately on which his father who was carrying his licensed SBBL Gun No. K432 fired on them due to which two miscreants received injuries and there was commotion on their side after which they took shelter and challenged miscreants and moved toward Dariyabganj on its road near a place where mud was collected then the fire from the miscreants side hit his father who fell down and as soon as they picked him up and started running the miscreants resorted to more fire and his father fell on the roadside. Amongst the miscreants Mahavira, Munish Lal, Chandrapal, Ram Lal, Kishan Pal and Sattu were seen by them and identified but they can identify the other miscreants if they come in front. Amongst the miscreants Chandrapal Ahir took away the gun of his father and the other miscreants dragged the two other injured miscreants and went towards Chehka side. On the sound of fire people of nearby came there. A report be lodged and action be taken. The said application is Exb:Ka-1 to the records.

4. On the basis of the said application a first information report as Case Crime No. 224 / 1981, under Sections 147, 148, 149, 302/404 I.P.C., Police Station Patiyali, District Etah was lodged on 30.12.1981 at about 17:45 hours against Mahavira, Munshi Lal, Chandrapal, Ram Lal, Kishan Pal and Sattu and 12 armed unknown miscreants. The chik FIR is Exb:Ka-15 to the records.

5. Blood stained mud and plain earth was recovered on 31.12.1981. The memo of the same is Exb:Ka-9 to the records.

6. Four 12 bore empty cartridges were recovered lying near the dead body of Atar Singh. The same were taken into possession by the Investigating Officer on 31.12.1981. The memo is Exb:Ka-16 to the records.

7. The postmortem examination of Atar Singh was conducted on 31.12.1981 at 3:00 pm by Dr. S.K. Sharma. He found the following injuries on his person:-

"1. Fire arm wound of entry 2 cm x 2 cm x through on left side of face just in front of ear. Direction inward and upward.

2. Fire arm wound of exit whole of front half of head blasted off with skull fractured into many pieces.

3. Fire arm wound of entry 1 1/2 cm x 1 1/2 cm x through on left front side of neck 5 cm below ear.

4. Fire arm wound of exit 5 cm x 6 cm on right side of face including lower part of ear.

5. Firearm wound of entry 2 cm x 2 cm on right side front of chest 5 cm medial to nipple at 2 O' Clock position. Direction downward and backwards.

6 Fire arm wound of entry 4 cm x 4 cm over left nipple.

7. Fire arm wound of entry 3 cm x 2 cm on left upper part of abdomen, 3 cm above umbilicus at 10 clock position.

Loops of intestines protruding out. Direction of injury no.6 downwards, backwards and left to right and that of injury no.7 backward and from left to right.

8. Contusion 3 cm x 2 cm on left side abdomen. 5 cm below and lateral to umbilicus.

9. Fire arm wound of exit 1 1/2 cm x 1 1/2 cm just above right sup.-anti iliac spine.

10. Fire arm wound of exit 1 1/2 cm x 1 1/2 cm on right side of back lower part.

11. Firearm wounds of exit (two) on either side of vertebral column in the middle part of back 1 1/2 cm x 1 1/2 cm each.

12. Fire arm wound of entry 2 1/2 cm x 2 cm on anterolateral aspect of left thigh middle part.

13. Fire arm wound of exit four in number, 1 cm x 1 cm to 1 1/2 cm x 1 cm on inner aspect and middle part of left thigh. Underlying bone fractured. One big pellet recovered from under lying muscular tissue."

The cause of death was as under:-

"Death was due to coma & syncope as a result of AMIs"

The doctor found the scalp to be grossly lacerated. The skull was found to be fractured at multiple places. The membranes were grossly lacerated. Brain matter was lying out separately. 4th, 7th ribs of left side and 3rd to 5th ribs of right side were found fractured. Pleura was lacerated on both the sides. Both the lungs, pericardium, heart were lacerated. The aorta was also having laceration. The peritoneum, oesophagus, small intestines, large intestines, gall bladder, right kidney were lacerated. Fourteen big pellets, one metallic piece, one piece of yellow metal and four gutta pieces were recovered from the body. The said report is Exb:Ka-2 to the records.

8. The site plan of the place of occurrence as prepared on 02.01.1982. The same is Exb:Ka-12 to the records.

9. The investigation concluded and a charge-sheet No. 22 dated 15.03.1982 was filed against accused Kishan Pal, Sattu, Ram Lal, Chandra Pal and Munshi Singh for offence under Section 393 I.P.C., the same is Exb:Ka-13 to the records.

10. Vide order dated 13.04.1982 passed by the Additional District & Sessions Judge (Special Court), Etah charge under Section 404 I.P.C. was framed against Chandrapal. Further vide order dated 13.04.1982 passed by the Additional District & Sessions Judge (Special Court), Etah charge under Section 396 I.P.C. was framed against Kishan Pal, Sattu, Ram Lal, Munshi Singh and Chandra Pal. Alternatively charge against them under Section 147, 302 read with Section 149 I.P.C. were also framed. They were read over the charge which was explained to them who pleaded not guilty and claimed to be tried.

11. The prosecution in order to prove its case produced and examined Dharendra Pal Singh the first informant and son of the deceased Atar Singh as P.W.-1, Raghunath Singh the chacha of the first informant and

brother of the deceased as P.W.-2, Badam Singh as P.W.-3. All the three witnesses were alleged to be eye-witnesses of the incident. Amongst the formal witnesses Head Constable Munna Lal was examined as P.W.-4 who took the body of Atar Singh for postmortem, Dr. S.K. Sharma as P.W.-5 who conducted the postmortem examination on the body of Atar Singh and S.I. S.P. Singh the Investigating Officer of the matter as P.W.6.

12. P.W.-1 Dharendra Pal Singh is the first informant of the matter and son of the deceased Atar Singh. He states that Tilak Singh is his grandfather who had two brothers namely Dhara Singh and Bhawani Singh. Bhawani Singh had three sons namely Gulab Singh, Raghubir Singh and Jagveer Singh. Gulab Singh and Raghubir Singh are dead. Dhara Singh had three sons namely Govan Singh, Nawab Singh, and Jodha Singh. Tilak Singh has seven sons. Atar Singh was his father who was murdered in this incident. Raghunath a witness in the matter is his chacha. Mahavira dacoit was a priced dacoit and resident of Swargdwari. Mahavira had enmity with his father as his father had helped the police in his arrest. Mahavira had a gang of his own. His father was terrified from them due to the said reason. Around 4 ½ months back his father was murdered. On the said day he, his father Atar Singh, chacha Raghunath and Jwala Khatik were going to their village Patiyali. They came to Dariyabganj by bus and then were going to their village on foot. When they reached the culvert in village Chehka then Mahavira and his 12-13 people coming from the side of Chehka were seen. Mahavira then exhorted his father Atar Singh and stated that he has met him after a long time and started firing upon him on which his father also fired from his gun. About 10-12 rounds of fire were done. They while firing started running. From the fire of his father two miscreants got injured. Mahavira and his companions also fired. The firing done by them on his father due to which he died. Amongst the people with Mahavira he saw Munshi, Ram Lal, Chandrapal, Kishal Pal and Sattu at the place. He saw other persons also but does not know their names and thus cannot tell their names. He identifies Chandrapal, Sattu, Munshi, Ram Lal and Kishan Pal. Chandrapal had taken away the gun and belt with cartridges of his

father and the other miscreants had taken away the two injured towards the village. He got a report transcribed from Chandrabhan and gave it at the police station. Whatever he stated was written in it. He proves the same as Exb:Ka-1.

13. P.W.-2 Raghunath Singh is the chacha of the informant and the brother of the deceased Atar Singh. He states that about 4 ½ months back on 29th he had gone to deposit his electricity bill in Etah and was returning back on the 30th. He purchased some items from Patiyali Bazar and was returning back by bus. His brother Atar Singh, informant Dhirendra Pal Singh, Jawal Prasad and Badam of the village came up to Dariyabganj. When they were coming to their village Dariyabganj then in the evening near the field while on the culvert Mahavira, Kishal Pal, Sattu, Mahoka, Munshi, Chandrapal, Ram Pal and Majnuwa who were identified by him along with 6-7 other people all armed with firearms in which some had rifles came. Mahavira told his brother Atar Singh that he has met after a long time and he was searching for him and fired on his brother. In response his brother fired from his gun. People from behind also fired on his brother. The people with Mahavira started firing from different places which hit his brother. From the firing done by his brother two miscreants received injuries. When his brother climbed on the mud mount he was hit by fire shots therein. He fell down after receiving firearm injuries. He tried to move from the place and the miscreants kept on firing on his brother which hit him and he died. Subsequently Chandrapal took the gun and belt of cartridges of his brother. The other miscreants carried the injured with them. After about 15 minutes of their going back he and others went to his brother Atar Singh and found him to be dead. As they were not near Atar Singh they cannot tell whether Atar Singh was alive or dead when the gun and cartridges were taken away. He identified Kishan Pal, Munshi, Ram Lal, Chandrapal and Sattu as the accused present in Court.

14. P.W.-3 Badam Singh is an independent person and an alleged eye-witness of the incident. He states that about 06 months back he was going from Patiyali to his village. They came to Dariyabganj by bus then

started going to the village by foot. Along with him Jwala, Dharendra, Atar Singh, Raghunath were also coming. Atar Singh was carrying his licensed gun. They reached the culvert at about 3:30 – 3:45 pm. The gang of Mahavira came from the side of Chehka. Kishan Pal, Sattu, Ram Lal, Chandu, Ujveer, Bataika, Udaiveer, Katingra, Kali Charan, Majnu, Chadra Rupa @ Chandra Pal, Tirloke and Mahavira came. Amongst the accused present in Court he identified Sattu, Chandra Pal, Munshi and Kishan Pal. Mahavira on seeing Atar Singh stated that they were in search of him for a long time. Mahavira fired on Atar Singh in reply of which Atar Singh also fired. The persons accompanying Atar Singh were not carrying firearms with them but the persons accompanying Mahavira were carrying firearms with them. Atar Singh asked them to move back. Atar Singh while firing started moving back. When Atar Singh climbed the ramp then he was hit with shots. He was hit on the thigh. He opened his cloth and tied it at the said place. He then moved 50 steps back and the persons with him moved 100 steps back. Atar Singh then fell down. The miscreants fired on Atar Singh. Due to the said firing Atar Singh fell down and then the miscreants took away his gun. Chandra Pal snatched his gun and belt of cartridges. The two miscreants who were injured were taken away by tying their hands and legs by the other miscreants. He and other persons came to Atar Singh and found him dead. On a question as to whether the other people along with Mahavira had also fired, he states 'Yes'.

15. P.W.4 Head Constable Munna Lal gave an affidavit dated 24.07.1982 stating that on 31.12.1981 he was posted as Constable in Police Station Patiyali. On the said day he, Constable Ram Naresh and Mohar Pal took the dead body of Atar Singh in a sealed condition for postmortem to the doctor. The dead body was sealed till it was in their possession and no one tampered with it or saw it. He was not cross-examined.

16. P.W.-5 Dr. S.K. Sharma was posted as Medical Officer, District Hospital, Etah on 31.12.1981. He states that he conducted the postmortem examination of the deceased Atar Singh on the said day at

about 3 pm. He proves the postmortem examination which was Exb:- Ka-2. He discloses the cause of death and also states that death could have occurred on 30.12.1981 at about 4 pm due the injuries received.

In his cross examination he states that the injuries having contusion on the abdomen of the deceased were caused by blunt weapon and not by firearms.

17. P.W.-6 S.P. Singh is the Investigating Officer of the matter. On 30.12.1981 he was posted as S.H.O. of the Police Station Patiyali. He conducted the inquest on the body of the deceased and prepared the relevant documents and sent it for postmortem. He further conducted the spot inspection and did the recoveries. He interrogated the witnesses. He arrested one accused whereas the other surrendered on 02.01.1982. He completed the investigation and submitted the charge-sheet. He states that the chik first information report was prepared by Constable Clerk Om Prakash in his presence. He proves his writing and also proves the corresponding G.D.

18. The accused in their statements under Section 313 Cr.P.C. denied the prosecution story in full.

19. The surviving accused-appellant Sattu stated that his father Suraj Singh was a witness in the case of Atar Singh and Geetam Singh. The accused Kishan Pal is his chacha. The other accused denied the prosecution version and stated of false implication.

20. The trial court finding that in the present case Mahavira gang which was a notorious gang of dacoits and used to commit dacoity and in the present occurrence gun and cartridges were looted and so the offence committed by the accused comes within the definition of Section 396 I.P.C. and not under Section 302 I.P.C. read with Section 404 I.P.C. and came to a conclusion that the prosecution has proved its case beyond reasonable doubt against all the accused under Section 396 I.P.C. and thus convicted and sentenced them as above.

21. Heard Sri Shashi Kumar Mishra, learned counsel for the appellants and Sri Ajay Singh, learned A.G.A.-I, Sri V.D. Ojha, learned A.G.A. for the State and perused the records. The paper book of the

matter is ready which has also been perused. The trial court records are also tagged which have also been perused.

22. Learned counsel for the surviving appellant submits that the appellant has been falsely implicated in the present case. It is submitted that no specific role has been assigned to the appellant. It is further submitted that the appellant has been acquitted of the charges levelled against him of murder which was the common object of the unlawful assembly but the case as of now stands of dacoity with murder in which the allegation is of snatching the gun and belt with cartridges of the deceased Atar Singh by co-accused Chandra Pal after shooting him. It is further submitted that father of the first informant Atar Singh, his uncle Raghunath Singh (P.W.-2) and one Geetam Singh surrendered in a case in which some ghee was seized from the house of Jhandu and were released on bail. In the said case Jhandu and Geetam Singh were convicted and sentenced. An appeal against the said order was pending. Further it was made clear that Kishan Pal and Surat Singh the father of the accused Sattu did not appear as witness in the said case. It is submitted that thus the appellant had no enmity with the deceased. It is further submitted that enmity, if any, was between the deceased Atar Singh and Mahavira since Atar Singh had helped the police in his arrest. It is submitted that as per the prosecution case itself Mahavira had died and was not tried. It is submitted that the entire prosecution version would go to show that the deceased along with the other alleged eye-witnesses after alighting from the bus were walking to their village wherein all of a sudden Mahavira and his associates met them on the road who was challenged and firing from both the sides took place in which Atar Singh died. It is submitted that in no event of the matter the case would fall under Section 396 I.P.C. as the group of Mahavira met them accidentally and were not having any such motive or intention to commit dacoity at the first instance and in its pursuance murder took place. It is submitted that in so far as the appellant is concerned, there is no overt act assigned to him. It is submitted that thus the present appeal be allowed the conviction & sentence of the appellant be set-aside.

23. *Per contra*, learned counsel for the State opposed the submissions and the appeal and submitted that the appellant is named in the first information and is a member of a gang of dacoits. They murdered Atar Singh and looted his gun and belt of cartridges and thus the conviction and sentence as recorded is just and proper. It is submitted that the appellant has been assigned the role of firing on the deceased along with other persons and the cause of death of Atar Singh was due to the said firearm injuries which corroborates with the prosecution version. It is further submitted that there were three eye-witnesses of the incident namely Dharendra Pal Singh P.W.-1, Raghunath Singh P.W.-2 and Badam Singh P.W.-3 who have corroborated the prosecution version. It is submitted that the gang of Mahavaria along with Mahavira had come for dacoity of gun and in that even fired upon Atar Singh and killed him and then took his gun and belt of cartridges and thus conviction and sentence as recorded is just and proper. It is submitted that the present case thus is proved beyond reasonable doubt and the appeal deserves to be dismissed.

24. After having heard learned counsel for the parties and perusing the records, it is evident that the case of the prosecution as per the first information report is that the first informant Atar Singh the deceased, Raghunath Singh, Jwala Prasad and Badam Singh were going to their village on foot after alighting from bus at Dariyabganj. When they reached a culvert in village Chehka Mahavira with his 12 associates came there and challenged Atar Singh on the ground that he had been under search since long and immediately fired upon him. Atar Singh in response also fired from his gun which hit two miscreants. Firing then was resorted from the side of the miscreants which hit Atar Singh and he died. Chandra Pal co-accused took away the gun of Atar Singh and his belt with cartridges. They then took the two persons injured from there side and went away. The prosecution story thus shows that the meeting of the first informant and the presence of Mahavira and his associates was all of a sudden. The intention of the accused thus as per the prosecution case cannot be said to be of dacoity with murder. As per the

prosecution version the side of the first informant and the side of the accused met all of a sudden and were challenged due to the enmity between Atar Singh and Mahavira. There is no evidence brought on record to show that Mahavira had a gang of dacoits including the surviving appellant. At this stage section 396 I.P.C. would be relevant to be read. It reads as under:-

"396. Dacoity with murder.—

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

25. The reading of Section 396 I.P.C. would go to show that the first event in the same is of one or five or more persons conjointly commit dacoity as the first act and then in committing the same commit murder then everyone of those persons shall be punished as per the said section. Dacoity is defined in section 391 I.P.C., the same reads as under:-

"391. Dacoity.—

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

26. In the present case the nexus between the act of committing dacoity and murder while committing so is not established. The prosecution case is to the effect that while going on the road all of a sudden both the parties met each other and then Mahavira challenges Atar Singh on account of his previous enmity and fires upon him on which in defence Atar Singh fires in which two miscreants received injuries and further group of Mahavira fired on Atar Singh due to which he received injuries and died after which a co-accused Chandra Pal goes and takes away the gun and belt of cartridges of Atar Singh. Thus the prosecution story in no manner is consistent of the conviction as recorded under Section 396 I.P.C. of dacoity with murder. It is also relevant herein that despite firing by so many persons no other person

was injured from the side of the first informant. There is no recovery of any incriminating material either from the possession or pointing out of the appellant. Thus the prosecution has failed to establish that dacoity was the first intention and in committing dacoity murder was committed. The conviction thus as recorded under Section 396 I.P.C. fails.

27. The accused-appellant no.2- Sattu is acquitted of the charges levelled against him. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

28. The appeal is **allowed**.

29. The judgment and order dated 02.11.1982 passed by the Additional District & Sessions Judge (Special Court), Etah is hereby set-aside.

30. A copy of this judgement along with the trial court records be sent to the court concerned forthwith for communication and necessary action.

August 25, 2026
AS Rathore

(Samit Gopal,J.)