

Supreme Court of India

Ram Lakhan vs State Of U.P. on 2 February, 1983

Equivalent citations: AIR 1983 SC 352, 1983 CriLJ 691, 1983 (1) SCALE 100, (1983) 2 SCC 65

Bench: O C Reddy, S M Ali

JUDGMENT

1. In this appeal the appellant has been convicted under Section 395 and sentenced to 7 years rigorous imprisonment. In our opinion this appeal must succeed on a short point. It appears from the FIR that only 9 persons viz. 1. Ramroop Kurmi, 2. Ramdhoop Kurmi, 3. Rambodh Kurmi, 4. Ram Noker Kurmi, 5. Sampuran Kurmi, 6. Rambachan Kurmi, 7. Ram Lakhan Kurmi, 8. Ram Ujagir Kurmi and 9. Ram Pyare Kurmi have participated in the dacoity which is alleged to have been committed in the course of which ornaments, grains and other property were looted away. The trial court had acquitted 5 persons and convicted 4. But on appeal the High Court acquitted the remaining three persons and convicted Ram Lakhan the present appellant. The position now is that out of 9 persons named in the FIR who are alleged to have participated in the dacoity Ram Lakhan is alone left. Before an offence under Section 395 can be made out there must be an assembly of 5 or more persons. On the findings of the courts below it is manifest that only one person is now left. In these circumstances therefore the appellant cannot be convicted for an offence under Section 395. The High Court has not found that Ram Lakhan was guilty of any overt act so as to bring his case within any other minor offence. For these reasons therefore the conviction and sentence imposed on the appellant are set aside and he is acquitted of offence charged under Section 395. The appeal is accordingly allowed. The accused is on bail. His bail bonds are cancelled.