

Chhote Lal Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 454 of 1977

(P. N. Singhal, Syed M. Fazal Ali JJ)

27.02.1978

JUDGMENT

FAZAL ALI, J. -

1. In this appeal special leave is confined only to the nature of the offence and question of sentence. The appellant has been convicted under Section 397, I.P.C. and sentenced to seven years' rigorous imprisonment. It appears from the findings of the High Court that none of the witnesses was able to identify the appellant at the Test Identification Parade and, therefore, the position is that there is no legal evidence to connect the appellants with the actual participation in the dacoity said to have been committed by the dacoits in the house of Chhotekhan in village Pakhwar P. S. Mawai tehsil and district Mandla on the night of July 26/27, 1974. It is true that empty cartridges were found near the place of occurrence which are said to have been fired from the licensed gun of the appellant, but that by itself is not conclusive because there has been a delay of as many as six days after the occurrence in the recovery of the cartridges. Moreover the possibility of the cartridges having been used by someone else by borrowing the gun of the appellant cannot be reasonably excluded.

2. In the circumstances, however, there can be no escape from the position that the articles which were recovered at the instance of the appellant, were the subject matter of dacoity and have been properly identified by the owner of the articles. In these circumstances there will be a presumption that the appellant was a receiver of the property, transferred to him in the course of dacoity. We would, therefore, alter the conviction of the appellant from one under Section 397, I.P.C. to that under Section 412, I.P.C. and reduce the sentence from seven years to five years. Fine is reduced to Rs. 500, and in default six months, rigorous imprisonment. With this modification the appeal is dismissed.

</html