

Ram Lakhan

Vs

State of Uttar Pradesh

Criminal Appeal No. 541 of 1976

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

02.02.1983

### JUDGMENT

In this appeal the appellant has been convicted under Section 395, IPC, 1860 and sentenced to 7 years' rigorous imprisonment. In our opinion this appeal must be succeed on a short point. It appears from the FIR that only nine 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 five persons and convicted four. But on appeal the High Court acquitted the remaining three persons and convict Ram Lakhan the present appellant. The position now is that out of nine 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 five 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.

</html