

**SUPREME COURT OF INDIA**

Mohmad Ali

Vs.

State Rep.By Insp.of Police

Crl.A.No.482 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

17.03.2009

**ORDER**

Leave granted.

1. Initially, nine persons were charged for commission of offences under Sections 395 and 397 of the *Indian Penal Code (IPC)*. The appellant was one of them.

2. The learned Trial Judge, however, acquitted all the accused in respect of offence punishable under Section 397 of the IPC. However, the learned Trial Judge having found them guilty for commission of an offence under Section 395 I.P.C., sentenced them to undergo rigorous imprisonment for a period of 10 years.

3. By reason of the impugned judgment the High Court, however, has acquitted all the accused persons except the appellant herein. It was recorded by the High Court:

“Surprisingly and shockingly, even though horrendous and horrible crime took place, owing to faulty investigation and lack of co- operation from the witnesses except as against A-1, the prosecution cannot succeed in driving home the guilt as against other accused.

Accordingly, Point Nos. (ii) and (iii) are also answered.”

4. Indisputably, all the witnesses who were examined on behalf of the prosecution to prove the alleged extra judicial confession with regard to recovery of materials turned hostile. The prosecution witness to the Mahazar in regard to the currency notes has not been examined. The evidence of the witnesses for the purpose of identifying the accused persons, except the appellant herein, has also not been relied upon.

5. As all the other accused persons have been acquitted, we are of the opinion that no case has been made out for commission of offence under Section 395 of the I.P.C. The allegations

made against the appellant, at best makes out a case against him for commission of offence under Section 392 of the I.P.C.

6. It is stated before us that the appellant has been in custody for a period of seven years. In that view of the matter, we alter the conviction and sentence of the appellant from one under Section 395 to Section 392 of the I.P.C. and sentence him to the period already undergone by him.

The appeal is allowed to the aforementioned extent.