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**(2012) 03 AHC CK 0247**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 1381 of 1980

Ram Rais

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** March 16, 2012

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 395, 412

**Citation:** (2012) ACR 1704 : (2012) 4 ADJ 511

**Hon'ble Judges:** Vinod Prasad, J

**Bench:** Single Bench

**Advocate:** S.I. Zafri, Viresh Misra, Amit Mishra, R.K. Rathore, Atul Kumar Gupta, Rahul Kahgan and Sandeep Kumar Amicus Curiae, for the Appellant; A.G.A, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Hon"ble Vinod Prasad, J.

Appellant Ram Rais was tried by 4th Additional Session's Judge, Meerut in S.T. No. 540 of 1978 (State v. Ram Rais) for charge u/s 395 I.P.C. and was convicted therefor and was sentenced to undergo four years RI for the said offence vide impugned judgment and order dated 13.6.1980. Hence this appeal. In nutshell, prosecution allegations were that on the intervening night between 16/17.1.1978 in between 2 to 3 a.m., appellant along with six or seven other associate dacoits had committed dacoity in the house of Malak Dad (P.W. 2), Tauseef (P.W. 3), Nasir (P.W. 4) and Ferozmand (P.W. 6). FIR regarding the incident was lodged same day at 1.40 p.m. measuring a distance of five miles from the place of the incident. Dacoits were identified in the torch light flashed by the witnesses.

2. Registration of crime and undertaken investigation resulted in charge-sheeting the appellant only as he was put up for trial. Identity of rest of the accused, though was known, but they were never put up for trial. During course of the investigation, complicity of the appellant had surfaced on 13/14.2.1978 and he was arrested by

Ram Swarup Sharma (P.W. 5) Inspector In-charge. As noted above, since trial Judge found the prosecution version against the appellant credible, confidence inspiring, therefore, convicted him for offence u/s 395 I.P.C. and sentenced him to four years RI. Hence this appeal.

3. At the time when the appeal was called out, nobody appeared to argue it and hence Sri Sandeep Kumar Singh was appointed as amicus curiae to argue the appeal. I have heard learned amicus curiae and Sri Patanjali Mishra, learned AGA for respondent State.

4. It is contended by learned amicus curiae as follows:

firstly, that the incident night was a dark night, there was no sufficient source of light for identification of the accused. Secondly, that Malak Dad (P.W. 2) never went for identifying the accused and trial Judge wrongly relied upon his evidence. Thirdly, during investigation, complicity of other accused persons could not be surfaced and except the appellant, nobody else was put up for trial. Fourthly, that the appellant was alleged to have been arrested by Ram Swamp Sharma (P.W. 5) on 13/14.2.1978 but his identification was conducted by Sita Ram Singh (P.W. 1) after in an ordinate and unexplained delay on 3.4.1978. Fifthly, that the appellant had no criminal background, incident had occurred in 1978 more than three decades ago and, therefore, appellant should not be sent to jail in case he is not acquitted of the charge and a compassionate view he adopted while sentencing him.

Learned AGA argued conversely and supported the judgment of conviction. From the perusal of evidences of witnesses on record i.e. Sita Ram Singh (P.W. 1), Malad Dad (P.W. 2), Tauseef (P.W. 3), Nasir (P.W. 4), Ram Swamp Sharma (P.W. 5), Ferozmand (P.W. 6), Ram Kishan (P.W. 7), Mahavir Singh (P.W. 8), Parasram Verma (P.W. 9), Ranvir Singh (P.W. 10), Ravi Shankar (P.W. 11) and Jag Roshan (P.W. 12) alongwith the evidence of Ganga Sahai appellant's father (D.W. 1), it is revealed that in the dacoity, six or seven persons are alleged to have committed crime but only the appellant was prosecuted for that charge. Charge-sheet does not indicate that investigation in respect of other persons continued. It also does not state as to whether other persons will be put to trial or not? In such a view, convicting the only sole appellant u/s 395 I.P.C. does not seems to be a legal exercise. Be that as it may, admitted case of the prosecution is that the incident had occurred on the intervening night between 16/17.1.1978 when it was pitch dark night between 2 to 3 a.m. Complicity of the appellant was surfaced during investigation on 13/14.2.1978. His identification was got done on 3.4.1978 for which, Sita Ram Singh (P.W. 1) has not offered any explanation at all. I.O. has also failed to offer such an explanation. Learned trial Judge while convicting the appellant had not pondered over the said delay, which goes a long way in discrediting the prosecution version of participation of appellant in the crime. It is also noted that so far as Malak Dad (P.W. 2) is concerned, he had not gone to identify the appellant. No recovery has been made from the appellant nor he was charged with any offence u/s 412. I.P.C. and

consequently his participation in the crime seems to be extremely doubtful. It was a wintry January night and, therefore, identification of the accused persons during the course of dacoity in the flashed torches also seems to be very doubtful. Trial Judge has convicted the appellant only for the reason that he was identified by three persons. That, in my opinion was not sufficient unless a finding is returned that the witnesses had sufficient opportunity to identify the dacoits and they had availed it. There is no finding to that effect recorded by the trial Judge. There was no criminal background of the appellant. He was working as a tailor and had a family of wife and children to foster. In such a view, his participation without any criminal proclivity into the incident seems to be very doubtful.

In view of above, I am unable to concur with the opinion recorded by the trial Judge in the impugned judgment.

Appeal is allowed. Conviction of the appellant in S.T. No. 540 of 1978, State v. Ram Rais, for charge u/s 395 I.P.C. recorded by 4th Additional Session's Judge, Meerut is hereby set aside. Appellant is acquitted of that charge and is set at liberty. His bail and surety bonds are discharged.

Let a copy of the judgment be certified to the trial Court for it's intimation.