

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1065 OF 2003

STATE OF U.P. ... APPELLANT(S)

:VERSUS:

CHANDRA BHUSHAN UPADHYAHA ... RESPONDENT(S)

ORDER

The respondent herein was charge-sheeted along with two other accused persons for commission of offence punishable under Section 395 of the I.P.C. The Trial Court acquitted two accused persons who were co-accused with the respondent herein but convicted the respondent under Section 395 of the I.P.C. and sentenced him to undergo rigorous imprisonment for a period of 10 years.

Being aggrieved by the said order of conviction and sentence passed by the Trial Court, the respondent filed an appeal before the Allahabad High Court. By passing the impugned judgment and order dated 31.7.2002 in Criminal Appeal No. 333/1986, the High Court acquitted the respondent from the charge under Section 395 IPC. The State being aggrieved of the said order of acquittal, has filed this appeal on which we have heard the learned counsel for the parties.

-2-

The High Court on consideration of the materials on record, found that there is no evidence available on record on the basis of which there could be an order of conviction and sentence against the respondent.

We have scrutinized the records and we find that the order of conviction and sentence is based mainly on the ground that the DBBL gun of the respondent was found by the side of one of the dacoits who was apprehended and was killed. We fail to understand as to how that could be an incriminating evidence against the respondent for there is no evidence on record to show that the respondent was either physically present at the place of occurrence for the purpose of commission of dacoity nor there is any evidence to show that he was a party to the conspiracy, if any.

On appreciation of the evidence on record, we find that the High Court has given sufficient and cogent reasons for acquitting the respondent. The impugned order does not call for any interference. This appeal, therefore, has no merit and is dismissed accordingly.

.....J
(Dr. MUKUNDAKAM SHARMA)

.....J
(Dr. B.S. CHAUHAN)

NEW DELHI,
MAY 21, 2009.

JUDGMENT