

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 04.08.2025

Delivered on 22.08.2025

Court No. - 78

Case :- CRIMINAL APPEAL No. - 2929 of 1985

Appellant :- Rudral Pratap Singh @ Murahu Singh

Respondent :- State of U.P.

Counsel for Appellant :- Kailash Pati Singh Yadav, Swapnil Singh

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Kailash Pati Singh Yadav, learned counsel for the appellant and Sri Satyendra Nath Tiwari, learned AGA for the State.

2. The instant criminal appeal has been filed by the appellant, Rudra Pratap Singh alias Murahu Singh, being aggrieved by judgment and order dated 30.10.1985, passed by the Ist Additional Sessions Judge, Ghazipur, in Sessions Trial No.99 of 1984(State Vs. Rudra Pratap Singh alias Murahu Singh), whereby the appellant herein was acquitted for the offence under section 396 IPC, however, was convicted for the offence under section 412 IPC and was directed to undergo ten years rigorous imprisonment.

3. As per the prosecution story the informant Sri Vishwanath Singh Yadav son of Dadhibal Yadav submitted a written report to the Police Station Shadiabad, District Ghazipur on 04.10.1983 stating therein that on the intervening night of 3/4.10.1983 the informant was sleeping out side of their house and the ladies of the house

were sleeping inside the house and in the outside of the drawing room a lantern was lit. In the night around 11.00 P.M., 10 to 11 dacoits armed with lathis, Dandas and guns etc. came to the house of the informant, having torches in their hands and 3 to 4 dacoits scaling from the backside and entered in the court yard and broken the doors and by threatening of the ladies of the house, they took out jewellery of the ladies and also broke open the boxes and started looting. The father of the informant shouted and assaulted the dacoits with bricks and he also shouted for help and asked the others to assault the dacoits with bricks, thereafter, the informant also started assaulting the dacoits with bricks. Out of the dacoits one of Shyamnarain Singh, resident of Audar, who was having gun assaulted the father of the informant. Due to the gunshot injury the father of the informant fell down on the ground. His brother Doodh Nath and Awadh Nath continued assaulting the dacoits with bricks. The dacoits also assaulted them with fire arms and they also got injured. Due to the cries and shout of the informant and his family members the villagers Gorakh Pandey, Sarju Yadav, Kedar and others came there with torch and challenge the dacoits. The dacoits again fired, therefore, all of them became afraid. The villagers Rajendra Singh and Harihar Singh have also fired on the dacoits from their gates, then one among the dacoits said, master hurry up, thereupon the dacoits after carrying the articles of loot went towards west and then towards south side. While coming and going, out of the daicots 4-5 persons namely Kalpnath Singh, Subba Harijan, Surendra Yadav, Satyadeo, Ramji Yadav, Shambhoo Singh, Shyamnarain Singh and Deepchand, who worked in the wood shops of the Shambhoo Singh, were identified by face, who can be identified by them, if they are produced before them. The said dacoits have looted golden Hasuli, Silver

Dhanpatta, 5 Chatak Nagfoosi, golden nose ring, silver Kakdi, two silver Hasuli, silver sikadi, saris and petticoat of the ladies and Rs.700/- were looted by them, which can be identified by his brother and the ladies of the house. The father of the informant Dadhibal Singh Yadav has died due to the fire arm injury. After the daicoity in the house of the informant they have also done daicoity at Gopalpur, in the house of Surendra Lal. The brother of the informant Doodh Nath and Awadh Nath, who are injured with the fire arm injury are admitted in the hospital at Ghazipur. On the basis of the aforesaid written report the FIR being Case Crime No.114 of 1983, under section 396 IPC was registered on 04.10.1983 at 5.30 A.M. at Police Station Shadiabad.

4. The investigation was taken up by Sri Ram Prakash Panday, S.H.O. The spot was inspected. The inquest of the dead body of Dadhibal Singh Yadav, the father of the informant was completed and the same was sent for postmortem, at District Hospital Ghazipur. Site plan was prepared. Plain and blood stained earth stands recovered. He also recovered the empty cartridges and tikli. He also inspected the lantern and the torches. He recorded the statements of the witnesses Vishwanath, Gorakh Nath, Sarju, Smt. Dulari and Smt. Mewati on 04.10.1983, it self. Since the injured Doodh Nath and Awadh Nath had gone to the hospital, therefore, their statements could not be taken by the investigating officer on the same day. They were medically examined by Dr. Amar Singh at District Hospital, Ghazipur on 04.10.1983 at 4.00 A.M and 4.15 A.M., respectively. They were found to have sustained the fire arm injuries, as per their medical examination reports. The postmortem of the dead body of Dadhibal was conducted at District Hospital, Ghazipur. The deceased was found to have died due to shock and hemorrhage on account of the fire arm injuries on the night of 3/4-

10-1983 at about 23-24 hours. The houses of the named accused persons were raided on 05.10.1983 by the investigating officer, but they were found absconding from their houses. The accused Subba was arrested on 05.10.1983. Accused Kalpnath and Shambhoo Nath were also arrested on 05.10.1983. On 07.10.1983 the accused Rudra Pratap Singh, the appellant herein was also arrested, from near Ibrahimpur school in Jakhania, in the presence, P.W.-8, Ram Janam and P.W.-13, Sheodhani. He was interrogated and kept Bapardah. He was brought to the house of Smt. Chandrawati at his own instance as he had apprised the investigating officer to get the properties recovered. Accused Rudra Pratap himself opened the door of the house and then took the investigating officer inside the house and the looted clothes and ornaments were recovered from a box kept in the Kothari. He also recovered his licensed gun alongwith six live cartridges. Recovery memo of the aforesaid items were prepared and the recovered items were seized and sealed. The witnesses Doodh Nath and Awadh Nath were interrogated by the investigating officer on 08.10.1983. Accused Ramji was reported to have surrendered before the court on 10.10.1983. Accused Shyam Narain and Surendra were also reported to have surrendered before the court on 11.10.1983 and 20.10.1983, respectively. Witnesses Bharat and Kedar were interrogated by the investigating officer on 10.11.1983. Charge sheet (Ext. Ka-22) against the accused Kalpnath and 5 others was submitted by the investigating officer on 20.12.1983 after completing due investigation.

5. The appellant herein, Rudra Pratap Singh was also put up for test identification parade, but he was not identified by any person. The items recovered from the house of Smt Chandrawati at the instance of accused appellant herein were put for test identification

parade, which was conducted in the presence of the Executive Magistrate (P.W.-3) on 31.12.1983, the properties were produced before him in sealed condition by the court Moharrir Lalji Pal after bringing them from the Sadar Malkhana. The articles for mixing with this properties were brought by Ram Janam Contractor (P.W.-10), the informant Vishwanath, injured Awadh Nath, Gorakh, Kedar and Smt. Mewati had identified some of these articles at the parade as mentioned in the test identification memo (Ext Ka-2). Subsequent thereto a separate charge sheet was submitted against the accused-appellant herein, Rudra Pratap Singh on 03.01.1984. The gun recovered from the house of Smt. Chandrawati at the instance of accused-appellant herein and the empty cartridges recovered from the place of the incident were sent for Ballistic Expert examination. Though the Ballistic Expert report was obtained, the same was not tendered into evidence, as it did not support the prosecution case, with regard to any fire done by the said licensed gun recovered at the instance of the appellant Rudra Pratap Singh.

6. To prove its case the prosecution examined Vishwanath as P.W.-1, Awadh Nath as P.W.-2, Smt. Mewati as P.W.-4 and Kedar Nath as P.W.-5, as the fact witnesses and other formal witnesses namely Lalji Pal, constable(P.W.-6), Sheodhari, constable(P.W.-7), Sadho Singh, constable (P.W.-9), Ram Janam, contractor(P.W.-10) were also examined to provide the link evidence, as they being the formal witnesses.

7. The P.W.-8, Ram Janam and P.W.-13, Sheodhani, were also examined, as recovery witnesses from the house of Smt. Chandrawati, at the instance of accused-appellant Rudra Pratap Singh. Both these witnesses did not support the prosecution case and they stated that neither the house of Smt. Chandrawati was

searched in their presence nor any property was recovered at the instance of accused appellant Rudra Pratap Singh in their presence. They have, however, stated that the investigating officer had a gun with him, but it was not recovered from the accused in their presence.

8. Dr. Amarnath Singh was examined as P.W.-12 to prove the postmortem report. P.W.-11, Lallan Singh, constable was examined as formal witness with regard to registration of the FIR and entries in the general diary. The investigating officer Ram Prakash Pandey was also examined on behalf of the prosecution.

9. The appellant herein examined Sri Badri Pandey as D.W.-4 to show that the house of Smt. Chandrawati was never searched and in fact the house of Rudra Pratap Singh was searched and accused appellant, Rudra Pratap Singh used to reside with his father in the village. The clothes, ornaments, gun and the license were taken in possession by the police from the house of the accused Rudra Pratap Singh. The other accused persons are also examined the defence witnesses, Ramchandar as D.W.-1, Raghunath as D.W.-2, Jamuna as D.W.-3. D.W.-1, Ramchandar has stated that there was a dispute between witness Kedar and accused Subba, therefore, the accused Subba has been falsely implicated. D.W.-2, Raghunath has stated that the accused Surendra is his real son-in-law and he has a bother named Murat whose daughter is married to Bharat son of the informant. There is a property dispute between the Surendra, Chaudhur and Chhotu, who has bought the illegal registered deed for the land in question, for which the criminal litigation is going on. D.W.-3 Jamuna has stated that the accused Ramji is the son of his daughter and the daughter of Sheomurat, who is his pattidar, is married to Kedar, nephew of Vishwanath, that is why the accused Ramji has been falsely implicated, due to the property dispute

between Sheomurat and Ramji.

10. After concluding the trial, the trial court has acquitted all the accused persons, including the appellant herein, for the offence under section 396 IPC. However, on the basis of recovery of the articles, which were identified by the witnesses. The appellant herein is convicted for the offence under section 412 IPC.

11. Learned counsel for the appellant relying upon the judgment of Apex Court in the case of 'K. Venkateshwara Rao @ Venkatal @ I. Rao Vs. State rep. By Inspector of Police, A.P.', 2002 (6) SCC 247, and submits that 'once an accused who has been tried for the offence under section 396 IPC as well as 412 IPC and once he has been acquitted for the offence under section 396 IPC, he cannot be convicted for the offence under section 412 IPC, without there being any additional material to establish this charge apart from the charge under section 396 IPC. Learned counsel for the appellant further submits that the conviction of the appellant herein under section 412 IPC is based upon the alleged recovery of the articles from the house of Smt. Chandrawati at the instance of the appellant herein, however, both the independent witnesses of recovery have not supported the prosecution case. Thus, the recovery of the articles at the instance of the appellant herein cannot be relied upon for convicting the appellant herein under section 412 IPC. It is further submitted by learned counsel for the appellant herein that the appellant has also lead his defence witnesses, who has categorically stated that the police has recovered those articles from the house of the father of the appellant herein, where he was residing with his father and in fact the appellant herein was the owner of those articles, which have been allegedly recovered by the police from the house of father of the appellant herein. It is further submitted by learned counsel for

the appellant that the gun recovered from the house of the appellant herein is a licensed gun and a valid license of the same was found and as per the Ballistic Expert report, the said gun was not used in the alleged incident. Therefore, the appellant herein has no connection with crime, as there is no recovery, as has been alleged by the prosecution, from the house of Smt. Chandrawati, rather the police has recovered the household articles from the house of the appellant herein and framed them in the instant case. It is further submitted by learned counsel for the appellant that since the articles which have been recovered from the house of the appellant, belongs to the appellant herein, no offence whatsoever is made out against the appellant herein. For the purpose of section 412 IPC, thereby the trial court has recorded a finding that the aforesaid articles were obtained by the appellant herein, knowing fully well that the same were looted properties, but in the entire case, there is no evidence lead by the prosecution to show that the appellant had any knowledge that the alleged properties were looted properties, which were recovered from the house of the appellant herein. Unless an accused has knowledge that it is a looted property, no offence can be said to have been made out against the said accused persons. It is further submitted by learned counsel for the appellant that even for the purposes of disclosure statement, there is a requirement of two independent witnesses, before whom the accused has made a statement regarding disclosure of incriminating articles. In the entire evidence no such witness has been produced by the prosecution. Therefore, neither the disclouser statement nor the recovery is proved by the prosecution. Therefore, learned counsel for the appellant seeks acquittal of the appellant herein for the offence under section 412 IPC.

12. Per contra, learned AGA for the State submits that the recovered articles have been identified by the family members of the informant. Though the independent witnesses for recovery have not supported the recovery of the aforesaid items. However, since the recovery of items, as such, has not been disputed by the appellant herein. His defence is that the said items were recovered from the house of his father and not from the house of Smt. Chandrawati, as alleged by the prosecution. If the recovery is admitted by the appellant and the recovered items have been identified by the informant and his family members to be the looted property, thus the trial court has rightly convicted the appellant herein. Therefore, the learned AGA for the State seeks dismissal of the instant appeal.

13. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully perused the record of the case. Since the appellant herein as well as the other co-accused persons have been already been acquitted for the offence under section 396 IPC, therefore, this Court is not going into the evidence with regard to the offence under section 396 IPC. Admittedly, the gun recovered at the instance of the appellant herein, as alleged by the prosecution, was not used in the crime, therefore, there is no direct evidence connecting the appellant herein with the crime. The only evidence available against the appellant is the recovery of the looted articles. Even the recovery has not been supported by the independent witnesses, in the manner, in which it is alleged by the prosecution, rather the witnesses P.W.-8, Ram Janam and P.W.-13, Sheodhani have denied any recovery having taken place in their presence, either from the house of the Smt. Chandrawati or from the house of father of the appellant herein. The defence witness (D.W.-4), Badri Pandey has

categorically stated that the investigating office has never searched the house of Smt. Chandrawati, rather the house of Rudra Pratap Singh was searched and Rudra Pratap Singh used to reside with his father in the village. The gun, clothes and ornaments were taken in possession by the police from the house of Rudra Pratap Singh, the appellant herein. Thus, since the prosecution has categorically failed to prove the recovery, as stated by the prosecution, therefore, the prosecution case with regard to recovery cannot be relied upon against the appellant herein and since the defence witnesses have categorically stated that the police has recovered the articles from the house of father of the appellant herein, where the appellant herein was residing, therefore, the defence version of the case is categorically proved in the instant case. Since the prosecution has failed to provide any distinguishing feature of the articles looted from the house of informant and the ornament, saris and clothes are very common and the same can be found in each and every houses. The defence has successfully proved that said articles were taken from the house of father of the appellant herein by the police and put for its identification parade, without there being any distinguishing feature. The informant and his other family members had identified some of the articles and not all of the articles. Thus it shows that all the articles taken into possession by the police from the house of the appellant herein were not the articles of crime. Therefore, defence version in the instance case finds more force, that the said articles belong to the family of the appellant herein, which has been allegedly taken from the house of the appellant herein and have been shown by the police as the articles of crime. There is no evidence in the instant case with regard to any knowledge attributed to the appellant herein with regard to the articles taken into possession from the house of the

appellant to be the stolen property or the proceeds of the crime. In view thereof, the offence under section 412 IPC cannot be attracted towards the appellant herein. In the judgment of Apex Court in the case of **K. Venkateshwara Rao @ Venkatal @ I. Rao(Supra)**, the Apex Court has held that 'once the prosecution case of dacoity under section 396 IPC was disbelieved by the Court and the appellant was acquitted from the trial, the accused can be convicted for the offence under section 412 IPC, and only if there is any additional material to establish this charge apart from the one not accepted by the Court, the conviction can take place under section 412 IPC on the basis of such additional material. Since in the instant case the sole basis of conviction of the appellant herein for the offence under section 412 IPC is the alleged recovery of the articles and identification of those articles by the informant and his family members. As already held that the prosecution has failed to prove the recovery itself and the defence has categorically proved that the police has recovered those articles from the house of father of the appellant herein and the articles were not having any distinguishing features and were very common and all the articles taken into possession by the police were not identified by the informant or his family members. Thus in the considered opinion of this Court, the prosecution has categorically failed to established the offence under section 412 IPC against the appellant herein, hence the instant appeal is **allowed** and the appellant herein is **acquitted** for the offence under section 412 IPC.

14. Since the appellant herein is on bail. His bail bonds are cancelled and sureties are discharged. The recovered articles be disposed of in accordance with the law, after expiry of the period of appeal.

15. The trial court record be send back to the trial court concerned to be consigned.

Order Date :- 22.8.2025

VKG / Shubham Arya

Anish Kumar Gupta,J.