
(2012) 01 AHC CK 0096
In the Allahabad High Court
Case No : Criminal Appeal No. 712 of 1982

Jai Sia Ram Alias Jaisi Ram

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 01 AHC CK 0096

Hon'ble Judges : Dharnidhar Jha, J; Ashok Srivastava, J

Bench : Division Bench

Advocate : V.C. Tewari, Rajiv Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

1. The present appeal was called out for hearing, which was preferred by two appellants to challenge the propriety of judgment dated 03.03.1982 passed by the learned 2nd Additional Sessions Judge, Etawah in Sessions Trial No. 432 of 1978 by which the appellants were held guilty of committing the offence u/s 302/34 I.P.C. and were, after being heard on sentence, directed to suffer rigorous imprisonment for life. After admitting the appeal the lower court records were summoned as may appear from order dated 23.03.1982. The learned District and Sessions Judge, Etawah reported that except the impugned judgment the whole of the records had been destroyed. In the light of the above report, this Court by its order dated 08.07.2003 directed the reconstruction of the records as also fixing of the responsibility of the employee(s) of his court for taking proper action. It appears that the present appeal came up before this Court on different dates, as on 08.07.2008, and noticing the judgement of the Supreme Court in State of U.P. Vs. Abhay Raj Singh reported in AIR 2004 SC 3235, directed the District Judge, Etawah to get the case retried and provided the evidence and other basic documents for disposal of the present appeal.

2. The District Judge, Etawah, has sent the report in a sealed envelop and we accordingly directed that the contents of the envelop be placed on record by our

order dated 11.01.2012.

3. We have perused the report submitted by the learned District Judge, Etawah which appears placed with his letter no. 780 dated 14.08.2008.

4. We have perused the record and the report submitted by the learned District Judge and we find that the informant and other witnesses were summoned and the S.S.P., Etawah was directed to produce the copies of the documents, like, F.I.R., General Diary regarding registration of the case, inquest report, dead body challan and post mortem report alongwith the charge sheet, copies of which we are required to be preserved and maintained by the police. It was reported as may appear from order dated 08.07.2008 passed during retrial of Session Trial No. 432 of 1978, that the police failed to produce the copies of the above documents. Likewise, the officer-in-charge of the concerned police station also failed in producing the copies of the same documents which were required to be produced by S.S.P., Etawah. The informant was summoned and his statement was recorded and during that course he stated that he had not engaged any private advocate for making pairvi in the case and that though he had deposed in court, but there was no documents or copy of any document with him and he did not exactly remember any fact of the case. The informant stated that he was not in a position to state to the facts even by his memory. The whole record of reconstruction with the statement of the informant is available to us with the report.

5. In view of the above lack of the documents and evidence, the learned District and Sessions Judge submitted the report.

6. It is true that the appellants were convicted by the impugned judgement but the right of the appellants to convince this Court about the propriety of findings recorded in support of the order of conviction and sentence passed upon them could be best appreciated only when the evidence of witnesses could be marshalled in the light of the criticism the findings. In the absence of the depositions of witnesses together with the relevant records, it is simply not possible to properly hear the appeal and scrutinize the submissions which have been made in the memo of appeal. It is really serious that the record of the case was made to disappear or was destroyed and we are fully convinced that such a serious act could have been done by any employee of the judgship of Etawah only with some ulterior motive and any punishment which could have inflicted upon such an employee, may not be sufficient. But, as regards the conviction of the appellants we cannot also sustain the same in absence of the lower court records, especially the evidence both oral and documentary. In the result, we allow the appeal and acquit the appellants of the charge of which they were convicted. The appellants are on bail. They shall be discharged from the liability of their bonds.