
(2009) 09 UK CK 0031

In the Uttarakhand High Court

Case No : Criminal Appeal No. 426 of 2001 (Old No. 2531 of 1998)

Magan Lal and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 34

Citation : (2010) 1 NCC 718

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon. Dharam Veer, J.—The present appeal has been preferred against the judgment and order dated 11/12.11. 1998 passed by Ist Addl. Sessions Judge, Dehradun in S.T. No. 181/1995 State Vs. Magan Lal & others, whereby the learned 1st Addl. Sessions Judge has convicted the appellants-accused Magan Lal, Amar Dev and Nar Dev u/s 304 (Part-I) r/w Section 34 of The Indian Penal Code, 1860 [hereinafter to be referred as the IPC] and each of them was sentenced to ten years" R.I. with fine of Rs. 5,000/- each and in default of payment of fine, the concerned accused was directed to further undergo six months" R.I.

2. On 17.09.2005, this Court summoned the record from the lower court. In compliance of that order, Officer-in-charge, Record Room (Civil) District Judge's Court, Dehradun vide report dated 7.11.2005 informed that the record of the case has been burnt to ashes in an incident of fire in Record Room (Civil) in the night of 7.12.1999, hence the record cannot be sent. On 4.3.2006, this Court directed the District Judge, Dehradun to get the record of the case reconstructed. However, in compliance thereof, photocopy of judgment has been sent which is not sufficient to decide the present case. Sri Lokendra Dobhal, Adv. for the appellants/accused and Sri M.A. Khan, learned Brief Holder for the State, both have submitted that after passing of the judgment and order dated 11/12.11.

1998 which is under challenge, now the period of about eleven years has expired. They further submitted that now the reconstruction of the record or retrial is also not possible. In a judgment rendered by Allahabad High Court in the case of Aziz Khan Vs. State of U.P. reported in XXIX 1992 ACC 223, it was held as under:-

Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence. The occurrence had taken place on 15.10.1976 i.e. 15 years back and the complete record has not been reconstructed; Applying the principle laid down in the above mentioned authorities, we are of the opinion that the appeal of Aziz Khan should be allowed and his conviction and sentence should be set aside and the government appeal against acquittal of accused-respondents is liable to be dismissed.

3. In view of the above said dictum of Allahabad High Court, the appeal preferred by the appellants-accused stands allowed. The judgment and order dated 11/12.11. 1998 passed by First Additional Sessions Judge, Dehradun in S.T. No. 181/95 State Vs. Magan Lal & others, convicting and sentencing the appellants-accused as discussed above, is hereby set aside. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.