

Court No. - 13

Case :- CRIMINAL APPEAL No. - 711 of 1985

Appellant :- Sadhu Singh And Others

Respondent :- State of U.P.

Counsel for Appellant :- Ramesh Kumar Singh, Mukul Rakesh, S. Singh, Virendra Mohan

Counsel for Respondent :- Government Advocate

Hon'ble Saurabh Lavania, J.

1. Heard Shri Mukul Rakesh, learned Senior Advocate assisted by Shri Atul Kumar Bhatt and Kumar Sushant Prakash, learned counsel for the appellant and learned A.G.A. for the State-respondent.

2. The instant appeal under Section 374(2) has been filed challenging the order dated 25.10.1985 passed by Special Additional Sessions Judge, Faizabad in Session Trial No. 70 of 1982 whereby convicted the appellant no. 7 namely Sabhajeet Singh for seven years rigorous imprisonment under Section 304 IPC and all other appellants i.e. the appellant nos. 1 to 6 and 8 to 11 have been convicted for sentence of five years rigorous imprisonment under Section 304/149 IPC, and eighteen months rigorous imprisonment under Section 324/149 IPC and to three months rigorous imprisonment under Section 323/149 IPC and also convicted the appellant nos. 1 to 5 for three months rigorous imprisonment under section 147 IPC.

3. Relevant portion of the judgment, under appeal, reads as under:

"The accused were heard on the question of sentence. They have nothing to say about the sentence. I convict accused Sabha Jeet Singh under section 304 I.P.C. and sentence him to undergo R.I. for a period of 7 years (Seven years). I further convict him under section 148 I.P.C. and sentenced him to undergo R. I. for a period of 6 (six) months. Sadhoo Singh, Nar Singh, Mathura Singh, Ram Pal Singh, Vijay Bahadur Singh, Nankaoo Singh, Bhuil Singh, Shiv Bahadur Singh, Jagpat Singh and Ram Deo Singh are sentenced under section 304

I.P.C. read with Section 149 I.P.C. to undergo R. I. for a period of 5 (five) years each. They are further sentenced under Section 324 I.P.C. read with Section 149 I.P.C. and sentenced to undergo R.I. for a period of 18 (eighteen) months each. They are further sentenced under Section 323 I.P.C. read with Section 149 I.P.C. to undergo R.I. for a period of 3 (three) months each. The accused Bhuil Singh, Shiv Bahadur Singh, Jagpat Singh and Ram Deo are further sentenced under Section 148 I.P.C. to undergo R.I. for a period of 6 (six) months. The accused Sadhoo Singh, Nar Singh, Mathura Singh, Ram Pal and Vijay Bahadur are further sentenced under section 147 I.P.C. to undergo R.I. for a period of 3 (three) months each. All the sentences of each accused will run concurrently."

4. It is to be noted that this appeal was admitted vide order dated 30.10.1985 and all the appellants were released on bail. The order dated 30.10.1985 is extracted herein-under:

"Admit. Issue notice.

Heard the learned counsel for the parties. The conviction and sentences awarded to the appellants are hereby suspended. They are also admitted to bail. They shall be released on bail on each of their furnishing adequate sureties and a personal bond in the like amount to the satisfaction of Chief Judicial Magistrate, Faizabad."

5. It would be apt to indicate that during the pendency of this appeal, the appellant no. 1 - Sadhu Singh, appellant no. 2 - Nar Singh, appellant no. 3 - Mathura Singh, appellant no. 4 - Ram Pal, all S/o Mahipal Singh, appellant no. 8- Bhuil Singh @ Sheo Pujan S/o Sheo Bahadur Singh, appellant no. 9 - Jagpat Singh S/o Brij Raj Singh, appellant no. 10 - Ram Deo Singh S/o Fardangi and appellant no. 11 - Sheo Bahadur Singh S/o Visva Nath Singh had expired, as appears from the Office Report dated 14.12.2023, which on reproduction, reads as under: -

"In compliance of Hon'ble Court's order dated 26.10.2023, CJM Ayodhya sent report bearing dispatch no. nil dated 20.11.2023 flagged

'X'. According to report, appellant no. 1 - Sadhu Singh, appellant no. 2 - Nar Singh, appellant no. 3 - Mathura Singh, appellant no. 4 - Ram Pal, appellant no. 8- Bhuil Singh @ Sheo Pujan, appellant no. 9 - Jagpat Singh, appellant no. 10 - Ram Deo Singh and appellant no. 11 - Sheo Bahadur Singh have died. Statement of village head and family members of deceased is to be recorded which shall be sent to Hon'ble Court as soon as possible."

6. It is relevant to indicate that, as appears from the order sheet, particularly the order dated 09.03.2007 that the trial Court was available but on the date of listing, the record was not available. For ready reference, the order dated 09.03.2007 is extracted herein-under:

"Learned counsel for the appellants submitted that the record of the trial court was previously available and arguments were also heard in this appeal. The record has not come from office. The office is directed to search and produce the record of this appeal.

Let the appeal be listed after the record is made available."

7. Thereafter, the matter was listed on several occasions, but the appeal could not be heard.

8. It is further to be indicated that from a perusal of order sheet particularly the order(s) dated 07.01.2013, 09.12.2017, 21.12.2017, 27.01.2020, 28.02.2020, 11.11.2021, 03.02.2022, 09.07.2022, 24.11.2022, 02.01.2023, 16.08.2023, 23.08.2023 and 15.03.2024 it reflects that this Court passed the orders in relation to the trial Court record.

9. It also appears from the Office Report dated 03.08.2022 that the efforts were made for re-construction in terms of order of this Court dated 11.11.2021 and Shri Mukul Rakesh, learned counsel for the appellants stated that he does not have any record/document related to present CRLA No. 711 of 1985.

10. Further, letter No. 722/V-294 Faizabad/Dated 01.04.2003, which

was sent in response to Letter No. 5778 dated 26.03.2003, indicates that "B" File of Session Trial No. 70/1982, in which the judgment under appeal was passed on 25.10.1985, has been weeded out on 23.09.1993. The relevant portion of letter reads as under:

"उपर्युक्त विषयक माननीय उच्च न्यायालय के पत्र संख्या-5778 दिनांकित 26.3.2003 के सन्दर्भ में सूचित करना है कि सत्र परीक्षण संख्या-70/82 राज्य बनाम साधू सिंह, फैसला दिनांक 25.10.85 की "बी" नत्थी दिनांक 23.9.93 को विनष्ट की जा चुकी है।
सूचना प्रेषित है।"

11. From the letter dated 30.09.2023 which is on record of Additional District and Session Judge (Court No. 4)/E.C. Act, Ayodya indicated that the trial Court record was sent to Hon'ble High Court on 09.03.2000.

12. The last office note available on the Order sheet dated 21.03.2024 indicates that trial court record of the present appeal that is CRLA No. 711 of 1985 is misplaced. For ready reference report on reproduction reads as under:

"As per progress register of JRR of the year 1985, LCR of CRLA 711 - 1985 has been reported to be received, however, no entry of same is found in shifting registers made during shifting of records from Old High Court Building to New Building of this Hon'ble Court. Also, during the physical verification of LCRs of 1985, the LCR of CRLA 711 - 1985 has not been found out."

13. In the circumstances/background of the case noted above and also taking note of the age of the present appeal, this Court took note of the prepositions embodied in various pronouncements including the judgment(s) passed in the case of **Jitendra Kumar Rode Vs. Union of India in SLP (Crl) No. 2063 of 2023 on 24.04.2023** and **Sarita Vs. State of Delhi in Criminal Appeal Nos. 186/2019 and 187 of 2019** decided on **14.10.2019** by the Hon'ble Supreme Court as also Division Bench of this Court in the case of **Raguvir Sahai & Others Vs. State of U.P. (Neutral Citation No. 2018:AHC-LKO:17853-DB** and **Lala**

Ram and Others Vs. State of U.P. in Criminal Appeal No. 1169 of 1979 decided on **23.09.2019**, according to which in absence of trial Court record the appeal cannot be heard finally and decided on merits.

14. Taking note of the observations in the pronouncements, indicated above, as also the fact that the appellant nos. 1 to 4 and 8 to 11 had died, the present appeal against the judgment dated 25.10.1985 in Session Trial No. 70 of 1982 is hereby **abated** in so far as it relates to appellants nos. 1 to 4 and 8 to 11 and is **allowed** quo qua the appellant nos. 5 to 7 namely Bijai Bahadur, Naukau Singh, Sabhajeet Singh respectively, and accordingly, the conviction and sentence of these appellants is hereby set aside and their bail bonds are cancelled and sureties discharged.

Order Date :- 24.5.2024

Mohit Singh/-