

Court No. - 75

Case :- CRIMINAL APPEAL No. - 2755 of 1983

Appellant :- Kishori Saran

Respondent :- State of U.P.

Counsel for Appellant :- Awadhesh Prasad, Harish Chandra Mishra

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar, J.

1. Heard.

2. Challenge in this appeal to the judgment and order dated 24.09.1983 passed by the Sessions Judge, Jhansi in Sessions Trial No. 142 of 1980 (State v. Kishori Saran & another) convicting and sentencing the first appellant- Kishori Saran under Sections 323/34 IPC and second appellant- Virendra Kumar under Section 323 IPC and instead of sentencing them to imprisonment, directing them to be release on probation on each of the appellant furnishing a personal bond of Rs. 1,000/- without surety to the satisfaction of the Magistrate concerned for keeping peace and be of good behaviour for a period of one year.

3. There is order dated 01.08.2022 which reads as under:

"Heard learned counsel for the appellants, learned AGA for the State and perused the record.

Chief Judicial Magistrate, Jhansi, vide his letter dated 20.11.2021, has informed this Court that appellant No. 1- Kishori Saran had already expired on 25.9.2002. In verification of his death, statement of Virendra Kumar son of appellant No. 1 has been recorded. Death Certificate duly issued by Dinesh Panchal, Member of Nagar Panchayat, Ward No. 2, Post- Majpatiyapur, Badagaon, Jhansi has also been annexed. Police report by S.I. Mahendra Kumar of police station- Badagaon, Jhansi has also been annexed.

In view of the above, this criminal appeal in respect of appellant No. 1 Kishori Saran Saraogi stands abated.

Learned counsel for the appellant No. 2- Virendra Kumar Saraogi prays for and is granted two weeks' time to file an affidavit about the conduct of the appellant No. 2 after being convicted in the instant case and being released on probation for a period of one year.

Chief Judicial Magistrate, Jhansi shall also sent a report about the conduct of the appellant No. 2 by the next date fixed.

List on 22.8.2022."

4. There is an office report dated 29.09.2022, reads as under:

"It is humbly submitted that as per office report dated 17.12.2015, a letter dated 08.12.2015 (flag 'B') has been received from the District Judge, Jhansi wherein said that except lower court judgment, all rest papers of S.T. No. 142/80 and S.T. No. 142/81 have been weeded out on 26.02.1994.

The case is put up for orders along with 2756/83 and Lower Court Judgement."

5. On 07.07.2025, the following orders were passed:

"Matter has been taken up in the revised list.

Nobody has put in appearance on behalf of the appellant.

The name of Sri Awadhesh Prasad and Harish Chandra Mishra, Advocates has been shown in the cause list on behalf of the appellant.

On 01.08.2022 the following order were passed:

"Heard learned counsel for the appellants, learned AGA for the State and perused the record.

Chief Judicial Magistrate, Jhansi, vide his letter dated 20.11.2021, has informed this Court that appellant No. 1- Kishori Saran had already expired on 25.9.2002. In verification of his death, statement of Virendra Kumar son of appellant No. 1 has been recorded. Death Certificate duly issued by Dinesh Panchal, Member of Nagar Panchayat, Ward No. 2, Post- Majpatiyapur, Badagaon, Jhansi has also been annexed. Police report by S.I. Mahendra Kumar of police station- Badagaon, Jhansi has also been annexed.

In view of the above, this criminal appeal in respect of appellant No. 1 Kishori Saran Saraogi stands abated.

Learned counsel for the appellant No. 2- Virendra Kumar Saraogi prays for and is granted two weeks' time to file an affidavit about the conduct of the appellant No. 2 after being convicted in the instant case and being released on probation for a period of one year.

Chief Judicial Magistrate, Jhansi shall also sent a report about the conduct of

the appellant No. 2 by the next date fixed.

List on 22.8.2022."

Since nobody has put in appearance on behalf of the appellant no.2, thus in the interest of justice, the Court appoint Mr. Chetan Chaterji (AOR No. 7471/63), Mob: 9919555824 as Amicus Curiae for the appellant no.2.

Office is directed to prepare the paper book and supply the copies thereof to the Amicus Curiae and to the learned AGA free of cost.

List on 11.08.2025 in the additional cause list."

6. On 11.07.2025, the office report reads as under:

"It is humbly submitted that vide letter dated 08.12.2015 Ld. District Judge, Jhansi informed that Trial Court Record was weeded out in the past. Therefore, paperbook could not be prepared in compliance of Hon'ble Court's order dated 7/7/25. The report is placed at flag 'B'.

Ld. Amicus Mr. Chetan Chaterji was not available on call on his number 9919555824 therefore as SMS was sent to him requesting to collect related documents from the office."

7. A perusal of the order dated 01.08.2022 reveals that the criminal appeal in respect of the first appellant, Kishori Saran has abated consequent to his death on 25.09.2002 and so far as the second appellant-Virendra Kumar is concerned, he is alive and on the previous date, on 07.07.2025, this Court appointed Mr. Chetan Chaterji (AoR No. 7471/63) as Amicus Curiae.

8. As per the office report dated 29.09.2022, a report dated 08.12.2015 had been received from District Judge, Jhansi wherein the rest of the papers of the Sessions Trial have been weeded out except the judgment. Office report dated 11.07.2025 also show that since the records have been weeded out in the past. Therefore paperbook could not be prepared in compliance of the Hon'ble High Court's order.

9. Mr. Chetan Chaterji, Amicus Curiae submits that there is nothing on record even otherwise to suggest that the liberty so

accorded to the second appellant while instead of sentencing him to imprisonment, he was directed to be released on probation for a period of one year, has been misused.

10. A Division Bench of this Court in ***Criminal Appeal No.474 of 1980, Mauji Lal and others vs. State of U.P.***, decided on 15.03.2022, had the occasion to consider the contingency when the records stand weeded out and they cannot be reconstructed. It was observed as under: -

"31. Law framed by Hon'ble the Apex Court as well as the High Courts on the law point, i.e, where Lower Court Record is not traceable; reconstruction of same is not possible and even retrial is not possible is to the effect that in such case, the judgment of the Trial Court shall be quashed and appellant shall be acquitted for all charges.

32. Reasons for reaching to the aforesaid conclusion is that in the absence of original record, it is not possible to arrive at a decision that impugned judgment passed and sentence awarded against appellant is legally justified and in conformity with law. Where the reconstruction of record is not possible which has been lost or destroyed, it is not legally permissible for the Appellate Court to affirm the conviction of the appellant since perusal of the record of the case is one of the essential elements of hearing of the appeal. Further, appellant has a right to satisfy the Appellate Court that the material or evidence available on record did not justify his/her conviction and this right cannot be denied to the appellant."

11. Learned counsels have made a joint statement at Bar that barring the memo of appeal and the judgment and order of conviction, they do not possess any other record.

12. Bearing in mind the fact that the offences were committed on 15.07.1979, the order of conviction is dated 24.09.1983 and the appeal is pending since 1983, the records are weeded out and there is no possibility of reconstruction and also the nature of the offences alleged to have been committed and the conviction, this Court while respectfully following the judgment in ***Mauji Lal (supra)***, which in fact follows the law of the land on the said subject, has no option but to quash the impugned judgment and

order dated 24.09.1983 passed by the trial court and acquit the appellant.

13. Resultantly, the present criminal appeal is **allowed**.

14. The judgment and order dated 24.09.1983 passed by the Sessions Judge, Jhansi in Sessions Trial No. 142 of 1980 (State v. Kishori Saran & another) convicting and sentencing appellant-Virendra Kumar under Section 323 IPC and instead of sentencing them to imprisonment, directing them to be release on probation on each of the appellant furnishing a personal bond of Rs. 1,000/- without surety to the satisfaction of the Magistrate concerned for keeping peace and be of good behaviour for a period of one year, stands quashed. The appellant is acquitted of all the charges leveled against him.

Order Date :- 11.8.2025

A. Prajapati