

HIGH COURT OF JUDICATURE AT ALLAHABAD

(SL No.319)

Court No. - 78

Case :- CRIMINAL APPEAL No. - 286 of 1983

Appellant :- Zahoor And Others

Respondent :- State of U.P.

Counsel for Appellant :- Irfan Chaudhary, Sumit
Goyal, Swetashwa Agarwal

Counsel for Respondent :- Govt. Advocate

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Swetashwa Agarwal, learned counsel for the applicants assisted by Ms. Mahjavi Begam, learned Amicus Curiae. The appellant nos. 2, 3, 5 and 6 have who has filed an application for recall of the order dated 09.07.2025 passed by this Court, whereby the non-bailable warrants were issued against the appellants no. 2, 3, 5 and 6, simultaneously appointing Ms. Mahjavi Begum as Amicus Curiae in the instant case. On recall being pressed by learned counsel for the appellants, this Court has asked him to argue the appeal finally, which has been argued by Swetashwa Agarwal as counsel for the appellants assisted by Ms. Mahjavi Begam, Amicus Curiae.

2. The instant criminal appeal has been filed against the judgment and order dated 31.01.1983, passed by the Additional Sessions Judge- IIIrd, Saharanpur, in S.T. No. 86 of 1982 whereby the

accused Zahoor was convicted for the offences under Sections 148 and 324 I.P.C. as well as under Sections 323/149 I.P.C. and also under Sections 325/149 I.P.C. and also under Section 147 I.P.C. whereas the accused Saddu, Nasir, Zaheer, Kaushar and Marghoob were convicted under Sections 147 and under Section 323 read with Section 149 I.P.C. for causing simple hurt and also under Section 324 read with Section 149 I.P.C. and under Sections 325/149 I.P.C. and all the accused persons were acquitted under Section 302 read with Section 149 I.P.C. The appeal is also filed against the order dated 01.02.1983, whereby the appellants herein were sentenced under the aforesaid Sections and the maximum sentence awarded is one year for the offenses under Sections 325, 149 I.P.C., and six months simple imprisonment, under Section 324 I.P.C. and three month each, under Section 323 read with 149 I.P.C. and under Section 148 I.P.C. and three months simple imprisonment under Section 347 I.P.C.

3. Learned counsel for the appellants submits that during the pendency of the instant appeal, both the appellant no.1 Zahoor and appellant no.4, Zaheer, had died and their appeal was abated vide order dated 21.01.2013. Now, the instant criminal appeal is pending only on behalf of appellant no.2, Saddu; appellant no.3, Nasir; appellant no.5, Kausar; and appellant no.1, Marghoob.

4. At the outset, learned counsel for the appellants submits that he is not challenging the conviction of the appellants herein as held by the trial court. In view of the aforesaid statement made by Sri Swetashwa Agarwal, learned counsel for the appellants, the conviction of appellant no.2, Saddu; appellant no.3, Nasir; appellant no.5, Kausar; and appellant no.6, Marghoob is upheld under Sections 147, 323 read with 149, Section 323 read with 149, Section 324 read with 149 I.P.C., Section 325 read with 149 I.P.C.

5. Learned counsel for the appellants submits that since in the instant case, there was no premeditation and incident had occurred all of sudden due to the sudden provocation on the part of the informants' sides. The cross-case was also filed on behalf of the appellants, however, in the said case, an acquittal has been recorded by the trial court. It is further submitted that there is no other criminal history of the appellants except the instant case.

6. Learned counsel for the appellants further submits that the appellants have also undergone some part of the sentence during the trial of the case as well as after the conviction in the instant case, for a brief period of around 15-20 days. At present, the appellant no. 2, Saddu, is aged about 58 years; appellant no.3 is aged about 80 years; appellant no.5, Kaushar, is aged about 62 years; and appellant no.6, Marghoob, is aged about 66 years. It is further submitted that this instant appeal has been pending since 1983. More than 42 years have passed. None of the appellants has been found involved in any other criminal case. Looking at the age of the appellants and the gap of around forty two years during the pendency of the appeal, sending them to jail would not serve the ends of justice, and it is further submitted by learned counsel for the appellants that the ends of justice would be appropriately served if an appropriate fine is imposed by this court. Therefore, learned counsel for the appellants seeks modification in the order of sentence dated 01.02.1983 passed against the appellants.

7. Since, the learned counsel for the appellants has not challenged the conviction, learned A.G.A. submits that the ends of justice would be served by imposing an appropriate fine against the appellants for the aforesaid offenses to which the appellants herein have been convicted.

8. Having heard the submissions so made by learned counsel for the appellants as well as learned A.G.A. for the State, this Court has carefully gone through the record of the case. From the entire story of the prosecution, it appears that the incident dated 08.05.1981 took place all of sudden without there being any premeditation on the part of the appellants herein and due to sudden provocation, the incident occurred. The appeal has been pending in this Court for more than forty two years, and the appellants have not been found involved in any other case.

9. The Apex Court in *State of Karnataka v. Kaisarbaig, (2018) 4 SCC 403*, in an almost identical situation, has modified the sentence to the imprisonment already undergone with a fine of Rs. 50,000/- against each of the appellants. Similarly, in another judgment dated 12.03.2012, in *Labh Singh and Others vs. State of Haryana and Another (Criminal Appeal No. 523 of 2012 arising out SLP (Crl) No. 7719 of 2009)*, the Apex Court has considered the age of the appellants and the length of pendency of appeal, which was twenty seven years. The Apex Court has modified the sentence to the payment of a fine of Rs. 1,00,000/- which is to be paid to the injured persons.

10. In the light of the aforesaid judgements, the instant appeal is partly allowed, and the order of sentence dated 01.02.1983 is hereby modified as follows:

(i) For the offence under Section 325/149 I.P.C., appellants no. 2, 3, 5, and 6 herein are sentenced to the imprisonment already undergone by them with a fine of Rs. 10,000/- each;

(ii) Similarly, for the offence under Section 324 I.P.C., the aforesaid appellants are sentenced to the imprisonment already undergone by them with a fine of Rs. 5,000/- each; and

(iii) For the offences under Sections 323 and 149 I.P.C., the appellants are sentenced to the imprisonment already undergone, plus a fine of Rs. 1000/- each;

(iv) For the offences under Section 147 I.P.C., the appellants herein are sentenced to the imprisonment already undergone, with a fine of Rs. 1,000/- each.

11. Thus, the appellants herein, namely appellant no.2-Saddu, appellant no.3-Nasir, appellant no.5- Kausar and appellant no.6-Marghoob, are directed to deposit Rs. 17,000/- each within a period of one month from today, failing which the order of sentence as awarded by the trial court shall be restored. The amount so recovered from the appellants shall be paid to the injured persons if they are alive, and if not, to their legal heirs after realization from the appellants.

12. With the aforesaid observation the instant appeal is partly **allowed**. The lower court record be sent to the trial court concerned. Since, we have decided the appeal finally, there is no need to pass any further order on the recall application. On the deposit of the fine as awarded above, the bail bonds of the appellants shall be cancelled. The sureties shall be discharged.

13. This court appreciates the assistance provided by *Ms. Mahjavi Begum, learned amicus curiae*, who has assisted the Court and for the service rendered by her, an honorarium of Rs. 10,000/- shall be paid to her as per rules.

Order Date :- 22.7.2025

Shubham Arya

(Anish Kumar Gupta, J.)