

Kabira

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 121-123 of 1980

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

19.02.1980

ORDER

1. The appellant in these appeals was convicted by the VIth Additional District and Sessions Judge, Moradabad for the offence under Sections 392 and 397 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years. The appellant preferred an appeal being Criminal Appeal No. 2141 of 1975 in the High Court and on the appeal being admitted, the appellant was released on bail during the pendency of the appeal. The appeal came up for hearing before a Single Judge of the High Court on August 7, 1979, but no one was present on behalf of the appellant at the time when the appeal reached hearing. The learned Judge thereupon passed an Order dated August 7, 1979 dismissing the appeal. It was not stated in the Order that the appeal was being dismissed on merits or that the reasons for the dismissal of the appeal would be given later. In fact, the Order noted in the Order-sheet of the appeal was as follows : "No one appears on behalf of the accused-appellant. The appeal is dismissed in default." This noting would clearly show that the appeal was dismissed for default of appearance of the appellant. The appellant was unfortunately not aware of the hearing of the appeal and it was only when warrants were issued in pursuance of the Order passed by the High Court dismissing the appeal, that he came to know that the appeal had been dismissed. The petitioner thereupon immediately preferred an application in the High Court on September 11, 1979 for recalling the Order dated August 7, 1979 and praying that his appeal may be restored and heard on merits. This application was, however, summarily rejected by the same learned Judge on September 13, 1979. The petitioner thereafter applied for a certified copy of the Order of the High Court dated August 7, 1979 dismissing the appeal and in response to this application, he received a certified copy of a judgment supposed to have been delivered by the learned Judge on August 7, 1979 dismissing the appeal on merits. The petitioner thereupon instructed his advocate to make an inquiry and the advocate, on inspecting the records of the Session's trial, found that the judgment of which a certified copy had been given to the appellant was not on the record of the case and no copy of the same had been sent by the High Court to the Court of the VIth Additional District and Sessions Judge, Moradabad and the only judgment of the High Court received by the Court of the VIth Additional District and Sessions Judge, Moradabad was the one just dismissing the appeal. The appellant thereupon preferred the present appeals with special leave, one against the original Order dated August 7, 1979, the other against the Order dated September 13, 1979 and the third against the judgment subsequently delivered though dated August 7, 1979.

2. Now it does appear from the record that on August 7, 1979, when the learned Judge dismissed the appeal, he did not go into the merits of the appeal, but dismissed the same for default of appearance of the appellant, as is obvious from the noting made in the Order-sheet of the appeal. If the learned Judge had examined the evidence and then disposed of the appeal on merits, he would have

certainly delivered a judgment dealing with the merits of the appeal instead of passing a cryptic Order saying : "No one appears for the appellant; Shri K. G. Saxena for the State; this appeal is dismissed". If the learned Judge did not want to give a reasoned judgment immediately, he could have said : "The appeal is dismissed for reasons to be given later." But the Order dated August 7, 1979 passed by the learned Judge did not indicate at all that the learned Judge was dismissing the appeal on merits and that he proposed to give his reasons later. The reasoned judgment of the learned Judge which is on record is also dated August 7, 1979, but it does not state anywhere that the Order dismissing the appeal has already been passed and that the reasons for making that earlier Order are being given in the judgment. This judgment proceeds on the basis as if no Order disposing the appeal has preceded it. It does appear a little doubtful whether this judgment disposing of the appeal on merits was given by the learned Judge on August 7, 1979, because if it had been so given, there is no reason why it should not have been sent to the Court of the VIth Additional District and Sessions Judge, Moradabad along with the Order dated August 7, 1979. We are, therefore, of the view that there has not been a proper disposal of the appeal preferred by the appellant. The appeal could not be dismissed by the learned Judge for default of appearance. If the appellant was not present, the learned Judge should have appointed some advocate as amicus curiae and then proceeded to dispose of the appeal on merits. The Order dated August 7, 1979 passed by the learned Judge dismissing the appeal, as also the reasoned judgment bearing the date August 7, 1979 given by the learned Judge must accordingly be set aside.

3. We, therefore, allow the appeals, set aside the Order and the judgment of the High Court and direct that Criminal Appeal No. 2141 of 1975 be heard and disposed of by the High Court on merits. The appellant will continue on the same bail for a period of 15 days from today in order to enable him to apply for bail to the High Court.

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