

Shyam Sunder

Vs

State of Rajasthan

Criminal Appeal No. 210 of 1981

(Syed M. Fazal Ali, V.B. Eradi JJ)

25.02.1981

ORDER

1. The appeal in our opinion must succeed on a short point. The admitted facts are that the criminal appeal filed by the appellant before the Rajasthan High Court was initially presented in Jodhpur which is the headquarters of the High Court. A counsel from Jodhpur was engaged by the appellant to argue the appeal. While the appeal was pending in the Jodhpur Bench, it was transferred to the Bench at Jaipur without serving any notice on the appellant. The appellant was stated in affidavit that even his counsel at Jodhpur did not inform him that the appeal had been transferred to Jaipur and will be heard there. In these circumstances, the appeal was heard by the Bench at Jaipur in the absence of the accused, as would appear from the judgment itself. Counsel for the State of Rajasthan has not denied these facts and has conceded that as the appeal had been decided without hearing the accused he would not have any objection if the appeal is remitted to the High Court at Jaipur for re-hearing in presence of the accused. Although the High Court at Jaipur has given reasons for dismissing the appeal the fact remains that as the accused was not represented the possibility of the appellant having persuaded the High court to take a different view cannot be reasonably excluded. In these circumstances, therefore, we allow this appeal, set aside the judgment of the High Court at Jaipur for disposal in accordance with law after hearing the appellant as also the counsel for the respondent. The appellant will now immediately engage his counsel and appear before the High Court for further directions on March 16, 1981. The High Court will fix a short date and dispose of the appeal as soon as possible.

2. The appellant will continue on bail.

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