

Shaukin Singh and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 363 of 1981

(R.S. Pathak, Baharul Islam JJ)

30.03.1981

JUDGMENT

Pathak, J. –

1. Special leave granted.
2. This appeal is directed against the judgment dated October 31, 1980 of the Allahabad High Court maintaining the conviction and sentence of the appellants under the second part of Section 304 read with Section 34 of the Indian Penal Code and Section 323 read with Section 34 of the Code.
3. The learned Sessions Judge tried the accused for offences under Section 302 read with Section 34 and Section 323 read with Section 34 but convicted and sentenced them as mentioned above. An appeal was filed in the High Court through counsel, but when it was taken up for hearing counsel did not appear, and when it was taken up again some time later counsel applied for adjournment on the ground that he was busy arguing a case in another court. The learned single Judge of the High Court did not accept the request and proceeded with the case with the assistance of the Deputy Government Advocate for the State, and he thereafter dismissed the appeal. The High Court found that the appellants had the intention of causing death of the deceased. But, since no appeal had been preferred by the State against the acquittal under Section 302 of the Code, the court maintained the conviction and sentence imposed by the learned Sessions Judge. Counsel for the appellants applied for recalling the judgment and restoring the appeal. The application was rejected. The appellants then applied for special leave against that order, but without success.
4. We have perused the record before us and we think that the case should be sent back to the High Court so that the appeal be disposed of afresh by it. We need express no opinion on the merits but we would like to point out that certain aspects of the case have not been covered. Perhaps if the High Court had had the assistance together of counsel for both the parties, a fuller and more considered judgment touching on the different aspects of the case would have resulted. The judgment shows that the court was evidently handicapped by the absence of the counsel. We are aware that the special leave petition against the order refusing to restore the appeal has been dismissed. But here we are concerned with the case on its merits, and the absence of counsel during the hearing of the appeal is only a factor influencing the decision on the merits.
5. Accordingly, in the special circumstances and treating this as an exceptional case, we set aside the judgment dated October 31, 1980 passed by the High Court and remit the case back to it for fresh consideration and disposal of the appeal. It will be for the High Court to consider the appeal again on its merits and to dispose it of in accordance with law and in the free exercise of its judgment.

6. The appellants shall be released on bail to the satisfaction of the Chief Judicial Magistrate, Bijnor. But, they will appear and surrender before the High Court on April 27, 1981 and the grant of bail to the appellants thereafter will be entirely in the discretion of the High Court.

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