

State of J & K

Vs

Mazhar Ali and Another

Criminal Appeal No. 555 of 1976

(Sabyasachi Mukharji, S. Ranganathan JJ)

31.03.1989

ORDER

1. In this case the offence is alleged to have been committed in November 1971. The respondents were the two accused. They were arrested in November 1971. The offence alleged were under Sections 302 and 201 of IPC for brutal murder and mutilation of the dead body. It is not necessary to deal with facts and motives. Both were found guilty and convicted by the learned District & Sessions Judge. Sentences of death were passed on both of the respondents. Both appealed to the High Court. The High Court on January 20, 1976 set aside the judgment of the learned Additional Sessions Judge, and the convictions of both the accused were set aside and they were directed to be released. On the application of the State on November 23, 1977, this Court granted special leave and issued non-bailable warrants against both the respondents. On March 14, 1977, respondent 1 was granted bail. Respondent 1 did appear at one stage and he sought for and obtained legal aid of the Supreme Court Legal Aid Committee. He was apparently dissatisfied with the legal aid counsel, Mr. M. Qamuruddin and the counsel was also dissatisfied with the instructions and he got himself discharged by the order of this Court dated September 22, 1988. Thereafter, a fresh notice was also directed to be issued to him. He is not appearing now. We do not know whether he has been intimated as directed. So far as respondent 2 is concerned, the non-bailable warrant directed to be issued against him by this Court has not been executed. Several attempts were alleged to have been made but his correct address was not available to the State or to the State authorities. In that view of the matter, we gave the State a last chance by the order of this Court dated January 31, 1989, to have the non-bailable warrant against respondent 2 executed, yet he still remains untraced. It is not necessary for us to find out who is responsible for this but in the events that have happened, in our opinion, it will be unjust to carry on the prosecution in such an offence which has been alleged to have been committed in the year 1971. We revoke the order granting the special leave. This however, will not prejudice the rights, if any, in future if the State is able to trace respondent 2 and is able to serve respondent 1 to make application for fresh leave.

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