

Jagbir and Another

Vs

State of Punjab

Criminal Appeal No. 121 of 1996

(M. K. Mukherjee, S. M. Quadri JJ)

03.09.1998

ORDER

1. Consequent upon a charge-sheet (challan) submitted by the police and a committal enquiry that followed, the two appellants and others were placed on trial before an Additional Sessions Judge, Ferozepur. The trial ended in an acquittal of all of them, and aggrieved thereby, Birbal, the complainant, filed an appeal before the High Court after obtaining leave under Section 378(4) CrPC. In disposing of the appeal the High Court set aside the acquittal of the two appellants and convicted them under Sections 302/34 IPC, while upholding the acquittal of others. Aggrieved by the order of the conviction and sentence recorded against them the appellants filed this appeal under Section 379 CrPC.

2. Since the appeal must succeed on a pure question of law, we need not go into the facts of the case. Admittedly, the cognizance in the instant case was taken upon a police report under Section 190(1)(b) CrPC. Resultantly, it was the State alone who could file an appeal in the High Court against the order of acquittal under Section 378(1) CrPC after obtaining leave under sub-section (3) thereof - and not the complainant who could only file an application under Section 401 CrPC for revision of that order. The High Court, therefore, was not at all justified in entertaining the appeal of the complainant and disposing the same in the manner aforesaid. On this score alone, we allow this appeal and restore the order of the trial court. The High Court will now treat the memorandum of appeal filed by the complainant as an application for revision of the order of the Sessions Judge, qua the two appellants only, and dispose of the same in accordance with law. The appellants who are in jail be released forthwith unless wanted in connection with any other case.