

SUPREME COURT OF INDIA

Kalu Ram and Anr

Vs

State of Delhi

Appeal (Crl.) 694 of 2006 (Arising Out of Slp (Crl.) Nos. 5731-5733 of 2005)

(Arijit Pasayat and Altamas Kabir, JJ)

15.06.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

The appellants question correctness of the judgment rendered by a learned Single Judge of the Delhi High Court who dismissed the appeal filed by the appellants simply observing that the Criminal Revision Petition No.117 of 2001 filed by the informant has been dismissed and the said revision and appeal related to the same judgment. It is to be noted that the appellants as accused nos. 2 and 3 faced trial for alleged commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'), along with accused no.1 i.e. Tej Ram who has expired in the meantime, while several others some of whom have died in the meantime, the allegations were under Sections 147, 148, 149 and 307 IPC for which the accused Nos.1, 2 and 3 were also similarly charged.

The trial court by its judgment dated 13.11.2000 held that the appellants Kalu Ram and Roop Chand were guilty of offence punishable under Section 304 Part I read with Section 34 IPC and sentenced each to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- with default stipulation. All the other accused persons were acquitted. The informant Ranjit Singh filed a revision application questioning the conviction of the appellants under Section 304 Part I IPC.

According to him they should have been convicted under Section 302 IPC and the other accused persons should not have been acquitted. Appellants filed an appeal questioning their conviction and sentence imposed. Learned Single Judge took up the criminal revision first and held the same to be without merit. But without considering the merits of appeal filed by the present appellants dismissed the same holding that in view of the decision in the Criminal Revision Petition No.117 of 2001, the appeal also was without merit.

Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It did not hear the learned counsel for the appellants. On the contrary in the judgment it has been indicated as if the appellants were represented by Mr. Rajesh Aggarwal and Ms. Mridul Aggarwal who in fact were the learned counsel for the informant Ranjit Singh in the connected Criminal Revision. The summary disposal of the appeal is also not proper as no opportunity was granted to the appellants to substantiate their challenge to the legality of the judgment of the trial court.

We find that the contentions of the learned counsel for the appellant to be correct. The case of the appellants was not independently examined. Merely because the Revision Petition filed by the informant was dismissed that could not have been a ground for not discussing the merits of the appeal filed by the appellants. A Criminal Revision Petition may have been without merit; but that did not make the appeal filed by the appellants meritless.

On the above grounds alone we set aside the order of the High Court and sent it to the High Court for a fresh consideration on merits.

It is submitted by learned counsel for the appellants that they were on bail during the pendency of the appeal before the High Court. It is open to them to bring this fact to the notice of the High Court and seek such interim order as is available in law. Since the appeal is of the year 2000 the High Court is requested to dispose of the same expeditiously.

The appeals are allowed to the aforesaid extent.

J