

Neutral Citation No. - 2024:AHC:147793

**Court No. - 86**

**Case :-** CRIMINAL APPEAL No. - 2616 of 1982

**Appellant :-** Shri Ram Singh

**Respondent :-** State

**Counsel for Appellant :-** G.P. Dixit,R.K.Kanaujiya,Swetash Agrawal

**Counsel for Respondent :-** A.G.A.

**Hon'ble Nalin Kumar Srivastava,J.**

1. This criminal appeal has been preferred by the appellant - Shri Ram Singh against the judgement and order dated 30.09.1982 passed by Session Judge, Ballia in Session Trial No.37 of 1982 (State Vs. Shri Ram Singh and another) under Section 302/201 IPC, Police Station Garwar, District Ballia convicting and sentencing the appellant for the offence under section 201 IPC to undergo 4 years rigorous imprisonment.

2. Heard Sri R.K. Kanaujiya, learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.

3. A pertinent question involved in this appeal is as to if the original record of the trial court is not available before the Appellate Court, what legal consequence would ensue.

4. Learned counsel for the appellant has prayed for acquittal of the sole surviving appellant Shri Ram Singh, as the entire record (except the original judgment and order of the trial court) of this case has been weeded out as per report of District Judge, Ballia and now hearing of this Appeal is not possible for want of record. The present appeal pertains to year 1982. In view of all these facts particularly considering the fact that this appeal is pending for the last 42 years, it appears expedient in the interest of justice that this appeal may be decided finally.

5. A perusal of the record reveals that complete trial court record was summoned, but only a part of the record was sent by the District Judge, Ballia which includes only impugned judgment and order. No other document is available on record to proceed with

the present appeal.

6. It further reveals from the perusal of the record that except the impugned judgment and order, rest of the record has been destroyed / weeded out. This Court vide order dated 8.8.2024 called for the report from the court concerned as to whether the reconstruction of the trial court record or retrial pertaining to the present case is possible or not. In compliance thereof, a report dated 28.8.2024 sent by the District Judge, Ballia was received wherein it was submitted that reconstruction of the trial court record of the present case is not possible and due to non-reconstruction of the trial court record, retrial of this case is also not possible.

7. In the similar circumstances, a Division Bench of this Court dealt with the matter in **Brahmanand Shukla Vs. State of U.P. reported in 2010 (5) ADJ 158 (D.B.)**. In the said matter, it was observed that -

"In the present case, as we have mentioned in the earlier part of the judgment only a copy of the trial court's judgment is available and no other documents like FIR, post mortem report, copies of the documents which had been filed by the prosecution and were exhibited during trial, the statement of the witnesses recorded under Section 161 Cr.P.C. are available despite various attempts to reconstruct the record. The incident is of the year 1979 i.e. the incident took place about 30 years back. In these circumstances, no fruitful purpose would be served by ordering re-trial as the same cannot be conducted at all in absence of these documents.

In the light of the above discussions and the circumstances mentioned above, we have no other alternative but to allow the appeal, set aside the conviction and sentence of the appellant and to acquit him.

The appeal is allowed and the conviction and sentence of the appellant as recorded by the trial court is set aside and the appellant is acquitted of the charge levelled against him. His sureties and personal bonds are discharged.

Let a copy of this judgment be certified to the trial court for its intimation."

8. Subsequently the issue was again raised before the Division Bench of this Court in **Government Appeal No.2528 of 1987, State of U.P. Vs. Subedar and others**, which was an acquittal

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appeal and the Division Bench in the aforesaid matter found which is extracted here in below -

"The incident in the present case is of the year 1986 almost 29 years ago. The judgment of the trial court is of the year 1987. The appeal is pending for the last 29 years. In absence of the record the direction for retrial would be of no purpose inasmuch as, the FIR, inquest report, the injury report, the postmortem report, site plan and other recovery memos are not available and as such nothing can be proved by directing retrial. Further retrial after a lapse of such a long time would also not serve the ends of justice, inasmuch as, requiring the witnesses to depose about the incident which took place 29 years ago, their memory would be falling and they would not be in a position to give an accurate account of the incident. For the above reasons, we are not inclined to issue any direction for retrial. In such circumstances, we relying upon the judgment of the Apex Court in the case of **State of U.P. Vs. Abhai Raj Singh and another [2004 (2) JIC 337 (SC)]** and Division Bench judgment of this Court in the case of **Brahmanand Shukla Vs. State of U.P. [LAWS (ALL)-2010-4-14]**, proceed to decide the appeals accordingly.

The only option that remains with us is to dismiss the Government Appeal.

Accordingly, the Government Appeal is dismissed."

9. It is notable that the law laid down in **Brahmanand Shukla (supra)** case was also taken into account by the Division Bench in the judgment and order passed in Government Appeal No.2528 of 1987 (supra) and the law promulgated by the Hon'ble Apex Court in the matter of **State of U.P. Vs. Abhai Raj Singh and Anr. (supra)** establishing a principle on the subject where substantial portion of record was not available and it was observed like this -

"We, therefore, set aside the order of the High Court and remit the matter back for fresh consideration. It is to be noted at this juncture that one of the respondents i.e. Om Pal has died during the pendency of the appeal before this Court. The High Court shall direct re-construction of the records within a period of six months from the date of receipt of our judgment from all available or possible sources with the assistance of the Prosecuting Agency as well as the defending parties and their respective counsel. If it is possible to have the records reconstructed to enable the High Court itself to hear and dispose of the appeals in the manner envisaged under Section 386 of the Code, rehear the appeals and dispose of

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the same, on its own merits and in accordance with law. If it finds that re- construction is not practicable but by order retrial interest of justice could be better served - adopt that course and direct retrial - and from that stage law shall take its normal course. If only reconstruction is not possible to facilitate High Court to hear and dispose of the appeals and the further course of retrial and fresh adjudication by Sessions Court is also rendered impossible due to loss of vitally important basic records - in that case and situation only, the direction given in the impugned judgment shall operate and the matter shall stand closed. The appeals are accordingly disposed of."

10. The same principle of law echoes in a plethora of decisions of the Hon'ble Supreme Court and this Court as well, such as **Hari Ram Vs. State, Criminal Appeal No. 1239 of 1982 (date of decision 10.5.2016)** and **Raj Kumar Vs. State of U.P., Criminal Appeal No.29 of 1989 (delivered on 25.11.2020)**

11. The judgment of the Hon'ble Supreme Court was also considered in Government Appeal No.2528 of 1987 (supra).

12. The dictum of law, which flows from the above is that if the substantial portion of trial court record is not available before the Appellate Court, an endeavour should be made firstly for the reconstruction of the record and if only reconstruction is not possible to facilitate the High Court to hear and dispose of the appeal, then possibility should be looked into for the retrial of the case and if due to the loss of vital and basic records of the trial court retrial and fresh adjudication of the matter is not possible, then in that case the impugned judgment and order should not be permitted to operate and the matter shall stand closed.

13. In the present case, as admitted by the prosecution itself, since the reconstruction of the record is not possible and no other record except the impugned judgment and order of the trial court is available, as a natural consequence thereof, retrial of the case is also not possible.

14. Hence, in view of the legal principle enumerated in the aforesaid judgments, in my view, nothing remains in this appeal and on account of non-availability of the vital and important basic records, the conviction order cannot be sustained. This Court has no other alternative in these circumstances but to allow the appeal and set-aside the conviction and sentence of the appellant and to acquit him.

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15. Resultantly, the appeal is allowed and the conviction and sentence of the appellant, as recorded by the trial court vide impugned judgement and order dated 30.09.1982, is set-aside and the sole surviving appellant Shri Ram Singh is acquitted of the charge under Section 201 IPC levelled against him. His sureties and personal bonds are ordered to be discharged.

16. All pending applications shall also stand disposed of accordingly.

17. Let a copy of this judgment be certified to the trial court for intimation and necessary action.

**Order Date :- 9.9.2024**

SS