

Court No. - 58

Case :- CRIMINAL APPEAL U/S 374 CR.P.C. No. - 2616 of 1982

Petitioner :- Ram Singh

Respondent :- State

Petitioner Counsel :- G.P. Dixit

Respondent Counsel :- Aga

Hon'ble Sibghat Ullah Khan,J.

List revised. No one appears for the appellant.

Accordingly bail order dated 14.10.1982 is cancelled. Let non bailable warrant be issued to the appellant for appearance on 1.10.2012.

List on 1.10.2012. Meanwhile office shall immediately summon the records of the court below.

Order Date :- 11.9.2012

RS

Court No. - 58

Case :- CRIMINAL APPEAL U/S 374 CR.P.C. No. - 2616 of 1982

Petitioner :- Ram Singh

Respondent :- State

Petitioner Counsel :- G.P. Dixit

Respondent Counsel :- Aga

Hon'ble Sibghat Ullah Khan,J.

Shri Rajesh Kumar Kanojia and Shri Swetashwa Agarwal, learned counsel have filed their appearance slip on behalf of appellant and also an application dated 1.10.2012 praying for recall of order dated 11.9.2012 through which non-bailable warrant was directed to be issued and earlier bail order was cancelled. Learned counsel state that appellant has not yet been arrested. Shri Sangam Lal Kesarwani, learned A.G.A. also states that in case appellant had been arrested by now he would have got information however, he has not received any information hence the statement of learned counsel for appellant appears to be correct. As new counsel have appeared on behalf of appellant hence order dated 11.9.2012 is recalled and bail order dated 14.10.1982 is revived.

List on 15.10.2012.

Registrar General is directed to immediately send Fax message to Chief Judicial Magistrate, Ballia alongwith covering letter annexing therewith copy of order dated 11.9.2012 asking him as to why records of court below have not yet been sent.

Certified copy of the order may be issued to the learned counsel for the appellant on payment of usual charges today.

Order Date :- 1.10.2012

RS

Court No. - 25

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- Aga

Hon'ble Anil Kumar Sharma,J.

In the lower court record only judgment in original passed by Sri G.P. Srivastava the then Sessions Judge, Ballia dated 30.09.1982 has been annexed.

Call for report from Sessions Judge, Ballia about the other record of the case.

Compliance report be submitted within eight weeks.

List thereafter.

Let copy of the order be sent to Sessions Judge, Ballia through FAX for compliance.

Order Date :- 7.11.2014

Imroz

Court No. - 45

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- AGA

Hon'ble Pratyush Kumar,J.

None appears on behalf of the appellant even in the revised list.

List in the next cause list.

Order Date :- 30.6.2016

T. Sinha

Court No. - 17

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- AGA

Hon'ble Vinod Kumar Srivastava-III,J.

List after four weeks showing the name of Shri R.K. Kanaujiya and Shri Swetash Agarwal as counsel for the appellant in the cause list.

Order Date :- 8.7.2016

Atul kr. sri.

Court No. - 27

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- AGA

Hon'ble Vinod Kumar Srivastava-III,J.

Shri R.K. Kanaujiya, learned counsel for the appellant and Shri P.K.Srivastava, learned A.G.A. are present.

Vide order dated 7.11.2014 the report was called from Sessions Judge, Ballia about the lower court record but no report of Sessions Judge, Ballia has been received.

Office is directed to issue reminder to the Sessions Judge, Ballia for compliance of the order dated 7.11.2014 and submits its report within six weeks.

List thereafter.

Order Date :- 2.8.2016

Atul kr. sri.

Court No. - 22

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- AGA

Hon'ble Amar Singh Chauhan, J.

Office is directed to send a reminder to the court concerned for sending the lower court record within four weeks.

List after receipt of record of lower court.

Order Date :- 16.9.2016

Pr/-

Court No. - 42

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- AGA

Hon'ble Shailendra Kumar Agrawal, J.

The case is called out in the revised list.

None is present to press this appeal on behalf of the appellant.

Only judgement has been sent by the Lower Court, Ballia.

Summon the original record from the District Judge, Ballia.

Office is directed to make compliance immediately.

List on **12th December, 2016.**

Order Date :- 22.11.2016

Vinod.

Court No. - 54

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- A.G.A.

Hon'ble Dinesh Kumar Singh,J.

Lower Court record has been received

Sri R.K. Kanaujiya, learned counsel for the appellant submits that he could not obtain the copies of the lower Court record and he does not have entire record to argue in this appeal.

Learned counsel for the appellant may do so within a period of 15 days.

List this appeal, peremptorily, after 15 days.

Order Date :- 4.8.2018

S. Thakur

Court No. - 50

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- A.G.A.

Hon'ble Harsh Kumar, J.

There is an illness slip of Shri R.K. Kanaujiya, learned counsel for the appellant. However, there are two more counsel shown in the cause list.

The perusal of record shows that whenever the case is listed adjournment is sought on the part of appellant of one ground or the other, and in this 1982 appeal learned counsel for the appellant is not ready to argue after a period of 36 years.

In the interest of justice the case is passed over for the day on the illness slip of Shri R.K. Kanaujiya, learned counsel for the appellant.

List peremptorily after two weeks, and if any of the three counsels are not ready to argue, they are supposed to make necessary arrangements for hearing of appeal. In case they fail to argue, the court will have no option except to issue N.B.Ws against the appellant.

Order Date :- 21.8.2018

VS

Court No. - 50

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- A.G.A.

Hon'ble Harsh Kumar, J.

Sri Rajesh Kumar Kannoja, learned counsel for the appellant submits that he is unable to contact the appellant and has no instructions.

Let non-bailable warrants be issued against the sole appellant Shri Ram Singh through C.J.M., Ballia, who shall get the non-bailable warrants executed forthwith and submit the compliance report in two weeks, failing which serious view will be taken by this Court.

List after three weeks for hearing of appeal.

Office is directed to send a copy of this order to C.J.M., Ballia through **Fax, E-mail** and ordinary process within three days for compliance.

Order Date :- 5.9.2018

Kpy

Court No. - 77

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- A.G.A.

Hon'ble Ashok Kumar,J.

In compliance of the earlier order dated 05.09.2018 non-bailable warrant was issued however the office report indicates that the appellant is not traceable as he resides outside the district concerned since last 10-15 years.

Let the Chief Judicial Magistrate will take appropriate steps for compliance of the order dated 05.09.2018.

List after six weeks.

Order Date :- 7.7.2020

A.Kr.*

Court No. - 88

Case :- CRIMINAL APPEAL No. - 2616 of 1982

Appellant :- Ram Singh

Respondent :- State

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

Counsel for Respondent :- A.G.A.

Hon'ble Dinesh Pathak, J.

List has been revised. None appears on behalf of the appellant. Shri O.P. Mishra, learned A.G.A. for the State is present.

In compliance of the order dated 05.09.2018 non-bailable warrant was executed against the sole appellant-Ram Singh who has move Recall Application No. 02 of 2020 along with the Delay Condonation Application No. 01 of 2020. Nobody is present to press the aforesaid applications. In view of the above, both the applications are dismissed for want of prosecution.

Office report dated 06.07.2020 shows that in compliance of the order dated 22.11.2016, the District Judge, Ballia has submitted his report dated 24.07.2019 along with the earlier report dated 02.12.2016 sent by the then District Judge, Ballia informing that record of Sessions Trial No. 37 of 1982 relating to the present matter, is weeded out on 15.03.1993 by Shri Badre Alam, the then Record Keeper of the record room and information in this respect had already been given to the High Court vide Official Letter No. 2617/XV dated 26.09.2012. In the report dated 02.12.2016 it is also stated that Additional Sessions Judge, FTC, Ballia was directed to get the record of Sessions Trial No. 37 of 1982 reconstructed and submit his report along with the record. In pursuance of the aforesaid direction subsequent report dated 24.07.2019 was submitted to the effect that reconstruction of the record of Sessions Trial No. 37 of 1982 (State vs. Ram Singh) is not possible. Aforesaid observation qua non-reconstruction of the record was made on the basis of the enquiry report dated 25.02.2019 submitted by the Enquiry Officer Shri Chandra Bhan Singh, IInd Additional District & Sessions Judge, Ballia. The said enquiry report is also enclosed with the report dated 24.07.2019.

List this appeal is due course.

Order Date :- 9.11.2020/VR

Court No. - 83

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 Sanjay Kumar Pachori,J.

In compliance of earlier order dated 5.9.2018, report is incomplete.

Call the report from C.J.M., Ballia in pursuance of earlier order dated 5.9.2018.

List on 28.9.2023.

Order Date :- 12.9.2023

T. Sinha

Court No. - 90

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 Dinesh Pathak,J.

As prayed by learned counsel for the appellant, list this matter on
08.11.2023.

Order Date :- 26.10.2023

Jitendra

Court No. - 90

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 Dinesh Pathak,J.

Order on Delay Condonation Application No.3 of 2023 and Recall Application (Criminal) No.4 of 2022 :-

1. Instant recall application along with delay condonation application supported by affidavit has been filed on behalf of the applicant to recall the order dated 09.11.2020 by which previous recall application no.2 of 2020 and delay condonation application no.1 of 2020 filed against the order dated 05.09.2018 has been ordered to be dismissed for want of prosecution.
2. No counter affidavit has been filed to the aforesaid applications.
3. Cause shown for the delay and non-appearance of counsel for the applicant on the date of hearing has been explained in the supporting affidavits are to the satisfaction of the Court.
4. As such, delay condonation application as well as recall application is allowed. Consequently, original delay condonation application no.1 of 2020 and recall application no.2 of 2020 which have been filed against the non-bailable warrant dated 05.09.2018 are hereby restored to its original number.

Order on the memo of Appeal :-

Place this matter before appropriate Bench on **05.01.2024**. The matter shall not be treated as tied up or part heard to this Bench.

Order Date :- 12.12.2023

VR

Court No. - 85

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 Ms. Nand Prabha Shukla,J.

1. As per Office report dated 4.1.2024, it has been reported that the Misc. Delay Condonation Application No. 1 of 2020 and Misc. Recall Application (Criminal) No. 2 of 2020 filed by learned counsel for the appellant for recalling the Hon'ble Court's order dated 5.9.2018 passed by Hon'ble Justice Harsh Kumar is pending.
2. Let a fresh report be called from the CJM concerned regarding the compliance of order dated 05.09.2018.
3. List again on 29.1.2024.

Order Date :- 12.1.2024

Vandana Y.

Court No. - 84

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. Case called out. No one has appeared on behalf of the appellant. However, the learned A.G.A. is present.
2. Let a fresh report be called for from the CJM, Ballia, as ordered by coordinate Bench of this Court vide order dated 12.1.2024.
3. The trial court record be also summoned positively by the next date of listing.
4. The matter is very old one. List this matter on 26.2.2024.

Order Date :- 5.2.2024

SS

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. Case called out. Sri R.K. Kanaujiya, learned counsel for the appellant is present.
2. It appears from the perusal of the record that proceedings for reconstruction of the lost record were pending.
3. Let a specific report be called for from the concerned court as to whether the possibility of the reconstruction of the lost record and retrial of this case exists or not. The said report be submitted by the next date fixed in the matter.
4. List this case on 9.9.2024 alongwith fresh office report.

Order Date :- 8.8.2024

SS

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

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

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.

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