

(2008) 08 AHC CK 0293

Allahabad High Court

Case No: None

Nanku

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: R.K. Rastogi, J; Amar Saran, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Amar Saran and R.K. Rastogi, JJ.

The facts relevant for disposal of this appeal are that the appellant and two others named Ram Kumar and Uttam were charged u/s 302/34 IPC and tried for the offence. The trial court, after hearing of the case, came to the conclusion that the charge was sufficiently proved against Ram Kumar and Nanku but it was not proved against Uttam. Hence, Uttam was acquitted of the charge but Ram Kumar and Nanku were convicted u/s 302/34 and sentenced to life imprisonment. Aggrieved with that judgment and order Nanku filed this appeal.

2. When the record of the trial court was summoned for hearing of this appeal, it was reported that the record had been burnt in the incident of fire in the Record Room of the District Court. Thereafter steps were taken for reconstruction of the record but the record could not be reconstructed as no documents were available either with the prosecution, or with the accused or with the police or with the complainant. As reported by Sri. S.K. Pandey, District Judge, Bareilly vide his letter No. 55 (v)-Crl. Dated 27.7.07 reconstruction of the record is not possible.

3. Thereafter directions were issued to the Distt. and Sessions Judge to take steps for retrial of the case in accordance with the directions of the Hon'ble Apex Court in the case of State of U.P. v. Abhay Raj Singh 2004 SCC 901 vide order dated 2.11.07.

In compliance thereof a report has been received from the District Judge, Bareilly vide Letter No. 75/v-Crl. dated 29.11.07 that no document is available for retrial and so it is not possible to conduct retrial of the case.

4. Under these circumstances, when reconstruction of the record is not possible and when retrial is also not possible in the absence of the basic documents, there is no other alternative but to allow this appeal and acquit the accused as laid down by the Hon"ble Apex Court in the aforesaid ruling in the case of Abhay Raj Singh (Supra).

5. The appeal is, therefore, allowed and the accused appellant is acquitted of the charge u/s 302/34 IPC. He is on bail and he need not to surrender. His bail bonds are cancelled and his suresties are discharged.