(1999) 01 AHC CK 0104

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 5065 of 1998

Dashamani and Others		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Jan. 8, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374(3), 384
- Penal Code, 1860 (IPC) - Section 235, 323, 325

Citation: (1999) CriLJ 2338

Hon'ble Judges: Virendra Saran, J

Bench: Single Bench

Advocate: N.K. Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Virendra Saran, J.

The applicants Dashamani and Khilari alias Dinesh were convicted by the learned 3rd Additional Munsif Magistrate, Gyanpur, district Varanasi under Sections 323 and 325 I.P.C. u/s 323 I.P.C. they were awarded three months'' R.I. and a fine of Rs. 100/- each and u/s 235 I.P.C. they were awarded one year''s R.I. and a fine of Rs. 500/- each. The applicants filed Criminal Appeal No. 67 of 1991 in the Court of Sessions at Varanasi. The appeal came up for hearing before Special Judge (E.C. Act)/Additional Sessions Judge, Varanasi and it was discovered that in the memo of appeal there was no mention of the sentence awarded to the applicants u/s 325 I.P.C. Thereupon the applicants made an application 24-Kha dated 26- 2-1994 praying that they may be permitted to include Section 325, I.P.C. in the memo of appeal. The learned Additional Sessions Judge by his impugned order dated 11-11-1998 rejected the application on the ground that there was no provision in law for allowing such an

amendment in the memo of appeal. The applicants have challenged this order by means of this application.

2. I have heard Sri N.K. Sharma, learned counsel for the applicant, Sri Jagdish Tiwari learned State Counsel and Sri Jagdish Singh Sengar, learned counsel for the complainant.

3. I have considered the points raised by the learned counsel on either side. Section 374(3), Cr.P.C. states :-

374(3) - Save as otherwise provided in Sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b)to(c)...

may appeal to the Court of Session.

The language of the Section is unambiguous and an appeal is provided against orders of conviction. Whenever an appeal is preferred by a convict the judgment of conviction, as a whole, is under appeal and when such appeal is not dismissed summarily u/s 384 the Court is duty bound to dispose it of on merits. Even though the particulars such as the sections under which appellant has been convicted, sentence awarded and the like are, to appear on the face of the appeal for purpose of clarity but if there is any accidental omission it will not seal the fate of the appellant. In a criminal case while judging the guilt of an accused hypertechnical rules of the pleadings cannot be allowed to intervene and come in the way of the Court to impart justice. I am of the considered opinion that the learned Additional Sessions Judge should have exercised his judicial discretion by permitting the applicants to amend the appeal by mentioning Section 325 and the sentence awarded there under to do justice in the case.

4. Accordingly this application is allowed. Learned Additional Sessions Judge concerned is directed to permit the applicants to amend the appeal by mentioning Section 325, I.P.C. and the sentence awarded there under in the memo of appeal. Needless to observe that the lower appellate Court shall dispose of the appeal expeditiously.