
(1998) 09 SC CK 0093

Supreme Court of India

Case No: Criminal Appeal No. 121 of 1996

Jagbir and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 3, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190(1), 378(4), 379, 401
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (1998) 7 AD 29 : AIR 1998 SC 3130 : (1998) AIRSCW 3044 : (1998) 2 ALD(Cri) 673 : (1998) 2 ALT(Cri) 314 : (1998) CriLJ 4588 : (1998) 3 Crimes 244 : (1998) 5 JT 254 : (1999) 1 LW(Cri) 193 : (1998) 5 SCALE 161 : (1998) 6 SCC 629 : (1998) 1 SCR 411 Supp : (19

Hon'ble Judges: Syed Shah Mohammed Quadri, J; M. K. Mukherjee, J

Bench: Division Bench

Final Decision: Partly Allowed

Judgement

1. Consequent upon a charge sheet (challan) submitted by the police and a committal enquiry that followed, the two appellants and others were placed on trial before an Additional Sessions Judge, Ferozpur. The trial ended in an acquittal of all of them; and aggrieved thereby, Birbal, the complainant, filed an appeal before the High Court after obtaining leave u/s 378(4) Cr.P.C. In disposing of the appeal the High Court set aside the acquittal of the two appellants and convicted them u/s 302/34 I.P.C., while upholding the acquittal of others. Aggrieved by the order of the conviction and sentence recorded against them the appellants filed this appeal u/s 379 Cr.P.C.

2. Since the appeal must succeed on a pure question of law, we need not go into the facts of the case. Admittedly, the cognizance in the instant case was taken upon a police report u/s 190(1)(b) Cr.P.C. Resultantly, it was the State alone who could file an appeal in the High Court against the order of acquittal u/s 378(1) Cr.P.C. after obtaining leave under Sub-section (3) thereof - and not the complainant who could only file an application u/s 401 Cr.P.C. for revision of that order. The High Court, therefore, was not at all justified

in entertaining the appeal of the complainant and disposing the same in the manner aforesaid. On this score alone, we allow this appeal and restore the order of the trial Court. The High court will now treat the memorandum of appeal filed by the complainant as an application for revision of the order of the Sessions Judge, qua the two appellants only, and dispose of the same in accordance with law. The appellants who are in jail be released forthwith unless wanted in connection with any other case.