

Sundar Lal Vs. the State

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Court : Allahabad

Decided On : May-10-1967

Reported in : AIR1968All320; 1968CriLJ1226

Judge : G.D. Sahgal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 420

Appeal No. : Criminal Appeal No. 485 of 1964

Appellant : Sundar Lal

Respondent : The State

Advocate for Def. : K.H. Kapoor, Adv.

Judgement :

G.D. Sahgal, J.

1. Sunder Lal, who was convicted by the Civil and Sessions Judge of Sita-pur of an offence under Section 395, I.P.C., submitted an appeal from jail which, as the endorsement on the memorandum Indicates, was received by the office on the 17th of December, 1963, though it was ordered to be registered on the 24th of April, 1964. At the same time, he submitted an appeal through counsel which was filed in Court on the 19th of December, 1963, i.e., two days later. Both these appeals were registered separately and were not consolidated on account of the

mistake of the office. The earlier appeal, i.e., the one filed from jail, came up for Hearing before me on the 16th of May, 1966 on which date I allowed it and set aside the conviction and sentence passed against the appellant. On the other hand, the represented appeal came up earlier before the Hon'ble Misra, J., on the 16th of February, 1965 and he dismissed the same confirming the conviction and maintaining the sentence of seven years' rigorous imprisonment. Copy of the judgment of the Hon'ble Misra, J., when certified to the trial Court, was placed on the file of the Sessions case but the file was requisitioned in connection with the other appeal in the High Court with the result that when the order of release passed by me was received by the Civil and Sessions Judge, the file of the Sessions case being not before the lower Court, accused Sunder Lal was ordered to be released forthwith on receipt of the operative portion of my judgment. It was when the record of the case itself was received by the lower Court from the High Court that it came to notice that there have been two conflicting judgments in the same case against the conviction of Sunder Lal and a direction has been sought from this Court accordingly.

2. Sunder Lal filed two appeals against the same conviction. He had a right to file only one appeal. The earlier appeal was filed on the 17th of December, 1963. His right to file an appeal against his conviction was exhausted when that appeal was received by this Court from jail. The subsequent appeal, therefore, which was filed on the 19th of December, 1963, ought not to have been entertained and would, in any case, have been consolidated with the earlier appeal in case this fact had been brought to the notice of the Court by the office. But this was not done. Any judgment delivered in an appeal which was incompetent, therefore, would be a nullity. The judgment passed in the earlier appeal which only was competent, therefore, shall be treated as a judgment which is of validity in the case.

3. In the circumstances. Sunder Lal, appellant, was rightly released as the judgment given in the earlier of the two appeals will prevail over the judgment given in the later appeal which was not a competent appeal. Let the Civil and Sessions Judge be informed accordingly and a copy of this order sent to him.