

Chunnu Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-20-1989

Reported in : 1990CriLJ1057

Judge : S.I. Jafri, J.

Acts : Limitation Act - Sections 5; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 28(3), 325, 360, 374, 374(3), 374(2)(3) and 482; ;Indian Penal Code (IPC) - Sections 307

Appeal No. : Criminal Appeal No. 1776 of 1989

Appellant : Chunnu

Respondent : State of U.P.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : G.P. Dikshit and ;K.S. Tewari, Adv.

Disposition : Appeal dismissed

Judgement :

S.I. Jafri, J.

1. This appeal in hand was presented before me on behalf of Chunnu appellant by the Pairokar of the appellant at my residence during the period of strike by the

lawyers of Allahabad High court on 4-9-1989 in which the appellant had impugned the judgment and order dated 9-8-1989, passed by Asstt. Sessions Judge, Fatehpur in S.T. No. 59 of 1989 whereby the appellant was convicted under Section 307, I.P.C. and he was sentenced to undergo R.I. for 5 years.

2. Having regard to the report of the office of the High Court on the question of maintainability of the appeal, the aforesaid appeal was admitted by this Court and a notice was directed to be issued to the State of U. P. Notices were also directed to be issued to Chunnu appellant calling upon him to show cause as to why the sentence of 5 years' S.I. recorded by the trial Court be not altered to that of 5 years R.I. inasmuch as that the role attributed was that of firing resulting in injuries to two persons. At the time of admitting the appeal, realisation of fine was also stayed.

3. It was on 12-9-1989 that the office got enlightened and reported to this Court that on account of inadvertence, it was incorrectly reported on the memo of appeal that the aforesaid appeal was maintainable in the High Court, while the fact stands that it was not maintainable in this Court on account of the fact that the trial had been conducted by the Asstt. Sessions Judge, Fatehpur in which he had awarded a simple imprisonment of five years to the appellant. As a consequence of this report, I issued notices to the learned counsel for the appellant as well as to the learned counsel for the State in order to hear them on the question of maintainability of the appeal in this Court. Sri G. P. Dixit learned counsel for the appellant canvassed by placing provisions contained in Section 374, Cr. P.C. Sub-clause (2) that the appeal by a convicted person on trial held even by Asstt. Sessions Judge was maintainable in the High Court. Section 374 Sub-clause (2) of the Cr. P.C. is reproduced below for the sake of analytical approach.

'Any person convicted on a trial held by a Sessions Judge or an additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years (has been passed against him or against any other person convicted at the same trial) may appeal to the High Court'.

For the sake of reference, it is worthy of mention here that the appellant in the instant case was sentenced to undergo S.I. for a period of less than 7 years. In

this context, I may advert to Sub-clause (3) of Section 374, Cr. P.C. which tears off the veil round the controversy agitated in this appeal and which the learned counsel seems to be oblivious of. The aforesaid Sub-clause (3) of Section 374, Cr. P.C. is reproduced below for ready reference.

(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 1st Class or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate may appeal to the Court of Session;

In this perspective, Sub-section (3) of Section 28, Cr. P.C. is also worthy of being referred to. It dwells on the sentences which an Asstt. Sessions Judge may pass.

Section 28 Sub-section (3)--

'An Assistant Sessions Judge may pass any sentence authorised by law except, a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years'.

From a combined reading of Section 374(2) (3) and Section 28(3), it is deducible that Asstt. Sessions Judge is competent to pass a sentence not exceeding ten years and on a trial held by him in which a sentence of imprisonment for less than 7 years, the appeal would lie before the Sessions Judge and not to this Court. In the instant case, appellant had been convicted under Section 307, I.P.C. and sentenced to imprisonment for a term of 5 years' S.I. The legal position is transparently clear and it requires no reading between the lines as to conclude whether the appeal would lie to this Court or to the Sessions' Court.

4. Upon a conspectus, I am of the view that the order passed by this Court on 14-9-1989 thereby admitting the appeal and passing other consequential orders is liable to be recalled and the appeal is liable to be dismissed as not maintainable.

5. In the result, the order dated 4-9-1989 passed by this Court thereby admitting the aforesaid appeal and passing other consequential order is recalled and the appeal is dismissed as not maintainable to this Court. The appellant is at liberty to file the appeal before the Sessions Judge, Fatehpur against the aforesaid judgment and order passed by Asstt. Sessions Judge, Fatehpur. In case, the appeal is preferred by the appellant within a period of one month from today, the Sessions Judge is directed to condone the delay in filing the appeal and shall treat the appeal as filed within the period of limitation subject to the condition that an application under Section 5 of Limitation Act is filed along with the memo of appeal before the Sessions Judge, Fatehpur within a period of one month from today. However in order to protect the appellant from being arrested as a sequel of the order having been recalled by this Court dated 4-9-1989. I consider it just and proper to admit the appellant to interim bail for a period of one month in exercise of my inherent powers under Section 482, Cr. P.C. subject to the appellant's furnishing surety bond to the satisfaction of C.J.M. Fatehpur. Meanwhile, during the aforesaid period the realisation of fine shall also remain stayed.

6. Subject to the above directions, this appeal is dismissed as not maintainable in this Court.