

Dashamani and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-08-1999

Reported in : 1999CriLJ2338

Judge : Virendra Saran, J.

Acts : Essential Commodities Act; Indian Penal Code (IPC) - Sections 235, 323 and 325; Code of Criminal Procedure (CrPC) , 1974 - Sections 374(3) and 384

Appeal No. : Criminal Misc. Appln. No. 5065 of 1998

Appellant : Dashamani and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : N.K. Sharma, Adv.

Disposition : Application allowed

Judgement :

ORDER

Virendra Saran, J.

1. 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. Under Section 323, I.P.C. they were awarded three months' R.I. and a fine of Rs. 100/- each and under Section 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 under Section 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 under Section 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.

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