

Gopal Malik Vs. State of Orissa

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Court : Orissa

Decided On : Sep-27-1985

Reported in : 1985(II)OLR511

Judge : B.K. Behera, J.

Appeal No. : Criminal Revision No. 431 of 1981

Appellant : Gopal Malik

Respondent : State of Orissa

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : B. Rath, P.K. Parida and R.C. Rath

Disposition : Petition allowed

Judgement :

B.K. Behera, J.

1. Upon hearing the learned counsel for the petitioner and the learned Standing Counsel, I would uphold the contention raised on behalf of the petitioner that the appeal against the order of conviction and sentences passed against him has not legally and properly been heard and disposed of by the Court of Session. It would be seen from the record of the appellate Court that on 8. 7. 1981, a data to which

the appeal stood posted for hearing, no steps were taken by the appellant and none appeared for him. The Assistant Public Prosecutor was heard and the record was perused by the appellate Court. Judgment was delivered some days thereafter. As has been observed by the Supreme Court in 1982 SCC (Cri) 143 Khaili and Ors. v. State of U. P. and by this Court in 1984 Cri. L. J. 581 :1984 (I) OLR 1031: 1984 C. L. R. (Cri.) 296 : Surendra Mohapatra v. State and 1985 Cri. L. J. 228 : 1984 (2) Crimes 898 : 1934 (I) OLR 1033: 53(1984) CLT 585 : S. Mohan Rao v. Bhubaneswar Rath, when such a situation arises, the appellate Judge should engage an Advocate amicus curiae and then proceed to dispose of the appeal on merits. This had not been done.

2. I would accordingly allow the revision and set aside the impugned appellate judgment and order and direct the Sessions Judge, Cuttack, to dispose of the appeal in accordance with law within three months hence and intimate the fact of such disposal to this Court.

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