

Liverghi Sk. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/877796

Court : Kolkata

Decided On : Feb-24-1987

Reported in : 1989CriLJ380

Judge : Jitendra Nath Chaudhuri and ;Sudhanshu Sekhar Ganguly, JJ.

Appellant : Liverghi Sk.

Respondent : The State

Judgement :

1. No one appears for the appellant. Mr. Roy appears for the accused respondents Nos. 2 to 5 at the hearing of the appeal.
2. This appeal by Special Leave under Section 378(4) of the Code of Criminal Procedure, 1973 filed by the father of the deceased Afzal Sk. arises out of Session Trial No. 4/77. The State v. Eradut Langra and Ors. held by the learned Sessions Judge, Malda. In the said trial all the four accused persons who are the respondents Nos. 2 to 5 herein were found not guilty of the charge under Section 302/34, I.P.C. and acquitted on 23rd November, 1977.
3. Mr. Roy the learned Advocate appearing on behalf of the four accused respondents Nos. 2 to 5 herein has submitted that this appeal by Special Leave under Section 378(4) of the said Code is not maintainable as this was not a case instituted on a complaint and the appellant herein has no locus stand in the matter. He has submitted that this was a case in which the F.I.R. was lodged resulting in

the starting of Ratua P.S.; Case No. 4 dt. 11- 6-75. In that police case, the present respondents Nos. 2 to 5 were charge-sheeted by the police on the charges under Section 302/34, I.P.C. and the trial proceeded on the said charges against the said accused.

4. We find from the records before us that these submissions of Mr. Roy are correct. This is a case instituted upon a police report and not a case instituted upon a complaint. Therefore, the question of the present appellant obtaining any locus standi by the grant of leave under Section 378(4) of the said Code cannot arise. Obviously the fact that this was not a case instituted upon a complaint was not brought to the notice of the Court at the time when Special Leave to prefer the appeal was sought for and granted ex parte under Section 378(4) of the said Code. In any event the accused respondents are not debarred from agitating the question of the maintainability of the appeal at the present hearing of the appeal.

5. We accordingly held that this appeal filed by Haji Livershi Sk. is not maintainable in law and the appeal is accordingly dismissed without going into the merits of the appeal.