

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).1895 OF 2004

(From the judgement and order dated 12/03/2003 in CRLA. No.566/1995  
of The HIGH COURT OF U.P AT LUCKNOW)

STATE OF U.P.

Petitioner(s)

VERSUS

RAM KAILASH & ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

(For Final Disposal)

Date: 04/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. R.K. Singh,Adv.

Mr. Rajeev Dubey,Adv.

Mr. Jatinder Kumar Bhatia,Adv.

For Respondent(s)

Mr. Shakil Ahmed Syed,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties for a while.

Delay condoned.

Leave granted.

The criminal appeal is disposed of in terms of the signed order

[ T.I. Rajput ]

[ V.P. Tyagi ]

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.379 OF 2005

(Arising out of S.L.P. (Crl.) No.1895 of 204)

State of Uttar Pradesh

...Appellant(s)

Versus

Ram Kailash & Anr.

...Respondent(s)

O R D E R

Heard the learned counsel for the parties.

Delay condoned.

Leave granted.

The first respondent-Ram Kailash was convicted by the Court of Session for offence punishable under Sections 323, 325 and 376 of the Indian Penal Code, 1860 [for short, "I.P.C."]. The second respondent-Ganga Prasad was convicted for the offence punishable under Section 323 I.P.C. Ram Kailash was directed to undergo rigorous imprisonment for seven years for offence punishable under Section 376 I.P.C.; two years for offence under Section 325 I.P.C.; and six months for offence under Section 323 I.P.C. The conviction and sentence awarded by the Court of Session was challenged by the respondents in Criminal Appeal No.566 of 1995 before the High Court. The conviction of Ram Kailash for offence punishable under Sections 323, 325 and 376 I.P.C. has been set aside by the High Court. He has instead been found guilty for offence punishable under Section 354 I.P.C. and

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sentenced to imprisonment for the period already undergone by him and to pay a fine of Rupees seven thousand; in default of payment of fine, to undergo rigorous imprisonment for a period of one year. The other accused, Ganga Prasad, has been acquitted for the offence for which he was convicted by the Court of Session.

We have perused the impugned judgement and order and the material on record. The High Court has converted the judgement and order of conviction passed by the Court of Session into an order of acquittal by a cryptic order, insofar

as the first respondent-Ram Kailash is concerned. There is hardly any discussion in the impugned judgement and order passed by the High Court. We wish to say no more lest it may prejudice the case of Ram Kailash. Insofar as the second respondent-Ganga Prasad is concerned, we do think that it is a fit case for interference at this stage. His order of acquittal is, therefore, maintained.

Having regard to the aforesaid, we set aside the impugned judgement and order of the High Court, insofar as it directs the acquittal of Ram Kailash for the offence for which he was convicted by the Court of Session. We further direct that Criminal Appeal No.566 of 1995 shall be heard and disposed of afresh by the High Court in accordance with law. The Chief Justice of the High Court is requested to place the criminal appeal for hearing before a learned Judge other than the one who passed the impugned judgement and order. The High Court is further requested to decide the criminal appeal expeditiously.

The criminal appeal is disposed of in the above terms.

.....J.

[Y.K. SABHARWAL]

.....J.

[P.P. NAOLEKAR]

New Delhi,  
March 04, 2005.