

IN THE SUPREME COURT OF INDIAN

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2007

(arising out of SLP(CRL.)No.230 of 2006)

STATE OF U.P.

... APPELLANT

VERSUS

MOOSA & ORS.

...

RESPONDENTS

O R D E R

Leave granted.

Impleadment/intervention application by first informant is

discharged.

Heard the parties.

This appeal has been preferred by the State of U.P. against

the order of the High Court dismissing the Government,s appeal. The

respondents were charged under Section 147, 364A, 149/302/149,

201/149, 364/149 and 120B IPC. Amongst others, the evidence led

before the trial court, included extra judicial confession and the victim being last seen with the accused. The trial court disbelieved both the

piece of evidence, namely, extra judicial confession and the evidence

2

regarding 'last seen' and acquitted the accused. On appeal before the High Court, the High Court has not considered any evidence, in particular regarding the victim being last seen in the company of the accused. By a short order, leave have been refused and the appeal was dismissed. The High Court in the impugned order has not considered the evidence of last seen at all which in our view is a clinching circumstantial evidence. No finding has been recorded by the High Court on the theory of last seen propounded by PW.3. While it is true that being an affirming judgment refusing leave under Section 378(3) Cr.P.C., it need not be exhaustive, there should at least some consideration of last seen evidence.

In this view of the matter, the order of the High Court is not

sustainable in law and the same is set aside. The matter is remanded back to the High Court for fresh decision after scanning the evidence on

record and hearing the parties in accordance with law. Nothing stated

above shall be construed as expression of opinion on merits.

The appeal is allowed accordingly.

.....J.

( H.K. SEMA )

.....J.

3

( R.V. RAVEENDRAN )

NEW DELHI,

JANUARY 15, 2007.

4

ITEM NO.48

COURT NO.6

SECTION II

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 (Cr1) No(s).230/2006

(From the judgement and order dated 10/09/2004 in GA No. 2619/2002 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

STATE OF U.P.

Petitioner(s)

VERSUS

MOOSA & ORS.

Respondent(s)

(With appln(s) for impleadment and office report)

Date: 15/01/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA  
HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

Mr. Prashant Chaudhary, Adv.  
Mr. Ishad Ahmed, Adv.  
Mr. Praveen Swarup, Adv.

For Respondent(s)

Ms. Sandhya Goswami, Adv.

Mr. Tara Chandra Sharma, Adv.  
Ms. Neelam Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

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Heard the parties.

5

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The order of the High Court is set aside. The matter is remanded back to the High Court for fresh decision after scanning the evidence on record and hearing the parties in accordance with law. Nothing stated above shall be construed as expression of opinion on merits.

The appeal is allowed accordingly.

(PAWAN KUMAR)

(R.K. KUMAR)

COURT MASTER

COURT MASTER

(signed order is placed on the file)