

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

CRIMINAL APPEAL NO(s). 306 OF 2004

SHANKER DEV AND ANR.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

Date: 30/09/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Abhishek Chaudhary, Adv.
Mr. Manish Shrivastava, Adv.
Mr. Abhishek Kr. Singh, Adv.
Mr. Adarsh Upadhyay, Adv.

For Respondent(s)

Mr. R.K.Gupta, Adv.
Mr. Rajiv Dubey, Adv.
Mr. Kamalendra Mishra, Adv.

UPON hearing counsel the Court made the following
O R D E R

With some modification the appeal is dismissed.

The appellants are on bail, their bail bonds shall stand discharged.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 306 OF 2004

SHANKER DEV AND ANR.

.. APPELLANT(S)

vs.

STATE OF U.P.

.. RESPONDENT(S)

O R D E R

Nine persons were brought to trial for offences punishable under Sections 302 read with Sections 149, 147

and 323 of the IPC. The Trial Court by its judgment dated 31/3/1981 convicted Shanker Dev under Section 302 of the IPC and Shiv Ram under Sections 302 and 323 of the IPC and Hari Narain under Section 323 of the IPC. An appeal was thereafter filed by Shankar Dev and Shiv Ram in the High Court, which has, by the impugned judgment, modified the conviction to under Section 304 Part II of the IPC and has awarded a sentence of five years with fine. This order has been challenged in this appeal by Shanker Dev and Shiv Ram.

At the very outset Mr. Dinesh Dwivedi, the learned senior counsel for the appellants, has made a very limited prayer. He has shown us an extract of the service book of Shanker Dev appellant which reveals that he was born in the year 1923 and is now about 88 years of age. He has also

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taken us to the statement of Shiv Ram recorded under Section 313 of the Cr.P.C. and to certain other documents as well to show that he would be about 70 years of age. He has accordingly submitted that the sentence on the two appellants should be reduced very substantially on account of the above facts and the additional fact that the incident had happened in the year 1976, and 34 years have elapsed since then.

The learned State counsel has however controverted the plea of the learned counsel by submitting that the appellants had already been dealt with rather leniently and their conviction under Section 302 of the IPC ought to have maintained though in the light of the fact that the State Government had not filed any appeal in this Court, this argument could admittedly not be entertained.

We also see from the record that the appellants have undergone about six months of the sentence. Keeping in view the scenario in toto we feel that the ends of justice

would be met if the sentence on the appellants is reduced from five years R.I. to one year's R.I.; the other parts of the sentence to be maintained as it is.

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With this modification in the term of imprisonment the appeal is dismissed.

The appellants are on bail. Their bail bonds shall stand cancelled.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

New Delhi,
September 30, 2010.