

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1600 OF 2009

STATE OF PUNJAB

Appellant(s)

VERSUS

KULWANT SINGH AND ORS.

Respondent(s)

ORDER

1. This criminal appeal is directed against the judgment and order dated 3rd July, 2008 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh. By the said order, the criminal appeal filed by the State of Punjab (Criminal Appeal No. 610-DBA of 2000) was disposed of with certain observations.
2. Five persons were subjected to trial for commission of alleged offence under Section 302 of the Indian Penal Code (hereinafter 'IPC'). The Sessions Court convicted four of the accused under Section 304 Part-I of the IPC and acquitted the remaining accused, i.e., Boota Singh.
3. Two criminal appeals were preferred before the High Court from the judgment and order of the Sessions Court, one by the State and the other by the convicts.

The contention of the State in its appeal was that the Sessions Court ought to have recorded conviction under Section 302 of the IPC and not under Section 304 Part-I thereof. In the appeal against their conviction (Criminal Appeal No.1095-SB of 1999), the convicts contended that they should not have been convicted and sentenced at all.

4. While the appeal of the State was pending before a Division Bench of the High Court, the appeal of the convicts was heard by a learned Single Judge of the same Court. The learned Judge modified the conviction under Section 304 Part-I to conviction under Section 304 Part-II and appropriately sentenced them to suffer imprisonment. It was, however, not brought to the notice of the learned Judge that the appeal of the State was pending.

5. When the appeal of the State came up for consideration before a Division Bench of the High Court, the said Bench was apprised that the appeal filed by the convicts had been disposed of by recording conviction under Section 304 Part-II of the IPC and that the State had not carried such judgment in appeal before this Court. It was, thus, observed by the Division Bench that no order was called for on the appeal of the State, resulting in its disposal without any order.

6. It is such judgment and order that is challenged in this criminal appeal.

7. Having regard to the fact that four of the convicts had suffered conviction under Section 304 Part II of the IPC and had served out their sentences, and such conviction had not been challenged by the State, this Court had expressed on an earlier occasion (01st June, 2023) that the matter need not be re-opened. However, Mr. Vivek Jain, Deputy Advocate General for the State contended that Boota Singh had been acquitted by the Sessions Court although there was sufficient evidence on record to establish the charge of murder against him; and since Boota Singh had no occasion to file an appeal, like the other convicts, there was no legal bar for the Division Bench to examine whether Boota Singh was correctly acquitted. To that extent, he submitted that the Division Bench erred in not examining whether the acquittal of Boota Singh was justified.

8. While adjourning hearing of the appeal on 01st June, 2023, this Court had called upon Mr. Vivek Jain to produce the memorandum of appeal giving rise to Criminal Appeal No. 610-DBA of 2000 and adjourned hearing till this day. The memorandum of appeal was called for to ascertain whether the State had challenged

the acquittal of Boota Singh by urging specific ground(s) while challenging the conviction and sentence recorded by the Sessions Court in respect of the co-accused.

9. Today, Mr. Vivek Jain informs us that despite vigorous search, the memorandum of appeal could not be traced out.

10. Since the memorandum of appeal has not been produced, this Court is disabled from ascertaining whether any specific ground had been raised therein challenging the acquittal of Boota Singh. Considering the fact that the incident which triggered the trial occurred on 06th October, 1990 and that more than three decades have passed since then, this Court allows the matter to rest.

11. The criminal appeal stands dismissed. Pending application(s), if any, stand disposed of. No costs.

....., J.
[DIPANKAR DATTA]

....., J.
[PANKAJ MITHAL]

NEW DELHI;
19th JULY, 2023

ITEM NO.302

COURT NO.4

SECTION II-B

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

Criminal Appeal No(s). 1600/2009

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VERSUS

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([PART-HEARD BY : HON'BLE DIPANKAR DATTA AND HON'BLE PANKAJ MITHAL, JJ .])

Date : 19-07-2023 This appeal was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PANKAJ MITHAL**

For Appellant(s)

**Mr. Vivek Jain, D.A.G.
Mr. Ajay Pal, AOR
Ms. Honey Kumbhat, Adv.
Mr. Abhinav Jain, Adv.
Mr. Rajat Jain, Adv.
Mr. Mayank Dahiya, Adv.
Ms. Sugandh Rathor, Adv.**

For Respondent(s)

**Mr. Harikesh Singh, Adv.
Mr. Sandeep Sinhmar, Adv.
Mr. Yash Pal Dhingra, AOR**

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

The criminal appeal is dismissed in terms of the signed order. Pending application(s), if any, stand disposed of. No costs.

**(SONIA GULATI)
SENIOR PERSONAL ASSISTANT**

**(RENU BALA GAMBHIR)
COURT MASTER**

(Signed order is placed on the file)