

Court No.42.

Case- GOVERNMENT APPEAL NO. 7999 OF 2009.

APPELLANT-State of U.P.

Respondent – Balwant and others

Counsel for Appellant- G.A

Hon'ble Arvind Kumar Tripathi,J

Hon. Anil Kumar Srivastava-II,J

Heard learned A.G.A for the State/appellant and perused the material on the record.

This government Appeal has been filed by the state/appellant with the prayer that leave to appeal be granted against the judgement and order dated 29.7.2009 passed by Additional District and Session Judge, Kushinagar at Padrauna arising out of case no.365 of 2005, under section 147,148,149,302,504,506 and 120-B I.P.C and Section 2/25/27 and 4/25/27 of Arms Act,police Station Kaptanganj,District Kushi Nagar,Sessions Trial No.72 of 2006( State of the U.P. Vs. Mahraj Singh and others), whereby the accused-respondents have been acquitted for the offences punishable under the under the sections referred above.

Learned A.G.A has contended that on the same evidence the co-accused Balwant, Mahraj Singh and Ram Bahal were convicted and rest accused -respondent has been acquitted. Though the prosecution case is proved beyond reasonable doubt. Hence the acquittal of the accused-respondents, is against the evidence on the record and is liable to be set aside.

We have carefully perused the impugned judgemet and order of acquittal passed by the court below.

Considering the submission made by the learned A.G.A and the finding recorded by the trial court it is clear that admittedly the accused-respondents are not named in the First Information Report. Subsequently, the allegation of

conspiracy was made against the accused-respondents. Further allegation is that the dead body of accused Rajendra Singh was dragged by the accused-respondents which is not supported by the medical report. The Trial court found the involvement of all the accused-respondents doubtful. Even there was no recovery from the accused-respondents. The learned counsel for the applicant has failed to demonstrate that the observation of the court below were factually incorrect. The view taken by the court below is a reasonable possible view.

We do not find any factual or legal error in the assessment of evidence by the Court below. We do not see any illegality or infirmity in the impugned order passed by the court below in so far as the acquittal of accused-respondents is concerned. The court below has given cogent and convincing reasons for acquitting the accused respondents. We, therefore, do not consider it to be a fit case for the grant of leave to appeal to the applicant.

The application seeking leave to appeal, is, accordingly, rejected.

Order Date:-7.4.2016

G.S