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KALU RAM AND ANR.

v.

STATE OF DELHI

JUNE 15, 2006

B

[ARIJIT PASAYAT AND ALTAMAS KABIR, JJ.]

*Practice and Procedure:*

C *Criminal appeal—Filed by accused—Dismissed by High Court on ground of dismissal of criminal revision filed by informant—Held, dismissal of revision filed by informant cannot be ground for not discussing merits of appeal of accused—High Court to consider the appeal afresh on merits.*

D *Appellants alongwith others were prosecuted for offences under Sections 302/34, 307/34 IPC etc. The trial court convicted the appellants u/s 304(part I)/34 IPC and acquitted the other accused. The appellants questioned their conviction in appeal before the High Court. The informant also filed a revision petition before the High Court for conviction of appellants u/s 302 IPC and questioning acquittal of the other accused. The High Court first dismissed the revision of the informant and then dismissed the appeal of the accused merely observing that in view of the decision in the revision petition, the appeal also was without merit. Aggrieved, the convicted accused filed the present appeal.*

E *Allowing the appeal and remitting the matter back to the High Court, the Court*

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**HELD:** 1. The case of the appellants was not independently examined. Merely because the revision petition filed by the informant was dismissed, that could not have been a ground for not discussing the merits of the appeal filed by the accused. A criminal revision petition may have been without merit; but that did not make the appeal filed by the accused meritless. The High Court would consider appellants' case on merits afresh. [42-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 694

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of 2006.

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From the Judgment and Order dated 28.7.2005 and 12.9.2005 of the High Court of Delhi at New Delhi in Crl. A.No. 733 of 2000 and Crl. M.A. Nos. 8854-55 of 2005.

M.N. Krishnamani, Pradeep Kumar Sharma and Prashant Chaudhary B for the Appellants.

T.S. Doabia, Anil Katiyar and Gargi Khanna for the Respondent.

The Judgment of the Court was delivered by

C ARIJIT PASAYAT, J. Leave granted.

The appellants question correctness of the judgment rendered by a learned Single Judge of the Delhi High Court who dismissed the appeal filed by the appellants simply observing that the Criminal Revision Petition No.117 of 2001 filed by the informant has been dismissed and the said revision and appeal related to the same judgment. It is to be noted that the appellants as accused nos. 2 and 3 faced trial for alleged commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'), along with accused no.1 i.e. Tej Ram who has expired in the meantime, while several others some of whom have died in the meantime, the allegations were under Sections 147,148, 149 and 307 IPC for which the accused Nos.1, 2 and 3 were also similarly charged.

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The trial court by its judgment dated 13.11.2000 held that the appellants Kalu Ram and Roop Chand were guilty of offence punishable under Section 304 Part I read with Section 34 IPC and sentenced each to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- with default stipulation. All the other accused persons were acquitted. The informant Ranjit Singh filed a revision application questioning the conviction of the appellants under Section 304 Part I IPC. According to him they should have been convicted under Section 302 IPC and the other accused persons should not have been acquitted. Appellants filed an appeal questioning their conviction and sentence imposed. Learned Single Judge took up the criminal revision first and held the same to be without merit. But without considering the merits of appeal filed by the present appellants dismissed the same holding that in view of the decision in the Criminal Revision Petition No.117 of 2001, the appeal also was without merit.

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A Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It did not hear the learned counsel for the appellants. On the contrary in the judgment it has been indicated as if the appellants were represented by Mr. Rajesh Aggarwal and Ms. Mridul Aggarwal who in fact were the learned counsel for the informant Ranjit Singh in the connected Criminal Revision. The summary disposal of the appeal is also not proper as no opportunity was granted to the appellants to substantiate their challenge to the legality of the judgment of the trial court.

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We find that the contentions of the learned counsel for the appellant to be correct. The case of the appellants was not independently examined. Merely because the Revision Petition filed by the informant was dismissed that could not have been a ground for not discussing the merits of the appeal filed by the appellants. A Criminal Revision Petition may have been without merit; but that did not make the appeal filed by the appellants meritless.

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D On the above grounds alone we set aside the order of the High Court and send it to the High Court for a fresh consideration on merits.

It is submitted by learned counsel for the appellants that they were on bail during the pendency of the appeal before the High Court. It is open to them to bring this fact to the notice of the High Court and seek such interim order as is available in law. Since the appeal is of the year 2000 the High

E Court is requested to dispose of the same expeditiously.

The appeals are allowed to the aforesaid extent.

R.P.

Appeals allowed.