

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1258 OF 2013
(SPECIAL LEAVE PETITION (CRL.) NO. 2163 OF 2013)

SUNDER & ORS.

APPELLANT(S)

VERSUS

STATE OF U.P.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1104 of 1981, dated 19.11.2012.
3. The learned Sessions Judge has convicted and sentenced the accused-appellants for the offences punishable under Sections 395/397 of the Indian Penal Code, 1860.
4. Being aggrieved by the aforesaid orders, the accused preferred an appeal before the High Court. Since the accused-appellants could not engage the services of a lawyer, the High Court had provided an *amicus curiae* to the accused-appellants to argue the case on their behalf.
5. On the date when the matter was fixed for hearing, the *amicus curiae* was not present before the High Court. The Court, without appointing/providing a new *amicus curiae*, has proceeded to pass the final orders on merits and thereby has partly confirmed the orders passed by the learned Sessions Judge.

6. In our considered view, at the time of the hearing the appeal, if, for any reason, the *amicus curiae* was not present before the Court, the Court either should have adjourned the matter or should have appointed a new *amicus curiae* to assist the accused-appellants. Since that has not been done by the High Court, in our considered opinion, the orders of the High Court become vitiated. In this view of the matter, we allow this appeal, set aside the orders passed by the High Court and remand the matter back to the High Court for fresh disposal in accordance with law. Needless to say that it can either avail the assistance of the already appointed *amicus curiae* or appoint a fresh *amicus curiae* to assist the accused-appellants.

7. We make it clear that we have not expressed any opinion on the merits of the case.

8. The Criminal Appeal is disposed of accordingly.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI;
AUGUST 23, 2013