

CASE NO.:
Appeal (crl.) 1308 of 2001

PETITIONER:
Deepak Rajak

RESPONDENT:
State of West Bengal

DATE OF JUDGMENT: 14/06/2007

BENCH:
Dr. ARIJIT PASAYAT & B.P. SINGH

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Appellant faced trial alongwith several others for alleged commission of offences punishable under Section 302 read with Section 34, Section 201 read with Section 34 and Section 120(B) of the Indian Penal Code, 1860 (in short the \021IPC\022).

2. The factual details need not detain us as undisputedly the co-accused have been acquitted by this Court in Mousam Singha Roy and Others v. State of W.B. [2003(12) SCC 377]. The effect of such acquittal vis-à-vis similarly situated co-accused has been considered by this Court in several cases.

3. Learned counsel for the appellant placed reliance on various decisions of this Court contending that the benefit of acquittal should be extended to the appellant.

4. Learned counsel for the State on the other hand submitted that the appellant did not surrender initially and therefore decisions relied upon may not have any relevance. He relied on the decisions in Raja Ram & Ors. v. State of M.P. (1994 (2) SCC 568); Kashmira Singh v. State of Punjab (1995 (Supp) 4 SCC 558); Dandu Lakshmi Reddy v. State of A.P. (1999 (7) SCC 69); Jayantibhai Bhenkar v. State of Gujarat (2002 (8) SCC 165); Bijoy Singh & Anr. v. State of Bihar (2002 (9) SCC 147); Gurucharan Kumar & Anr. v. State of Rajasthan (2003 (2) SCC 698); Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra (2003 (2) SCC 708); Suresh Chaudhary v. State of Bihar (2003 (4) SCC 128); Pawan Kumar v. State of Haryana (2003 (11) SCC 241); Hem Raj & Anr. v. State of Punjab (2003 (12) SCC 241); Vijrapu Sambayya Naidu v. State of A.P. (2004 (10) SCC 152); Mohinder Singh & Anr. v. State of Punjab and Ors. (2004 (12) SCC 311); Uma Shankar Gopalika v. State of Bihar (2005 (10) SCC 336) and Munna Kumar v. State of Bihar (2005 (12) SCC 209). The appellant subsequently surrendered and has suffered custody for more than two years.

5. The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.

6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not

filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended.

7. The appeal is allowed and conviction and sentence as recorded by the trial court and upheld by the High Court is set aside.

JUDIS