

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.886 OF 2020  
(Arising out of SLP (Criminal) No.6684 of 2020  
Arising out of Diary No.20424 of 2020)

SUBEDAR

Appellant

VERSUS

STATE OF UTTAR PRADESH

Respondent

O R D E R

Leave granted.

This appeal challenges the order dated 06.04.2017 passed by the High Court of Judicature at Allahabad dismissing Criminal Appeal No.2798 of 1988.

The appellant and one Buddhu were convicted under Section 302 read with Section 34 IPC and were sentenced to suffer life imprisonment by the Trial Court.

Criminal Appeal Nos.2798 and 2882 of 1988 were preferred

by said convicted accused respectively challenging their conviction and sentence. Accused Buddhu expired during the pendency of the appeal and the proceedings in relation to him stood abated.

The appeal preferred by the appellant came up before the High Court and opening sentences in the judgment passed by the High Court were as under:

"List has been revised. None appears on behalf of the appellant to press this appeal, although, name of Sri Malik Sayeed Uddin and Sri C.K. Jha are printed in the cause list, as counsel for the appellant."

Thereafter, the High Court went into the matter and affirmed the view taken by the Trial Court.

One of the submissions urged on behalf of the appellant is that the appeal was disposed of in absence of any representation on behalf of the appellant.

It is well accepted that right of being represented through a counsel is part of due process clause and is referable to the right guaranteed under Article 21 of the Constitution of India.

In case the Advocate representing the cause of the accused, for one reason or the other was not available, it was

open to the Court to appoint an Amicus Curiae to assist the Court but the cause in any case ought not to be allowed to go unrepresented.

In the circumstances, we have no other alternative but to set-aside the judgment passed by the High Court and to restore Criminal Appeal No.2798 of 1988 to the file of the High Court to be disposed of afresh.

The record indicates that the appellant was on bail while the appeal was pending in the High Court and has since then been taken in custody.

In the circumstances, we request the High Court to consider taking up Criminal Appeal No.2798 of 1988 for hearing at an early date and in order to facilitate the exercise, we direct the Registry of the High Court to list the appeal before the appropriate Court on 11.01.2021 for directions.

The appellant shall appear through Advocate(s) on 11.01.2021 and said Advocate(s) shall continue to represent the cause of the accused and in case there is any default on the part of the Advocate(s), the High Court may consider appointing an Amicus Curiae in the matter to assist the Court.

During the pendency of the matter before the High Court, the appellant shall continue to remain in custody.

With the aforesaid observations, the appeal is disposed of.

.....J.  
[UDAY UMESH LALIT]

.....J.  
[VINEET SARAN]

.....J.  
[S. RAVINDRA BHAT]

NEW DELHI;  
DECEMBER 18, 2020.

