

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1584 OF 2012
(@ SPECIAL LEAVE PETITION(CRL.)NO. 3583 OF 2012)**

IQBAL ABDUL SAMIYA MALEK

....APPELLANT(S)

VERSUS

STATE OF GUJARAT

....RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO.1585 OF 2012
(@ SPECIAL LEAVE PETITION (CRL.) NO. 6260 OF 2012)**

HENNO @ ANWARALI AMIR MALEQ & ORS.

...APPELLANT(S)

VERSUS

STATE OF GUJARAT

...RESPONDENT(S)

O R D E R

Heard both sides.

Leave granted.

It is the grievance of the appellants/accused that when they filed regular appeal before the High Court challenging the conviction under Section 302 IPC and sentence of life imprisonment, the High Court without going into all the materials including oral and documentary evidence disposed of their appeal affirming the judgment of the Trial Court.

In view of the above contention, we have gone through the impugned judgment of the High Court. As rightly pointed out by the learned counsel appearing on behalf of the appellants, after narrating the case of the prosecution and

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the defence as well as the order of the Sessions Judge convicting the appellants, without adverting to all the materials, the High Court has merely disposed of the appeal. The procedure followed by the High Court in a matter of this nature is not acceptable. Elaborate procedures have been prescribed under Section 386 of CrI.P.C. for disposal of the appeal by the Appellate Court.

It is the duty of an Appellate Court to look into the evidence adduced in the case arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by Appellate Court in drawing inference from proved and admitted facts. Further appeal cannot be disposed of without examining records/merits (Vide Padam Singh Vs. State of U.P., AIR 2000 SC 361 and Bani Singh & Others Vs. State of U.P. 1996 (4) SCC, 720. The said recourse has not been followed by the High Court.

In view of the same, without expressing anything on the merits of the claim of either party, we set aside the impugned judgment of the High Court and remit it to the High Court. We request the High Court to restore the appeal on its file and dispose of the same as early as possible preferably within a period of six months.

Learned counsel for the appellants has brought to our attention to the fact that the appellants are in jail for a period of more than 11 years and seek for an order of bail from this Court. Since we are now remitting the matters to the

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High Court, the appellants are free to make such claim before the High Court.

With the above observation, the appeals are disposed of.

NEW DELHI
1ST OCTOBER, 2012

.....J.
[P. SATHASIVAM]

.....J.
[RANJAN GOGOI]



JUDGMENT