



2026:AHJ:1680

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 431 of 1983

Sant Lal And Ors

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Haider Abbas, J. N. Dwivedi, Kamal Krishna, N/A, Rajiv Kumar Singh, Shailendra Nath Tiwari, Tej Prakash Mishra, Vikas Tripathi
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. List has been revised.
2. None appears on behalf of the appellant to press this appeal.
3. Record shows that this appeal is of the year 1983 and the appellants namely Sant Lal, Banaspati Singh and Ram Lal Misra, who were granted bail by this court vide order dated 23.2.1983, while admitting this appeal is ever since then, enjoying the liberty of bail.
4. Vide order dated 21.12.2017 a coordinate Bench of this Court had passed the following order:-

"Pursuant to an order dated 13.12.2017, C.J.M., Allahabad has submitted a report that the death of Sant Lal, appellant no.1 is supported by statement and report as per the Circular.

In view of the said report dated 15.12.2017, appeal against appellant no.1 Sant Lal stands abated.

Same report is with regard to appellant no.2 Banspati Singh has left his house along with family about fifteen years back.

In view of it, issue notices to the sureties namely; Ram Suchit Kurmee son of Baiju Kurmee, Resident of Village Lala Ka Pura, Police Station Karchhana District Allahabad and Sahdev son of Jagesar, Resident of Chakiya, Police Station Ghoorpur, District Allahabad to produce the appellants on the next date fixed before this Court and show cause as to why surety bonds submitted by them for the appellants be not forfeited.

List this case on 12.2.2018."

5. Thereafter, vide order dated 23.3.2018 a coordinate Bench of this Court has passed the following order:-

"List revised. None responds from the side of the appellants. However, learned A.G.A. for the State is present.

As per report of learned Chief Judicial Magistrate, Allahabad dated 20.12.2017, appellant-Ram Lal Mishra is the resident of District-Reewa and bailable warrant issued by this Court has been transmitted to Chief Judicial Magistrate, Reewa. Apart from it, appellant-Vansh Pati Singh has left his house 15 years back and his whereabouts are not known to anyone. Appellant-Sant Lal has expired.

Let non-bailable warrants be issued against appellants-Ram Lal Mishra and Vansh Pati coupled with notices to their sureties through Chief Judicial Magistrate, Allahabad who shall execute these warrants through concerned officers and notices on the appellants and their sureties.

The detailed report about service of these notices and warrants be submitted positively by the next date.

As per office report, lower court record is available.

List this appeal on 08.05.2018."

6. Thereafter, vide order dated 13.9.2018 a coordinate Bench of this Court had passed the following order:-

"As per office report, C.J.M., Allahabad has not sent the desired report of detention of appellant no.3 Ram Lal Misra.

Let a reminder be issued to C.J.M., Allahabad for ascertaining compliance and sending the detention report of appellant no.3 Ram Lal Misra positively within one week, failing which serious view will be taken by this Court.

List on 24.9.2018.

Office is directed to send a copy of this order to C.J.M., Allahabad through Fax, E-mail and ordinary process within three days for compliance.

Criminal Misc. Bail Application No.2 of 2018

Heard Sri Tej Prakash Mishra, learned counsel for the applicant-appellant, learned AGA for the State and perused the record.

Learned counsel for the applicant-appellant contends that in furtherance of order of issuance of N.B.Ws. dated 23.3.2018, he was arrested on

10.7.2018; that the applicant-appellant did not make any deliberate absence; that applicant-appellant has no criminal history; that the applicant-appellant undertakes that he will not misuse the liberty of bail and will remain present before the Court as and when required and he will cooperate with the hearing of appeal for which his counsel will remain present on the date of listing.

Learned A.G.A. vehemently opposed the prayer of bail.

Considering the unlikelihood of early hearing of appeal, complicity of convicts and sentence, as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for grant of bail.

Let the applicant-appellant no.3 Ram Lal Misra be released on bail on their furnishing a personal bond and two sureties for Rs. 20,000/- each to the satisfaction of C.J.M., Allahabad concerned in S.T. No. 238 of 1982, under sections 395 I.P.C., P.S. Goorpur, District Allahabad and undertaking that applicant-appellant will co-operate with the hearing of the appeal and will remain present in person or through counsel at the time of listing of case.

As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by trial Judge concerned to be kept on the record of this appeal."

7. Thereafter, again vide order dated 24.9.2018 a coordinate Bench of this Court had passed the following order :-

"List revised.

Sri Shailendra Nath Tiwari, learned counsel for appellant no. 3-Ram Lal Mishra and learned A.G.A., are present.

As per C.J.M., Allahabad, vide his report dated 13.09.2018, as annexed with the report of the Senior Jail Superintendent, Central Jail, Naini, Allahabad wherein it has been submitted that after undergoing sentence, the appellant no. 3-Ram Lal Mishra, s/o Sri Ram Dularey Mishra has been released in S.T. No. 236 of 1982.

After sufficient wait and repeated calls, Sri Tej Prakash Mishra, who was appointed as amicus curiae being counsel for appellant no. 3-Ram Lal Mishra vide order dated 06.09.2018, is not responding/appearing, hence he is removed from being amicus curiae for appellant no. 2 and in his place, Sri Vikas Tripathi, Advocate, is appointed as amicus curiae for appellant no. 2. He will obtain paper book from office.

List this case after two weeks for final hearing."

8. The office vide its report dated 9.7.2020 has reported that in compliance of order dated 21.12.2017 a report dated 9.2.2018 (Flag 'A') has been received from learned Chief Judicial Magistrate, Allahabad wherein it is submitted that sureties of the appellant no.2 namely Banaspati Singh have passed away.

9. In view of the above orders and office report it is clear that appellant no.3 namely Ram Lal Mishra has completed his entire sentence and released and vide order dated 21.12.2017 this appeal stands abated qua the appellant no.1 namely Sant Lal. **Now this appeal is surviving only qua the appellant no.2 namely Banaspati Singh.**

10. To cut a long story short, I do not find any prospect of the accused-appellant no.2 namely Banaspathi Singh, who absconding, being traced out and produced before this Court. It is apparent that he is not interested in the disposal of this appeal and have abused the liberty of bail by failing to appear before this Court despite coercive measures adopted against him. As per office report the sureties of the said appellant have also died. The question which arises before us is that whether this Court is bound to wait perennially for the accused-appellant till the accused-appellant is searched, if at all, and produced before us and keep on adjourning the hearing of this appeal.

11. Faced with the aforesaid contingency and looking to the huge pendency of cases before this Court, I am not inclined to pass over this appeal. Under identical circumstances, the Apex Court, after a comprehensive analysis of previous decisions on the issue, has distilled the legal position into six propositions in paragraph 19 of its judgment delivered in the case of **K.S. Panduranga v. State of Karnataka (2013) 3 SCC 721** :

"19.1 That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2 That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3 That the court may, as a matter of prudence or indulgence, adjourn

the matter but it is not bound to do so;"

19.4 That it can dispose of the appeal after perusing the record and judgement of the trial court;

19.5 That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6 That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

12. Thus, in view of the legal position propounded by the Apex Court in the case of **K.S. Panduranga (supra)**, I proceed to examine this appeal on merits qua appellant no.2 - Banaspati Singh with the assistance of Sri Rahul Asthana, learned A.G.A. for the State. I have perused the lower court record and heard learned A.G.A. on behalf of the State.

13. By way of instant criminal appeal, challenge has been made to the validity and sustainability of the Judgment and order dated 13.01.1983 passed by VI Additional District and Sessions Judge, Court No. 6, Allahabad convicting the appellants under section 395 IPC and sentencing them to five years R.I. in Sessions Trial no. 238 of 1982.

14. In nutshell, the prosecution story is that in the night between 29th and 30th of December, 1981 **P.W.-1** Ramswarup Ganderia and his son were sleeping inside their outer osara while the other inmates were sleeping inside his house at hamlet Ganderion-ka-purwa of village Bari Bajahia. Ram swarup was having a flashing torch and at about 2:00 AM some miscreants arrived there. When he inquired, the miscreants abused him and when Ram swarup run away they caught hold of his son, looting the valuables. Meanwhile Ram Swarup raised the alarms and subsequently Ram Sajiwan **P.W.-2** along with other villagers having lathis and torches arrived. The dacoits started escaping southwards. The villagers chased them and arrested accused No.1 Santlal, accused No.2 Banspati Singh and accused No.3 Ram lal Mishra and were handed over to the local police of Ghoorpur and written

report (**Ext. ka-1**) was lodged by P.W.-1.

PW-4- P.D. Pandey (S.I) posted at Ghoorpur conducted the investigation and after concluding submitted charge sheet (**Ext. ka-5**) against the accused persons.

After hearing, all the accused persons were charged for the offense U/s 395 IPC and out of them accused Nanhey Singh was charged U/s 397 IPC. Each of them pleaded not guilty and claimed to be tried.

The accused Ramswarup stated that they have been falsely implicated over the mortgage dispute of a joint agricultural land.

The prosecution in all examined six witnesses. **P.W.-1 Ramswarup**, the complainant has proved Ext. ka-1, the written report while **P.W.-5 Narpat Singh (Head Moharrir)** has proved Ext. ka-6 (FIR) and Ext. ka-7(entry of G.D.); **P.W.-4** The investigating officer has proved Ext. ka-2 (Site map), Ext. ka-3 (memo of Supurdginama of lantern and torches) and Ext. ka-4 (memo of house search of accused no.2); **P.W.-6 Imamuddin** (S.I and associate of **P.D. Pandey P.W.-4**) has proved the memo of house search of other accused as Ext. ka 8 to Ext. ka-10.

The learned trial court after considering the submissions of both the parties and appreciating the evidence produced stated that the participation of accused Nanhey singh alias Lakhpat Singh, Banarasi and Alha Kurmi is not at all established beyond reasonable doubt. Therefore, this possibility cannot be ruled out that they were deliberately named due to some enmity and hence they are entitled to be acquitted of the charges framed against them.

Furthermore, the ocular testimony about the place and manner of the arrest is corroborated by the timely lodged report also. The oral testimony led by the prosecution about the spot arrests cannot be ignored on this ground alone because no weapon or looted item was found from the custody of any of the arrested accused persons.

15. Learned trial Judge after considering the case on its merit returned aforesaid finding of conviction and sentenced the accused-appellants under

Section 395 I.P.C and sentencing them to five years rigorous imprisonment.

16. Feeling aggrieved by the order of the learned trial court, the appellants have preferred the instant criminal appeal.

17. Bare perusal of the record itself is indicative of fact, it is evident that the ocular testimony about the place and manner of the arrest is corroborated by the timely lodged report also. The oral testimony led by the prosecution about the spot arrests cannot be ignored on this ground alone because no weapon or looted item was found from the custody of any of the arrested accused persons.

18. Learned A.G.A. submits that the judgement and order passed by the learned trial Court does not suffers from any infirmity, perversity or illegality, and therefore, same requires no interference by this Court.

19. Under the facts and circumstances, it cannot be said that there was any deliberate attempt to falsely rope in the accused-appellant in this case, while allowing the real culprit to go scot-free.

20. It is established principle of criminal jurisprudence that testimony of eye-witnesses cannot be thrown away.

21. There is no case or circumstance either existing or emerging after contemplating various aspects of this case qua evidence on record against the appellant.

22. The learned trial judge while considering the various aspects of the case and various specific facets regarding the commission of the crime and the incident itself has elaborated a well-reasoned and detailed judgment, scrutinizing and analyzing each and every vital aspect of the case and judgment of conviction has been recorded after proper scrutiny of the evidence and facts on record.

23. In view of above, it may be conveniently summed up that the trial Judge has taken into consideration various aspects of the case and has appraised facts and testimony of prosecution witnesses in right prospective and has

rightly recorded finding of conviction and sentenced the appellants for offence under Section 395 I.P.C and sentencing them to five years rigorous imprisonment, which is just punishment and would meet the ends of justice.

24. In view of aforesaid discussion, it is obvious that this appeal lacks merit and is dismissed accordingly.

25. The appellant no.2 namely Banaspati Singh is at large. The trial court is expected to leave no stone unturned for ensuring arrest of the appellant to enable him to serve out the sentence imposed by the judgment of the trial court.

26. Let a copy of this order/judgment be certified to the court below forthwith for necessary information and follow up action.

January 27, 2026
Dev

(Mrs. Vani Ranjan Agrawal,J.)