

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 791 OF 2001

Smt. Santoshi Bai, W/o Balu Rajwar, aged 22 years, occupation-
Agriculturist, R/o Village- Amadarha, P.S. Darima, District- Surguja
(Ambikapur), Chhattisgarh

... Appellant

Versus

State of Chhattisgarh, through P.S. Darima, District- Surguja
(Ambikapur), Chhattisgarh

... Respondent

For Appellant	:	None.
For Respondent	:	Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

13/04/2016

1. The Appellant stands convicted under Section 304 IPC, without specifying whether it was under Part I or Part II, to life imprisonment by the First Additional Sessions Judge, Ambikapur in Sessions Trial No. 263 of 2000, dated 28.7.2001 for death of three persons who had consumed liquor mixed in a bottle with remains of a pesticide 'organocloro endosulfane'.

2. The present appeal was filed in the year 2001 and admitted on 4.9.2001. The Appellant was granted bail on 11.4.2002. It was adjourned at the behest of the Appellant on 26.6.2014 and on 12.4.2016 no one appeared on her behalf. Today also no one appears on behalf of the Appellant even while she continues to enjoy the privilege of the bail. The name of the Counsel appears in the cause-list and it has also been displayed on the Electronic LED Display that the case has been called out despite which there is no appearance.

3. Considering the age of the appeal, we are not inclined to adjourn it on that ground in view of the observations in (2014) 14 SCC 222 (Surya Baksh Singh v. State of Uttar Pradesh) and have taken up the appeal for consideration with the assistance of the State Counsel.

“24. It seems to us that it is necessary for the appellate court which is confronted with the absence of the convict as well as his counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in court. If even this exercise fails to locate and bring forth the convict, the appellate court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in *K.S. Panduranga v. State of Karnataka*, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions: (SCC p. 734, para 19)

“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 judgment 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.”

25. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences

awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute spectator to the spectacle of the convict circumventing his conviction. (See *Stirland v. Director of Public Prosecutions*, (1944) 2 All ER 13 (HL), quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*, (2003) 11 SCC 271.) If the court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals. The inherent powers of the High Court, poignantly preserved in Section 482 CrPC, can also be pressed into service but with care, caution and circumspection.”

4. Learned Counsel for the State has meticulously taken us through the judgment under appeal, the evidence of the prosecution witnesses and the exhibits on record which has facilitated us in consideration and adjudication of the appeal on merits.

5. According to the prosecution case Dehati Merg, Exhibit P-1 was lodged on 21.3.2000 by PW-1, Krishna Ram, brother of the deceased Ramfal. The latter is stated to have consumed alcohol along with Baigaram and Nandlal at the house of Nandlal in the morning of 20.3.2000. Ramfal developed loose motion thereafter, became unconscious and died before he could be taken to the hospital. Formal FIR, Exhibit P-21, was registered on 11.4.2000. The other two also died. Charge sheet was submitted under Sections 304 and 328 IPC. Charge was framed under Section 304 IPC.

6. The three deceased persons, Ramfal, Baigaram and Nandlal are stated to have consumed alcohol together. The Appellant is the married daughter of Nandlal. It transpires from the viscera report, a part of the forensic report, Exhibit P-34, that traces of ethyl alcohol and organocloro endosulfane pesticide was found. Exhibit P-10 was a green

coloured bottle seized from the house of the Appellant by the Investigating Officer S. C. Shukla, PW-14 observing that strong smell of alcohol was coming from it. Pesticide also has a very pungent smell but there was no reference to the same. The FSL report contains that the washing of the bottle contained traces of pesticide but does not mention any presence of alcohol.

7. The burden of proof lay on the prosecution to establish that the Appellant had deliberately mixed alcohol in the remnants of the pesticide bottle with the intention or knowledge to cause death of the three persons and which included her father.

8. There is no evidence that the Appellant was engaged in the business of hooch or that she had any animosity with deceased Ramfal, Baigaram let alone her own father to have wantonly killed them. The prosecution has not led any evidence even that she had served them the laced alcohol herself or seeing them consuming it deliberately kept quiet. The charges had to be established against the Appellant by the prosecution beyond all reasonable doubts. It is not the case of the prosecution that the green bottle of pesticide in which the alcohol had been mixed was recovered on confession of the Appellant.

9. Article 20(3) of the Constitution guarantees protection from self incrimination. Section 25 of the Evidence Act (hereinafter referred to as 'the Act') prohibits admission of any confession made in presence of the police whether the accused be in formal custody or not. Similarly Section 26 of the Act prohibits admissibility of confession in police custody unless made before a Magistrate. Section 27 of the Act partially lifts the bar on admissibility of confession in custody before the police to the extent it leads to discovery of a fact. It is only that part of the confession which exclusively leads to discovery of a fact on the

confession which is admissible in evidence. Therefore any confession by an accused before the police containing self incriminating statements cannot be relied upon by the prosecution to hold the accused guilty. Criminal jurisprudence admits of no ambiguity in this regard. In (2006) 4 SCC 265 (Commr. of Police v. Narender Singh) the conclusions were succinctly stated as follows :-

“30. The policy underlying Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police to any person whomsoever unless made in the immediate presence of a Magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act.”

10. The fact that the Appellant may have made a confession before the police “that she had mixed the alcohol with remnants of the pesticide” to commit suicide because her father was prevailing upon her to go back to her matrimonial home much to her dislike was not admissible in evidence as self incriminating. The self incriminating part of her statement singularly has been made the basis for her conviction. The case of the prosecution is based completely on an illegal and unsustainable foundation in law. The police made a complete mockery of the statutory powers to investigate. Investigation under Section 174 of the Code of Criminal Procedure was ignored completely whether it be on purpose or sheer negligence, in the facts of the case. Consequently abuse of statutory powers or sheer negligence in exercise of the same led to completely unjustified incarceration of the Appellant at the young age of 22 which cannot be compensated in monetary terms and her sullied reputation resurrected. Unfortunately matters did not end there. The Trial Judge equally assumed the role of a mute spectator and acted

mechanically without application of mind contrary to law and completely failed to render justice by convicting the Appellant on self incriminating material only. The Trial Judge did not even bother to consider under which part of 304 IPC the conviction was being ordered displaying callous negligence in a matter as serious as dispensation of justice. It is indeed a very sad reflection on the manner in which the criminal justice delivery system was abused by vital stakeholders entrusted with the responsibility that the scales of justice remain even.

11. Apparently the Appellant comes from the lower strata of society unaware of her legal rights and appears to have been denied able legal assistance due to poor financial condition. Any claim for compensation by her will have to be considered in accordance with law.

12. The conviction of the Appellant is set aside.

13. The appeal is allowed subject to conditions in Section 437-A Cr.P.C.

14. A copy of the order be sent to the Police Training Academy, Raipur and the State Judicial Academy.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge