

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-77-SB-1999
Reserved on: 16.01.2025.
Pronounced on: 30.01.2025

Bhola @ Ram Dass ...Appellant

Versus

State of Haryana ...Respondent

CRA-S-1747-SB-2005

Jarnail Singh @ JailaAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Deepanshu Kapur, Advocate for
Mr. S.S. Rana, Advocate
for the appellant in CRA-S-1747-SB-2005.

None for the appellant
in CRA-S-77-SB-1999.

Mr. Aashish Bishnoi, D.A.G., Haryana and
Ms. Trishanjali Sharma, DAG, Haryana.

Mr. Jasjit Singh, DAG, Punjab and
Mr. Sukhdev Singh, A.A.G, Punjab.

Mr. Manish Bansal, P.P., U.T., Chandigarh along with
Mr. Rajiv Vij, APP for U.T., Chandigarh.

ANOOP CHITKARA, J.

1. A common question of law is involved in all these appeals and, as such, they are being decided together through a common judgment of the same date. Facts are extracted from CRA-S-77-SB-1999.

2. The convicts filed these appeals to challenge their convictions and sentences.

Through separate orders, the appeals were admitted, the sentences were suspended, and

the payment of the fines was stayed. Before the appeals came up for final hearing, in the interregnum, the appellants expired.

3. The question of law that arises is whether the appeals would abate due to the appellants' death, considering that neither their close relatives sought permission for substitution under Section 394(2) CrPC, nor did the appellants deposit the fine amount.

4. Since none represent the appellants, I have heard the Counsel for the States of Punjab, Haryana and UT Chandigarh as outcome will have implications across all States.

5. Chapter XXXI of BNSS, 2023, from Section 413 to 435, deals with Appeals.

6. S. 435 BNSS, 2023 reads as follows:

435. (1) Every appeal under section 418 or section 419 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate. Explanation. —In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

7. Section 435 BNSS, 2023 is analogous to S. 394 CrPC, 1973, being verbatim identical except for the renumbering of related Sections 377 and 378 CrPC, 1973, which have been substituted by S. 418 & 419 of BNSS, 2023.

8. S. 418 BNSS (377 CrPC) provides for an Appeal by the State Government against the sentence, and S. 419 BNSS (378 CrPC) provides for an Appeal in case of acquittal. Section 435 (1), BNSS explicitly stipulates that appeals for enhancement of sentence and/or against acquittal shall abate on the death of an accused. Additionally, Section 435 (2) BNSS states that except for appeals involving a sentence of a fine, all other appeals filed under this Chapter shall abate upon the appellant's death. Therefore, the scope of Section 435(2) includes convicts who have filed appeals, which shall abate upon their death.

9. The Dictionaries define the word '**Abate**' as follows:

10. SHORTER OXFORD ENGLISH DICTIONARY (6TH ED. 2007) defines *Abate in LAW*. "Cause (a nuisance, an action) to cease".

11. *Abate*, JUDICIAL DICTIONARY (13th ed. 2000).

'Abate' is a generic term derived from the French word 'abate and signifies to quash, to beat down or destroy.

12. THE PENGUIN ENGLISH DICTIONARY (revised ed. 2003) defines abate in law as to put an end to or abolish and to reduce (something) in amount, intensity, or degree to moderate (something).

13. *Abatement*, BLACK'S LAW DICTIONARY (11th ed. 2019).

1. The act of eliminating or nullifying <abatement of a nuisance> <abatement of a writ>.

2. The suspension or defeat of a pending action for a reason unrelated to the merits of the claim <the defendant sought abatement of the suit because of misnomer>; esp., the discontinuation of criminal proceedings before they are concluded in the normal course of litigation, as when the defendant dies. *See plea in abatement under PLEA*

"Although the term 'abatement' is sometimes used loosely as a substitute for 'stay of proceedings, the two may be distinguished on several grounds. For example, when grounds for abatement of an action exist, the abatement of the action is a matter of right, but a stay is granted in the court's discretion. And in proper circumstances a court may stay a proceeding pending the outcome of another proceeding although a strict plea in abatement could not be sustained." 1 Am. Jur. 2d Abatement, Survival, and Revival 53 (1994).

► *abatement ab initio*. (1960) The negation of a criminal trial and verdict after a convicted defendant has died before exhausting all legal appeals. The case reverts to the beginning point as if the trial and conviction had never occurred. Also termed doctrine of abatement ab initio; rule of abatement ab initio.

► *abatement in equity*. (18c) Hist. The suspension of a suit for lack of the proper parties necessary for it to proceed. Abatement in equity differed from abatement at law in that the action was entirely defeated in the latter case, whereas in the former the action was merely suspended and could be revived later (usu. when appropriate parties were substituted for the originals within a specified time).

3. The act of lessening or moderating; diminution in amount or degree <abatement of the debt>.

14. THE NEW LEXICON WEBSTER'S DICTIONARY (ed. 1988) defines abate to reduce, do away with, so about the anger of the mob, v.i. to grow less, the storm abated.

15. The scope of appeals from a composite sentence of imprisonment and fine, as referenced in a similar provision in the Code of Criminal Procedure, 1894, has been

interpreted by the Supreme Court in Harnam Singh v. The State of Himachal Pradesh, (1975) 3 SCC 343, where it was stated as follows:

[4]. Learned Counsel for the State of Himachal Pradesh, who are respondents to the appeal, has raised a preliminary objection to the right of the appellant's widow to prosecute the appeal. He contends that the substantive sentence of imprisonment imposed on the appellant Harnam Singh came to an end with his death and therefore the appeal regarding that sentence stands abated. As regards the sentence of fine, it is contended that since the deceased appellant was not sentenced to pay a fine only but was punished with a composite sentence of imprisonment and fine, the appeal would abate as regards the sentence of fine also. According to the learned Counsel this Court may, at the highest, set aside the sentence of fine if it finds that the appellant need not have been asked to pay a fine. But the order of conviction and the substantive sentence must remain and the legality or propriety of that order cannot any longer be questioned in view of the death of the appellant.

[10]. The narrow question which then requires to be considered is whether an appeal from a composite order of sentence combining the substantive imprisonment with fine is for the purposes of Section 431 not an appeal from a sentence of fine. It is true that an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and the fine. But such an appeal does not for that reason cease to be an appeal from a sentence of fine. It is something more not less than an appeal from a sentence of fine only and it is significant that the parenthetical clause of Section 431 does not contain the word "only". To limit the operation of the exception contained in that clause so as to take away from its purview appeals directed both against imprisonment and fine is to read into the clause the word "only" which is not there and which, by no technique of interpretation may be read there. The plain meaning of Section 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine". The section for its application requires that the appeal must be directed to the sentence of fine and not that it must be directed to that sentence only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with imprisonment, the appeal against conviction would be an appeal from a sentence of fine within the meaning of Section 431. All that is necessary is that a sentence of fine should have been imposed on the accused and the

appeal filed by him should involve the consideration of the validity of that sentence.

16. Section 461 BNSS, 2023 reads as follows:

461. (1) When an offender has been sentenced to pay a fine, but no such payment has been made, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may— (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender; (b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 395.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

17. Section 461 BNSS, 2023 is a replica of Section 421 CrPC, 1973, except the change of numbering of related Section 357 (2) CrPC with 395(2) BNSS, 2023.

18. Section 471 BNSS, 2023 reads as follows:

471. Any money (other than a fine) payable by virtue of any order made under this Sanhita, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine: Provided that section 461 shall, in its application to an order under section 400, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 461, after the words and figures "under section

395", the words and figures "or an order for payment of costs under section 400" had been inserted.

19. Section 471 BNSS, 2023 aligns with S. 431 CrPC, 1973, indistinguishable in terms of their legal provisions', except for renumbering of consonant sections: Section 461 BNSS was previously 421 CrPC, 395 BNSS was 357 CrPC, and 400 BNSS was 359 CrPC.

20. Section 8(7) of BNS, 2023 is analogous to S. 70 of IPC, 1860, and reads as follows:

8(7) The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

21. In *Praban Kumar Mitra v. State of West Bengal*, 1958 SCC OnLine SC 79: 1959 Supp (1) SCR 63, a Constitutional Bench of Hon'ble Supreme Court holds,

[4]. There is no relevant; provision in the Code, except Section 431 which is the last section in Chapter XXXI of the Code, dealing with appeals and is in these terms: "431. Every appeal under Section 411-A, sub-section (2), or Section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant." It is manifest that the section, in terms, applies only to appeals, and lays down that an appeal against an order of acquittal passed by the High Court in exercise of its original criminal jurisdiction [Section 411 A (2)], or an appeal to the High Court from an order of acquittal passed by any court other than the High court, shall finally abate upon the death of the accused, and all appeals under Chapter XXXI, except an appeal from a sentence of fine, shall finally abate on the death of the appellant. The first part of the section dealing, as it does, with appeals against orders of acquittal, naturally, provides that such appeals must, necessarily, abate because the accused person has passed beyond the jurisdiction of the court. The second part of the section deals with appeals by convicted persons or by a person who has been deprived of any property, or who has been ordered to furnish security etc. and lays down that such appeals shall finally abate on the death of the appellant except appeals from a sentence of fine....

[7]. In view of the fact that even in the absence of any statutory provisions, we have held, in agreement with the decision aforesaid of the Bombay High Court, that the High Court has the power to determine the case even after the death of the convicted person, if there was a sentence of fine also imposed on him, because that sentence affects the property of the deceased in the hands of his legal representative, it now remains to consider whether the High Court was right in limiting its power of revision to the question of fine only — whether it was proper or excessive — without going into the merits of the order of conviction....X...On the death of the convicted person, the question of his serving the whole or a portion of his sentence of imprisonment, does not arise. But the sentence of fine remains to be examined — whether it was well founded in law. This question cannot be effectively gone into unless the order of conviction itself is examined on its merits. If the fact that the fine will have to be paid out of the estate of the deceased appellant or petitioner in revision, is the ground for giving the heir or legal representative a right to continue the appeal or a privilege of maintaining or continuing a revision, the same principle should entitle him to question the correctness of the conviction itself, for, if the conviction remains, at least some fine, however nominal, will have to be paid by the heir or the legal representative out of the estate of the deceased. In our opinion, therefore, where the High Court thinks it fit and proper to entertain an application in revision or calls for the record suo motu, it has the power to examine the whole question of the correctness, propriety, or legality of the sentence of fine, which necessarily involves examining the order of conviction itself from that point of view.

22. In Lakshmi Shanker Srivastava Vs. State (Delhi Administration), (1979) 1 SCC 229, Hon'ble Supreme Court holds,

[4]. Mr H.R. Khanna, learned Counsel who appeared for the respondent raised a preliminary objection. It was urged that the appellant died during the pendency of this appeal and, therefore, the appeal abates and cannot be proceeded with. Simultaneously it was urged that if the appeal were not to abate on the only ground that the appellant was also sentenced to pay a fine of Rs 200 and, therefore, it may be said that right to property of the legal representatives may be adversely affected and, therefore, they would be entitled to continue the appeal, the respondent State is prepared to concede that the sentence of fine may be set aside.

23. In Ramesan (Dead) Through LR Girija A v. The State of Kerala, MANU/SC/0065/2020 , Hon'ble Supreme Court holds,

[19]. We, thus, conclude that the appeal filed by accused Ramesan in the High Court was not to abate on death of the accused. The High Court rightly did not direct for abatement of appeal and proceeded to consider the appeal on merits. The appeal before the High Court being against sentence of fine was required to be heard against the sentence of fine despite death of accused-appellant.

[20]. Although, we have upheld the view of the High Court that appeal filed by the accused was not to abate and was required to be heard and decided on merits but there is one aspect of hearing of the appeal before the High Court, which need to be noted. From the judgment of the High Court, it does not appear that after the death of the appellant-accused, his legal heirs were given opportunity to proceed with the appeal against the sentence of fine. The judgment of the High Court does not also mention that any counsel has appeared for the legal heirs. The High Court ought to have given an opportunity to legal heirs of the accused to make their submissions against the sentence of fine, which fine could have been very well recovered from the assets of the accused in the hands of the legal heirs.

24. In Thotlegowda v. State, Crl.A-165-2012, decided on 13 Jan 2023, Single Bench of High Court of Karnataka observed,

[5]. Death of the convict does not discharge him from liability from paying fine and compensation imposed by Court and property which goes to his legal heirs after his death is legally liable for the same.

25. In Bondada Gajapathi Rao v. State of Andhra Pradesh, 1964 SCC OnLine SC 338: (1964) 7 SCR 251, Hon'ble Supreme Court holds,

[3]. The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it.

[8]. ... In view of the appellant's death we are of course not interested any further in considering the details of the offence, if any, unless we allow the heirs of the appellant to prosecute the appeal after his death and this is precisely what the present petitioners claim they are entitled to do. It is

admitted, however, that no analogous contention was ever raised in this Court, though appeal on the death of a sole appellant were, before this, treated as abated. One would expect that an appeal of this character would normally abate on the death of the appellant because a criminal prosecution is concerned primarily with the punishment of an offender and not with the trial of an abstract issue about the truth or falsity of a prosecution case. The maxim *actio personalis moritur cum persona* is often invoked in this behalf. The Criminal Procedure Code in Section 431 also provides that all appeals filed under Section 411-A sub-section 2 or Section 417 shall finally abate on the death of the accused and every other appeal under Chapter XXXI shall finally abate on the death of the appellant, except an appeal against a sentence of fine. The section cannot cover a case such as the present because this appeal was not filed under any of the sections mentioned in Section 431 or under Chapter XXXI.

[12]. There is good reason for holding that a criminal prosecution in which the State is anxious to bring an offender to book with a view to getting him punished for a crime comes to an end on the death of the person arraigned. The same principle must apply also to appeals after conviction, except insofar as a judgment already rendered touches assets which would come to the legal representatives or the executor as the case may be. Beyond this it is not possible to conceive of remoter interests because if the law were to take into account such remote interests every appeal would have to be continued after the death of the appellant. In my judgment, the present petitioners do not claim any direct interest and the appeal must, therefore, be taken to have abated. I agree that the petition be dismissed and the appeal held to have abated.

[18]. Indeed, the legislature has, by limiting in Section 431 of the Code the survival of appeals to appeals against sentences of fine has chosen to recognise only one kind of interest and no other. ...

26. An analysis of the above-mentioned statutory provisions and the judicial precedents would lead to the following outcome.

27. Facing criminal prosecution presents significant challenges, given the highly technical nature of criminal law and the substantial risk of self-incrimination. Further, effective cross-examination is an acquired skill that requires legal expertise and experience, emerging from incessant practice. The ability to analyse admissions, omissions, confessions, as well as to establish or negate existence of facts necessitates a deeper understanding of evidentiary

law and its principles. Moreover, distinguishing between relevant admissible and irrelevant or inadmissible evidence is a nuanced exercise that requires certain legal proficiency and acumen. While it is not a strict requirement that every accused or convicted individual obtain legal aid when unrepresented; the right to it is constitutionally and statutorily safeguarded for those who lack the means to secure legal counsel, ensuring access to justice in accordance with due process.

28. In the present case, the issue is not that the appellant had failed to engage a legal counsel, or the counsel was not putting in appearances; rather, the appellant's demise would have rendered the power of attorney legally inoperative and invalid. As a fundamental principle of law, only a living person possesses the capacity to confer authority upon another to act on their behalf.

29. Thus, upon the demise of an individual, if the legal heirs or representatives fail to substitute them within the prescribed timeframe, where the substitution is legally permissible subject to statutory limitations, the question arises as to whether the Court should appoint legal aid counsel to represent the deceased. The unequivocal answer must be in the negative, as dictated by the well-established Latin maxim *Actio Personalis Moritur Cum Persona*, which asserts that a personal cause of action extinguishes with the person. However, this principle is not absolute; certain legal claims, particularly those pertaining to proprietary interests or liabilities against the estate of the deceased, remain unaffected and continue to be enforceable posthumously.

30. The legislature has long recognized the inherent impossibility of subjecting a deceased individual to incarceration. Consequently, neither the Code of Criminal Procedure, 1973 (*CrPC*), nor its successor, the *Bharatiya Nagarik Suraksha Sanhita*, 2023 (*BNSS*), contains provisions mandating the continuation of criminal proceedings against a deceased accused. Under these procedural frameworks, all pending appeals, except those challenging a sentence of a fine, abate upon the appellant's death. However, in cases where a conviction has been recorded, certain close relatives—such as a parent, spouse, lineal descendant, brother, or sister—may seek leave of the Court to continue the appeal, thereby safeguarding the posthumous legal interests and reputational considerations of the deceased.

31. When a fine is levied upon a conviction, the State's right to recover it is strictly limited to execution against the deceased's estate, ensuring that penal sanctions remain personal and do not extend beyond the life of the offender. However, complexities arise where the fine's execution had been stayed by judicial order prior to the appellant's demise. In such cases, the stay continues to operate posthumously, as it cannot be vacated, revoked,

or enforced against a deceased individual who can no longer contest or comply with the order. A distinct scenario emerges when the convict, during their lifetime, has voluntarily deposited the fine with the State treasury or the Court. Here, the principle of irrevocable consent applies—once the fine has been remitted, it constitutes a legally concluded transaction, precluding legal heirs from challenging the payment or seeking restitution. Thus, if a convict who has deposited the fine dies during the pendency of their appeal, the deposited amount automatically vests with the State as a valid recovery, and legal representatives have no claim over it unless they seek and obtain leave of the Court to continue the appeal. Moreover, since the fine has already been transferred to the State, no further judicial orders—whether in appeal or attachment—are required for its final appropriation, as such a transfer is merely an administrative reallocation within governmental accounts. Given that neither the vesting nor the utilization of the fine imposes any legal burden on the heirs, and they lack *locus standi* to challenge its disposition absent a pending appeal, the appeal must necessarily abate upon the appellant’s death. This approach upholds the fundamental principle that criminal liability is strictly personal, ensures procedural finality, and prevents unnecessary judicial intervention in matters where the penal consequence has either been satisfied or rendered unenforceable by operation of law.

32. The law has also provided a 30-day limitation for parents, spouses, lineal descendants, brothers, or sisters to pursue the appeal. Thus, if the legal representatives wish to continue the appeal, they may seek leave from the Appellate Court. If such leave is granted, the appeal can proceed and shall not abate; however, if leave is not granted, the appeal shall abate.

33. In *Bani Singh v. State of UP*, (1996) 4 SCC 720, a three-member bench of the Hon’ble Supreme Court did not approve the dismissal of appeals against conviction for non-prosecution because of the lawyer’s absence.

34. However, in present appeals, the convicts died, and therefore, none can represent a deceased person except by substitution in accordance with the law, which was also not resorted to by their successors.

35. The legal challenge arises in cases where a convicted individual, upon whom a fine has been imposed, passes away without having either deposited the amount or securing a stay on its payment. Under both the *Code of Criminal Procedure, 1973* (CrPC) and its successor, the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), the recovery of such fines is procedurally limited to execution against the deceased’s estate in accordance with

established legal principles governing such liability . However, neither statute prescribes a mechanism enabling the Court to issue notice to the legal representatives of the deceased for the purpose of fine recovery. The apparent legislative omission of such a provision likely stems from a recognition of the practical and jurisprudential concerns associated with directly notifying legal heirs regarding the pecuniary liabilities of the deceased. The issuance of a formal Court notice demanding payment could, in many instances, not only diminish the deceased’s posthumous dignity in the eyes of their successors but also create unintended financial burdens. This concern is particularly pronounced where the heirs are financially well-established, domiciled abroad, or otherwise in a position to discharge the fine from their self-acquired assets as a matter of expediency. Such an outcome would neither align with the underlying legislative intent nor find support within the broader framework of criminal jurisprudence, which generally seeks to limit penal consequences to the individual wrongdoer rather than impose vicarious liability on their successors. The absence of a statutory mandate for notifying legal heirs thereby upholds the principle that criminal penalties, barring those explicitly permitted by law to survive, should not extend beyond the life of the convict.

36. In conclusion, a criminal appeal filed by a convict shall abate if the payment of the fine has been stayed by a judicial order before death or if the entire fine amount has been deposited with the Court. However, if the fine is neither stayed nor deposited, the appeal shall not abate. When there is no representation for the appellant, the appeal will be dismissed for lack of prosecution.

37. In all the above appeals, during the lifetime of the appellant, the Court had stayed the payment of the fine. In the light of the discussions above, all these appeals shall stand abated.

38. Given the above, the appeals are dismissed as abated. Bail bonds are discharged. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: YES