

A

RAM LAL

v.

STATE OF U.P.

March 5, 1979

B

[S. MURTAZA FAZAL ALI AND O. CHINNAPPA REDDY, JJ.]

S. 499(1) Cr.P.C.—No personal bond taken from accused—Nor was the signature of the accused taken on the reserve of surety bond—Accused jumped bail—Sureties if liable—Bond executed by surety if independent of the bond executed by accused.

Dismissing the appeal,

C

HELD : Section 499(1) of the Cr. P.C., which contemplated the execution of a bond by the accused and by the sureties, did not imply that a single bond was to be executed by both the accused and the sureties, signed by the accused and counter-signed by the sureties. An undertaking of the surety in Form 42, Schedule V to secure the attendance of the accused was quite independent of the undertaking given by the accused to appear before the court whenever called upon, even if both the undertakings of the surety and the accused happened to be executed in the same document for the sake of convenience. Each undertaking being distinct can be separately enforced. [450 C, 451 B-D]

D

The fact that an accused would not be released on bail without his executing a personal bond does not mean that if a person is released by mistake without his executing a personal bond, the sureties are absolved from securing the attendance of the accused and his appearance before the court. The sureties' responsibility arises from the execution of the surety bond and is not contingent upon execution of a personal bond by the accused. Nor is the liability to forfeiture of the bond executed by the surety contingent upon the execution and the liability to forfeiture of the personal bond executed by the accused. The forfeiture of the personal bond of the accused is not a condition precedent to the forfeiture of the bonds executed by the sureties. [451 E-F]

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F

Abdul Aziz & Anr. v. Emperor, AIR 1946 All. 116; *Mewa Ram & Anr. v. State*, AIR 1953 All. 481; approved.

Bakaru Singh v. State of U.P., AIR 1963 SC 430; distinguished.

Brahma Nand Misra v. Emperor, AIR 1939 All. 682; *Sailesh Chandra Chakraborty v. The State*, AIR 1963 Cal. 309; over-ruled.

G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 154 of 1972.

From the Judgment and Order dated 12-11-1971 of the Allahabad High Court in Criminal Revision No. 865 of 1970.

Shiv Pujan Singh for the Appellant.

D .P. Uniyal and *M. V. Goswami* for the Respondent.

H

The Judgment of the Court was delivered by

CHINNAPPA REDDY J.—Jorma who was convicted by the learned Sessions Judge, Dehradun under Section 302 Indian Penal Code and

sentenced to suffer imprisonment for life, was directed by the High Court of Allahabad to be released on bail on furnishing bail to the satisfaction of the District Magistrate, Dehradun. The District Magistrate (Judicial) Dehradun ordered Jorma to execute a personal bond in a sum of Rs. 5,000/- and to furnish two sureties in a sum of Rs. 10,000/- each. Ram Lal the present appellant was one of the persons who executed a surety bond. Another, Abdul Jabbar, also executed a surety bond. By some oversight no personal bond was taken from Jorma nor was his signature taken on the reverse of the bonds executed by the two sureties as appeared to have been usually done. Jorma jumped bail and the sureties were unable to produce him when required to do so. The District Magistrate, Dehradun, therefore, forfeited the surety bonds and issued a warrant of attachment against the sureties under Section 514 of the Code of Criminal Procedure, 1898. The appellant preferred an appeal to the High Court of Allahabad against the order of forfeiture. Before the High Court it was submitted that the surety bond executed by the appellant could not be forfeited when no personal bond had been taken from the accused who had been released on bail. The High Court over-ruled the submission of the appellant and confirmed the order of forfeiture. The appellant has filed this appeal on a certificate granted by the High Court under Article 134(1)(c) of the Constitution.

Shri Shiv Pujan Singh, learned Counsel for the appellant submitted that the question of forfeiting the surety bond for the failure of the accused to appear would arise only if the accused himself had executed a personal bond for his appearance. He submitted that someone must be primarily bound before the surety could be bound and his bond forfeited. He invited our attention to Section 499 of the Code of Criminal Procedure, 1898, and form No. 42 of the forms in Schedule V. He relied on the decisions in *Brahma Nand Misra v. Emperor*,⁽¹⁾ and *Sailash Chandra Chakraborty v. The State*⁽²⁾. A reference was also to *Bakaru Singh v. State of U.P.*⁽³⁾ On the other hand the learned Counsel for the State urged that the bond to be executed by the surety was independent of the bond to be executed by the accused and there was no impediment in the way of the forfeiture of the surety bond even in the absence of a personal bond executed by the accused. He relied upon the decisions in *Abdul Aziz & Anr. v. Emperor*⁽⁴⁾, and *Mewa Ram & Anr. v. State*⁽⁵⁾.

(1) AIR 1939 All. 682

(2) AIR 1963 Cal. 309

(3) AIR 1963 SC 430

(4) AIR 1946 All. 116

(5) AIR 1953 All. 481

A who was released on bail but guaranteed the attendance of that person and so the fact that the person released on bail himself did not sign the bond for his attendance did not make the bond executed by the surety an invalid one. In *Mewa Ram & Anr. v. State* (supra) the difference between a surety under the Code of Criminal Procedure and a surety under the Civil Law was pointed out and the view taken in *Abdul Aziz & Anr. v. Emperor* (supra) was reiterated. We agree with the view expressed in *Abdul Aziz & Anr. v. Emperor*, and *Mewa Ram & Anr. v. State* (supra).

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C
D In *Bakaru Singh v. State of U.P.*, (supra) the question presently under consideration did not arise. The question which was considered in that case was whether it was necessary that the personal bond of the accused should be executed on the other side of the bond executed by the surety on the same paper. It was held that it was not necessary. And, it was pointed out that the mere fact that form No. 42, Schedule V Criminal Procedure Code, printed the contents of the two bonds, one to be executed by the accused and the other by the surety together, did not mean that both the bonds should be on the same sheet of paper. To the extent that it goes the decision helps the State and not the appellant. For the reasons stated above, the appeal is dismissed.

N.V.K.

Appeal dismissed.