

SHRIDHAR NAMDEO LAWAND  
v.  
STATE OF MAHARASHTRA  
(Criminal Appeal No. 1124 of 2013)

AUGUST 5, 2013

[P. SATHASIVAM, CJI, AND RANJANA PRAKASH  
DESAI AND RANJAN GOGOI, JJ.]

*Appeal:*

*Criminal appeal - Decided by High Court in absence of counsel for accused - Held: Court should not decide criminal case in the absence of counsel for the accused - Accused should not suffer for the fault of his counsel and court must appoint another counsel as an amicus curiae to defend the accused - It is the duty of appellate court to look into the evidence adduced in the case so as to arrive at the conclusion whether prosecution case can be said to have been proved beyond reasonable doubt - Credibility of a witness has to be adjudged by appellate court in drawing inference from proved and admitted facts - In the case on hand, the said recourse has not been followed by High Court - Impugned order is set aside and matter remitted to High Court for disposal afresh - Appellant is in custody for nearly two months as against the sentence of two years - Therefore, he is ordered to be released on bail till the disposal of appeal pending before High Court - Bail.*

*Bani Singh & Ors. vs. State of U.P. 1996 (3) Suppl. SCR 247 = (1996) 4 SCC 720 (Larger Bench); Harjinder Singh vs. State of Punjab 2010 (10) SCR 326 = (2010) 13 SCC 533; Iqbal Abdul Samiya Malek vs. State of Gujarat, (2012) 11 SCC 312; K.S. Panduranga vs. State of Kamataka, (2013) 3 SCC 721 - referred to.*

A Case Law Reference:

1996 (3) Suppl. SCR 247 referred to para 8

2010 (10) SCR 326 referred to para 8

B (2012) 11 SCC 312 referred to para 8

2013 (3) SCC 721 referred to para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1124 of 2013.

C From the Judgment and Order dated 29.11.2012 of the  
High Court of Judicature at Bombay in Criminal Appeal No. 220  
of 1997.

D Rakesh Kumar, Naveer Gaur, Debnandan R., for the  
Appellant.

Chinmoy Khaladkar, Sanjay Kharde, Asha Gopalan Nair  
for the Respondent.

The following order of the Court was delivered

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ORDER

1. Heard learned counsel for the parties.

2. Leave granted.

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3. Against the conviction and sentence under Section 7  
and 13(2) read with Section 13(1)(d) of the Prevention of  
Corruption Act, 1988, the appellant has approached the High  
Court by way of Criminal Appeal No. 220 of 1997.

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4. Learned counsel appearing for the appellant has pointed  
out the following two infirmities in the impugned order.

(i) The appellant was not heard and the appeal was  
disposed of only on the basis of the statement made by  
the Counsel-State.

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(ii) The High Court has not gone into all the details and has not appreciated the evidence placed by both sides. A

5. In the light of the said contention, we have carefully perused the impugned order. Even at the first sight, we noticed none appeared for the appellant-accused before the High Court. This is evident from para 2 of the impugned order. Though, the High Court has mentioned certain factual details, the fact remains that it has not analyzed the evidence led by the prosecution and defence pleaded by the appellant-accused. B

6. It is settled law that court should not decide criminal case in the absence of the counsel for the accused as an accused in a criminal case should not suffer for the fault of his counsel and the court should, in such a situation must appoint another counsel as an amicus curiae to defend the accused. C

7. It is also equally settled that it is the duty of the appellate court to look into the evidence adduced in the case to arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon then whether prosecution can be said to have been proved beyond reasonable doubt on the said evidence. To put it clear, the credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. In the case on hand, the said recourse has not been followed by the High Court. D E

8. All the above principles have been reiterated in: F

i) *Bani Singh & Ors. vs. State of U.P.*, (1996) 4 SCC 720 (Larger Bench)

ii) *Harjinder Singh vs. State of Punjab*, (2010) 13 SCC 533 G

iii) *Iqbal Abdul Samiya Malek vs. State of Gujarat*, (2012) 11 SCC 312 H

A iv) *K.S. Panduranga vs. State of Kamataka*, (2013) 3 SCC 721

B 9. Accordingly, we set aside the impugned order and remit the matter to High Court for fresh disposal. We request the High Court to restore Criminal Appeal No. 220 of 1997 on its file and dispose of the same on merits, after affording opportunity to all the parties concerned.

C 10. It is brought to our notice that the appellant is in custody for nearly two months as against the sentence of two years. Taking note of the said aspect, we are inclined to consider the claim of the appellant for bail. Therefore, the appellant is ordered to be released on bail to the satisfaction of the Special Judge for Greater Bombay in Session Case No. 57 of 1990 arising out of FIR bearing CR No. 14/1989 PS, Anti Corruption Bureau, Greater Bombay till the disposal of the appeal pending before the High Court.

D 11. The Special Judge is free to impose appropriate condition(s) as he deems fit.

E 12. The appeal is disposed of accordingly.

R.P.

Appeal disposed of.