

MS. S.

A

v.

SUNIL KUMAR AND ANR.

(Criminal Appeal No.1581 of 2009)

B

NOVEMBER 16, 2015

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

Abatement – Of appeal – Supreme Court by judgment dated April 10, 2015 had convicted respondent No.1/accused u/s. 376(1) IPC directing to take him into custody – Later the Court was informed that the accused had already died on October 14, 2012 – Held: The factum of death of the accused was not within the knowledge of the Court at the time when the judgment dated April 10, 2015 was passed – The same cannot be given effect to – Therefore, the judgment dated April 10, 2015 is recalled, dismissing the appeal for having become abated – Judgment – Recalling of – Penal Code, 1860 – s.376(1).

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1581 of 2009

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From the Judgment and Order dated 28.11.2007 of the High Court of Chattisgarh at Bilaspur in Cr. Rev. No. 550 of 2007.

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Kanhaiya Priyadarshi for the Appellant.

Shashi Juneja, C. D. Singh, Vanshaja Shukla for the Respondents.

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The order of the Court was delivered

ORDER

1. By a judgment delivered on April 10, 2015, this Court H

- A allowed the appeal and convicted respondent No.1 for having committed the offence under Section 376(1) of the Indian Penal Code and sentenced him to undergo imprisonment for seven years and also imposed a fine of Rs.5,000/- which was to be paid in its entirety to the appellant. However, the acquittal of
- B Respondent No.1 for the offence under Section 3(2)(V) of the Act was confirmed. Respondent No.1 was directed to be taken into custody forthwith to undergo the sentence as aforesaid.

C 2. In spite of service of notice, when the appeal was fixed for hearing from time to time, none appeared before this Court to represent respondent No.1. In these circumstances, it led this Court to appoint an amicus in this matter to appear on behalf of respondent No.1 accused.

D 3. The State of Chhattisgarh was duly represented by its counsel. The appellant was also represented through the Supreme Court Legal Services Committee. However, the State and the appellant, none of the parties, drew the attention of this Court that respondent No.1/accused has already died.

E Accordingly, hearing of appeal was taken up and concluded on 13th March, 2015. The judgment was delivered by this Court on April 10, 2015.

F 4. At that point of time it was not within the knowledge of this Court that respondent No.1/accused has died. Subsequently, when the matter was placed before us, we have been informed by the learned counsel Ms. Shashi Juneja, that respondent No.1 Sunil Kumar has died on 14.10.2012. Since the said fact was not within knowledge of this Court nor the

G attention of this Court was drawn to the said fact by the parties, including the State, it would be obvious that the judgment/order dated April 10, 2015 cannot be given effect to at this stage.

H 5. Accordingly, the judgment and order dated April 10, 2015 already passed in this matter, has to be recalled,

recording the fact that the accused respondent No.1 had expired before the appeal was heard out. Hence, this appeal had become abated. A

6. Accordingly, on the basis of the statement made by the learned counsel appearing for the State, the judgment dated April 10, 2015, is recalled and this criminal appeal is dismissed for having become abated. B

Kalpana K. Tripathy

Appeal dismissed.