

CASE NO.:
Appeal (crl.) 361 of 2008

PETITIONER:
State of Rajasthan

RESPONDENT:
Rohitas & Ors

DATE OF JUDGMENT: 22/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 361 OF 2008
(Arising out of SLP (Crl.) NO. 5125 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court, Jaipur Bench, dismissing the application filed for grant of leave to prefer an appeal in terms of Section 378 (1) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.').

3. Background facts in a nutshell are as follows:

Respondent faced trial for alleged commission of offences punishable under Sections 498 (A) and 304 (B) of the Indian Penal Code, 1860 (in short the 'IPC'). It was the case of the prosecution that because of the torture meted out for bringing less dowry, she was murdered. Her dead body was found in the well of the accused persons. It was the case of the complainant that after killing her for dowry, she was thrown into the well. Charges were framed and the accused persons faced trial.

The trial court directed acquittal. Thereafter, as noted above, the appellant-State filed an application for grant of leave, which was rejected. Stand of the appellant was that the summary dismissal is not sustainable in law. There is no appearance on behalf of the respondent-accused.

4. Section 378 of the Code deals with the power of the High Court to grant leave in case of acquittal. Sub-sections (1) and (3) of Section 378 read as follows:

"378(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-section (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court".

5. To say the least the order is practicably unreasoned.

6. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in *State of U.P. v. Battan and Ors* (2001 (10) SCC 607). About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan* (AIR 1982 SC 1215) the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was re-iterated in *Jawahar Lal Singh v. Naresh Singh and Ors.* (1987 (2) SCC 222). Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the 'Constitution').

7. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar and Ors.* (2003 (7) Supreme 152).

8. Even in respect of administrative orders, Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

9. The above position was highlighted in *State of Orissa v. Dhaniram Luhar* (2004(5) SCC 568).

10. Therefore, the impugned order of the High Court cannot be sustained and is set aside, and matter is remitted to it. The High Court shall take up the matter afresh and dispose of the same in accordance with law. The appeal is allowed without any order as to costs.

JUDIS