A STATE OF ANDHRA PRADESH

v.

S. NARASIMHA KUMAR AND ORS.

JULY 13, 2006

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Constitution of India, 1950:

C *Article 136—Abatement of appeal—Criminal appeal filed by State—Death of accused during pendency of appeal—Petition by his wife stating that appeal against him abated—Held, appeal stands abated as regards deceased accused—Principles regarding abatement of appeal by special leave on death of accused/appellant as indicated in* **Bondada Gajapathi Rao's**** *case reiterated.*

D **Respondent No. 3 in Criminal Appeals No. 1446-1450/2001 faced trial as A-3 alongwith other accused for offences punishable, *inter alia,* under ss. 120-B and 414 IPC. The trial court convicted the accused. They filed revision petitions before the High Court. The revision petition filed by A-3 was numbered as Criminal Revision No. 1424 of 2001. The High Court acquitted** E **all the accused. During the pendency of the appeals before the Supreme Court, A-3 died. His wife filed the present petition stating that on the death of the respondent (A-3), the appeal against him abated.**

Disposing of the petition, the Court

F **HELD: 1.1. Counsel for the parties conceded that neither in the Code of Criminal Procedure, 1973, nor in the Supreme Court Rules, there is any provision which deals with such a situation. However, as was held in *Harnam Singh's** case, in the interest of uniformity, there is no valid reason for applying to appeals under Article 136 of the Constitution a set of rules** G **different from those which govern appeals under the Code in the matter of abatement. [528-D; 530-D-E]**

Harnam Singh* v. *The State of Himachal Pradesh,* [1975] 3 SCC 343, relied on.

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1.2. In view of the decisions of this Court, the appeal filed by the State so far it questions correctness of the judgment in Criminal Revision No. 1424 of 2001 stands abated on the death of the respondent (A-3). The cause title shall indicate the applicant's name to avoid confusion. [532-F-G]**

***Bondada Gajapathi Rao* **v.** *State of Andhra Pradesh,* **AIR (1964) SC 1645 and** *Harnam Singh* **v.** *The State of Himachal Pradesh,* **[1975] 3 SCC 343, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Miscellaneous Petition No. 2335/2005.

IN

Criminal Appeal Nos. 1446-1450 of 2004.

From the Judgment and Order dated 21.3.2003 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Revision Case Nos. 1415, 1418, 1419, 1424 and 1430/2001.

D. Bharathi Reddy for the Appellant.

G. Ramakrishna Prasad, Dr. K.P. Kyalasanath, Mohd. Wasay Khan, Suyodhan Byrapancni, Venkat Subramaniam, S. Srinivasan, K. Maruthi Rao, K. Radha, Anjani Aiyagari, R.V. Kameshwaran and T.N. Rao for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. This petition has been filed by wife of one D.V. Chandrasekhar who was accused no.3 in C.C. No.53/1990 and was respondent no.3 in the appeal. It is to be noted that the appeal has been filed against the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court disposing of several Criminal Revision petitions.

All those revision petitions related to the judgment of the Court of the VII Additional Munsif Magistrate, Guntur in C.C. No.53 of 1990. The accused persons are described as A-1, A-2, A-3 etc. A-1 was charged with offences punishable under Sections 381, 411 and 120-B of the Indian Penal Code, 1860 (in short 'IPC'); A-2 to A-11 and A-15 were charged with offences punishable under Sections 120-B and 414 I.P.C. A-12 to A-14 were charged with offence punishable under Section 411 I.P.C. A-4 died during the trial of the case. The

A case against A-10 was separated. Through its Judgment dated 26.11.2000 the trial Court convicted the above said accused persons for the offences alleged against them and awarded sentences of various descriptions.

The High Court set aside the conviction and sentence imposed in respect of the concerned respondents. In the appeal as noted above, the B deceased D.V. Chandrasekhar who was A-3 is the respondent in the Criminal Appeal relating to Criminal Revision no.1424 of 2001. The applicant has filed the present appeal stating that on the death of the said respondent the appeal abated so far he is concerned. The logic of Section 394 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was pressed into service. Learned counsel C for the State on the other hand submitted that Section 394 Cr.P.C. does not govern the case of an appeal by special leave before this Court.

The aforesaid D.V. Chandrasekhar died on 15.1.2004 and leave has been granted on 6.2.2004.

D It is conceded by learned counsel for the parties that neither in the Cr.P.C. nor in the Supreme Court Rules there is any provision dealing with such a situation. Section 394 Cr.P.C. reads as follows:

> "394. *Abatement of appeals.*—(1) Every appeal under Section 377 or Section 378 shall finally abate on the death of the accused.
>
> E (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 F 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.
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> Explanation.—In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister."

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It is to be noted that Section 394 Cr.P.C. corresponds to Section 431 of the Code of Criminal Procedure, 1898 (in short the 'Old Code').

In *Bondada Gajapathi Rao* v. *State of Andhra Pradesh,* AIR (1964) SC 1645 three-judge Bench of this Court was dealing with the situation as to H whether appeal by special leave against sentence of imprisonment abates on

the death of the accused/appellant. Three separate judgments were rendered by the Hon'ble Judges. The principles as can be culled out from the said decision are as follows: (though rendered in the context of the Old Code are equally applicable under the Cr.P.C.). A

(1) Section 431 of the Old Code does not apply *proprio vigore* to a case of appeal filed with the special leave of the Supreme Court granted under Article 136 of the Constitution of India, 1950 (in short the 'Constitution') when the appellant-accused dies pending the appeal. B

(2) But where the appeal is against sentence of fine, the appeal may be permitted to be continued by the legal representatives of the deceased appellant accused. There is no provision making such appeals abate. If they can be continued when arising under the Old Code, there is no reason why they should not be continued when arising under the Constitution. If revision petitions may be allowed to be continued after the death of the accused so should appeals, for between them no distinction in principle is possible for the purpose of continuance. C D

(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. E

(4) But where the sentence is not one of fine but of imprisonment, which on the death of the accused becomes infructuous, the sentence does not affect the property of the deceased-accused in the hands of his legal representatives, and therefore, the appeal, in such a case, would abate, upon the death of the accused. F

(5) In fact that the accused was a government servant and was under suspension during the trial and the fact that if the conviction and sentence were set aside, his estate would be entitled to receive full pay for the period of suspension, cannot be said to affect his estate, because, the setting aside of the sentence would not automatically entitle the legal representatives to the salary. It would be extending the principle applied to the case of a sentence of fine, if on the basis of it appeal against imprisonment is allowed to be continued by the legal representatives after the death of the appellant and for such an G H

A extension there is no warrant. Reference was made to *Pranab Kumar Mitra* v. *State of West Bengal and Anr.*, AIR (1959) SC 144.

Again in *Harnam Singh* v. *The State of Himachal Pradesh,* [1975] 3 SCC 343 the question was examined, and above principles were re-iterated. It was, *inter alia*, held as follows:

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"6. These contentions require an examination of Section 431 of the Code which reads thus:

"Every appeal under Section 411A, sub-section (2), or Section 417 shall finally abate on the death of the accused, and every other appeal C under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

7. The appeal before us was filed by special leave granted under Article 136 of the Constitution and is neither under Section 411A(2) nor under Section 417 nor under any other provision of D Chapter XXXI of the Code. Plainly therefore, Section 431 has no application and the question whether the appeal abated on the death of the appellant is not governed strictly by the terms of that Section But, in the interest of uniformity, there is no valid reason for applying to appeals under Article 136 a set of rules different from those which govern appeals under the Code in the E matter of abatement. It is, therefore, necessary to find the true meaning and scope of the provision contained in Section 431.

8. Chapter XXXI of the Code of 1898, called "Of Appeals" contains provisions governing appeals. The chapter opens with Section 404 which provides that no appeal shall lie from any judgment or F order of a Criminal Court except as provided for by the Code or by any other law for the time being in force and ends with Section 431 which deals with abatement of appeals. Section 411A(2) provides for appeals to the High Court from orders of acquittal passed by the High Court in the exercise of its original G criminal jurisdiction. Section 417 deals with appeals to the High Court from original or appellate orders of acquittal passed by courts other than a High Court. By Section 431, appeals against acquittal filed under Section 411A(2) or Section 417 finally abate on the death of the accused. Dead persons are beyond the processes of human tribunal and recognizing this, the first limb G of Section 431 provides that appeals against acquittals finally

abate on the death of the accused. Where a respondent who has been acquitted by the lower court dies, there is no one to answer the charge of criminality, no one to defend the appeal and no one to receive the sentence. It is of the essence of criminal trials that excepting cases like the release of offenders on probation, the sentence must follow upon a conviction. Section 258(2), Section 306(2) and Section 309(2) of the Code provide, to the extent material, that where the Magistrate or the Sessions Judge finds the accused guilty and convicts him he shall, unless he proceeds in accordance with the provisions of Section 562, pass sentence on the accused according to law.

9. Every other appeal under Chapter XXXI, except an appeal from a sentence of fine, finally abates on the death of the appellant. By "every other appeal" is meant an appeal other than one against an order of acquittal, that is to say, an appeal against an order of conviction. Every appeal against conviction therefore abates on the death of the accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. By Section 70 of the Penal Code the fine can be levied at any time within six years after the passing of the sentence and if the offender has been sentenced 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". The fact that the offender has served the sentence in default of payment of fine is not a complete answer to the right of the Government to realize the fine because under the proviso to Section 386(1)(b) of the Code the court can, for special reasons to be recorded in writing issue a warrant for realizing the fine even if the offender has undergone the whole of the imprisonment in default of payment of fine. The sentence of fine remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by Section 70, Penal Code.

10. The narrow question which then requires to be considered is whether an appeal from a composite order of sentence combining

A 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 B 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 C "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 D only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of 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 E imposed on the accused and the appeal filed by him should involve the consideration of the validity of that sentence.

11. It is difficult to discern any principle behind the contrary view. The reason of the rule contained in the exception is that a sentence of fine operates directly against the estate of the F deceased and therefore the legal representatives are entitled to clear the estate from that liability. Whether or not the sentence of fine is combined with any other sentence can make no difference to the application of that principle."

In view of what has been stated in the aforesaid two cases, the appeal G filed by the Stated of Andhra Pradesh so far it questions correctness of the judgment in Criminal Revision no.1424 of 2001 stands abated on the death of the respondent D.V. Chandrasekhar (A-3). The cause title shall indicate the applicant's name to avoid confusion. The application is accordingly disposed of.

H R.P. Petition disposed of.