PRASAD @ HARI PRASAD ACHARYA

v.

STATE OF KARNATAKA

(Criminal Appeal No. 242 of 2009)

FEBRUARY 9, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Criminal Appeal – High Court upheld conviction by a non-reasoned order – Justification of – Held: Not justified – High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind – Absence of reasons rendered the High Court's judgment unsustainable – Hence, matter remitted to High Court – Principles of natural justice – Right to reason.

The trial court convicted the accused-appellant under ss.447, 376(2)(g) and 506 IPC r/w s.34 IPC. In appeal, High Court upheld the conviction.

In appeal to this Court, the judgment passed by the High Court was challenged on the ground that it was practically non-reasoned. It was contended that the High Court did not analyze the evidence and arrived at abrupt conclusions about the guilt of the accused.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1. A bare perusal of the High Court's impugned judgment shows that the same is non-reasoned and no basis or reasons have been indicated by the High Court and there is not even analysis of the evidence. Various infirmities pointed out by the accused to throw doubt on the authenticity of the prosecution

A evidence are not even referred to. [Para 7] [1092-D]

2. 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
B of an application of its mind. The absence of reasons has rendered the High Court's judgment not sustainable. [Para 8] [1092-E-F]

3. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision
C 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
D 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
E the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. [Para 9] [1092-H; 1093-A-C]

F *Breen v. Amalgamated Engg. Union* (1971) 1 All ER 1148 and *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 ICR 120 (NIRC), referred to.

4. This Court is dismayed at the casual manner in which the criminal appeal has been disposed of. In the
G circumstances, the impugned judgment is set aside and the matter is remitted to the High Court for fresh consideration in accordance with law. [Para 10] [1093-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
H No.242 of 2009.

From the Judgment and final Order dated 6.6.2006 of the High Court of Karnataka at Bangalore in Crl. Appeal No.693 of 2005. A

Nagendra Kumar Sahoo (A.C.) for the Appellant.

Anitha Shenoy for the Respondents. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court upholding the conviction of the appellant for offence punishable under Sections 447, 376(2)(g) and 506 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Various custodial sentences were imposed on the appellant and one Sathish. C D

3. It is not necessary to refer to the factual aspects in detail in view of the order proposed to be passed.

4. It was the prosecution case that on 30.4.2003 around midnight both the accused persons went to the house of the victim, the prosecutrix (PW-1). They called out her husband. He came out after lighting the kerosene lamp and found the accused persons. The prosecutrix was compelled by the accused persons to follow them to the jungle and she was threatened that if she did not do so her hut would be set on fire. When she refused, they forcibly took her about 100 ft. away from the hut and forcibly committed rape on her and threatened not to disclose to anybody. Thereafter, they fled away. PW-2 and PW-3 are the husband and the daughter of PW-1 respectively. After the incident PWs 1 and 2 went and informed one Santosh Hegde (PW-7) who told them to give a police complaint. On 1.5.2003 at about 9.00 p.m. First Information Report was lodged. The prosecutrix was subjected to medical examination and the same indicated that she was subjected to sexual intercourse around 12 hours prior to the time of examination. E F G H

A The trial Court found that the evidence of the prosecutrix and the husband is sufficient to fasten guilt on the accused persons and accordingly convicted them. In appeal, the High court by the impugned judgment upheld the conviction.

B 5. In support of the appeal, learned counsel for the appellants submitted that the High Court's judgment is practically non-reasoned. The evidence has not been discussed and abrupt conclusions have been arrived at about the guilt of the accused.

C 6. Learned counsel for the respondent-State on the other hand supported the judgments of the trial Court and the High Court.

7. A bare perusal of the High Court's impugned judgment D shows that the same is non-reasoned and no basis or reasons have been indicated by the High Court and there is not even analysis of the evidence. Various infirmities pointed out by the accused to throw doubt on the authenticity of the prosecution evidence are not even referred to.

E 8. 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. The absence of reasons has rendered the High Court's judgment not sustainable.

F 9. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery* G *(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 H 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 the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

10. We are dismayed at the casual manner in which the criminal appeal has been disposed of. In the circumstances, we set aside the impugned judgment and remit the matter to the High Court for fresh consideration in accordance with law. As the matter is pending since long we request the High Court to explore the possibility of early disposal of Criminal Appeal No.693 of 2005.

11. The appeal is allowed to the aforesaid extent.

B.B.B. Appeal allowed.