
(2015) 11 SC CK 0055
In the Supreme Court Of India
Case No : Criminal Appeal No. 1581 of 2009

S.	Vs	APPELLANT
Sunil Kumar and others		RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(1)

Citation : (2016) 92 ALLCC 467 : (2016) 1 RCR(Criminal) 614 : (2015) 13 SCALE 44

Hon'ble Judges : Pinaki Chandra Ghose and U.U. Lalit, JJ.

Bench : Division Bench

Advocate : Kanhaiya Priyadarshi, Advocate, for the Appellant; Shashi Juneja, C.D. Singh and Vanshaja Shukla, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

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

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.

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. Accordingly, hearing

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

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 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.

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.

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.