



3. In this set of circumstances and evidences on record, we are not inclined to suspend the sentence awarded to this appellant accused by the Additional Sessions Judge-II, Giridih in Sessions Trial No. 388 of 2006/94 of 2010.

4. Counsel appearing for the appellant has also relied upon the decision rendered by this court on 20th September, 2013 in Criminal Appeal (S.B.) No. 419 of 2013, preferred by Original Accused No.s 1 and 2, who were convicted and sentenced to undergo 7 years for the offence punishable under section 366 (A) and 120 (B) of the I.P.C.

5. We have perused the said order. When we asked counsel for the appellant for pointing out the reasons for suspension of sentence, he is unable to read anything as to for which reason prayer for suspension of sentence made on behalf of these appellants were granted. Moreover, it appears that the role played by the appellant is remarkably different from the role played by the Original Accused No.s 1 and 2. Moreover, this appellant accused has also been punished for the offence punishable under section 376 I.P.C. read with 120 B of I.P.C. Further, while Original Accused No.s 1 and 2 have been punished for the offence u/s 366-A I.P.C. for seven years, whereas, this appellant accused has been sentenced to undergo rigorous imprisonment for ten years. Moreover, looking to the evidence of prosecution witnesses, pivotal role has been played by this appellant accused in commission of the offences, as alleged by the prosecution.

6. Therefore, taking into consideration the gravity of offence, quantum of punishment and the manner in which the appellant is involved in the offences, as alleged by the prosecution, we are not inclined to suspend the sentence awarded by the trial court to the present appellant-accused.

7. There is no substance in the prayer for suspension of sentence, which is accordingly rejected.

8. We, hereby, direct the Secretary, Home Department, Govt. of Jharkhand to take action against the Investigating Officer, who did not attend the trial court as a prosecution witness in the light of the decision rendered by the Hon'ble Supreme Court in the case of Shailendra Kumar vs. State of Bihar reported in [(2002)1 SCC 655], which reads as under:

"9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that the accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Additional Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case.

The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance ofailable/non-ailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the

crime cannot be left in a lurch."(Emphasis supplied) It is a duty of the Investigating Officer of a case to remain present in the concerned trial court when trial is going on. Earlier,a circular bearing No. 3/Misc.-18(22)2011-841 dated 23rd February, 2012 was issued by Mr. J.B.Tubid, the then Secretary, Home Department, Govt. of Jharkhand that if the Investigating Officer is not going to the court as prosecution witness, departmental proceeding shall be initiated against him. It is expected from the Secretary, Home Department to take action against such erring Investigating Officers. Further, recently a decision rendered by the Hon'ble Supreme Court in the case of State of Gujarat vs. Kishanbhai reported in 2014(1) JLJR 428 delivered on 7th January, 2014 in para 14,15,19,20, 21 also refers to take action against the erring investigating Officers. A Division Bench of this court has also decided in the case of State of Jharkhand vs. Sanjay Mondal reported in 2013 (4) JLJR Page 157 in para 11 as under:

".....

.....

- a) it is a duty of the trial court to inform the Investigating Officer, before it starts taking evidence;
- (b) It is a duty of Investigating Officer to remain present before the trial court;
- (c ) It is a duty of the Investigating Officer to bring prosecution witnesses, to the court;
- (d) It is a duty of Sessions Judge to secure presence of witnesses and by summons if they are not remaining present, bailable and then non-bailable warrant can be issued;
- (e) Disposal of appeal does not mean, disposal for statistical purposes, but, effective and real disposal to achieve the object of any trial;
- (f) Even the trial court can pass an order to stop the payment of salary or pension of Investigating Officer or Doctor or other Government Officers, who are avoiding to give evidence in court, after summons are issued for their presence.

It is high time for the Judges of the trial court, to learn the art of securing the presence of crucial prosecution witnesses.

No order of acquittal shall be passed by the trial court for want of evidence of Investigating Officer or Doctor or other Government officer, if these witnesses are alive and getting salary or pension. The Court has all the power to stop the payment of salary or pension to them, if they are avoiding the court.

In view of the aforesaid decision, it was the duty of the trial court to arrive at a just decision. The criminal court is an effective instrument for dispensing the justice and the Presiding Judge must cease to be a silent spectator or a mere evidence recording machine in the trial. It was the duty of the trial court to find out the truth and administer justice and it was a duty of the Investigating Officer

to remain present in the trial court and it is the duty of the Investigating Officer to keep the witnesses present before the trial court. There is failure in performance of the duty by the Investigating Officer as well as by the Public Prosecutor as also by the learned trial court in bring the evidence on record, though it is available i.e. the depositions of the aforesaid three doctors and the Investigating Officer ought to have been recorded by the learned trial court."

9. This matter is adjourned to be listed on 17th February, 2014 only for filing of an affidavit by Secretary, Home Department, Govt. of Jharkhand as to what action is proposed to be taken against the Investigating Officer of this case.

10. We also direct the Secretary, Home Department, to issue one more circular reiterating the same for strict compliance of the earlier circular issued by the Secretary, Home Department. Lenient approach by the Home Department is deprecated. It is also the duty of the Superintendent of Police of the concerned District to see that his Investigating Officers attend the court as witnesses, otherwise major or minor omissions, contradictions and improvements can not be proved in the court of law. This bare minimum requirement is also expected to be fulfilled by the A. P.P. of the concerned trial court.

11. We, therefore, direct the Registrar General of this court to supply a copy of this order to the

i) Secretary, Home Department, Govt. of Jharkhand

ii) Director General of Police of the State of Jharkhand

iii) Superintendent of Police, Giridih.

iv) Mr. Upendra Kumar, Principal of Police Training Center, Hazaribagh so that he can inculcate a sense of duty among the trainee investigating officers.

12. This order will be sent by Fax initially and thereafter, by registered post.

(D.N.Patel, J.) (P.P. Bhatt, J.) s.m.