

No.Gen/XIX/Misc/394/2023/1124

Dated 26/07 / 2023

From : Registrar General
Rajasthan High Court
Jodhpur

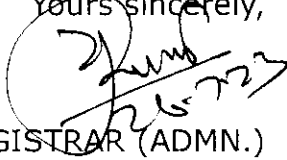
To : All the District & Sessions Judges

Sub. : Circulation of order dated 24/04/2023 passed by Hon'ble Court
in D.B.Criminal Death Reference No. 2/2022, State of Rajasthan
through PP & Anr. Vs. Lalchand

Sir,

On the above cited subject, while enclosing herewith copy of order dated 24/04/2023 passed by Hon'ble Court in D.B.Criminal Death Reference No. 2/2022, State of Rajasthan through PP & Anr. Vs. Lalchand, I am under direction to request you to circulate the same amongst all the Judicial Officers of Subordinate Courts posted in your Judgeship and ensure the compliance of order and mandate of Section 273 Cr.P.C. either by Physical presence of the accused or in alternative through Video Conferencing as per proviso to Section 274(i) of Cr.P.C. and provisions of Rajasthan High Court Rules for Video Conferencing for Courts, 2020.

Encl.: As above.

Yours sincerely,

REGISTRAR (ADMN.)

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Death Reference No. 2/2022

1. State Of Rajasthan, through PP
2. Bablu S/o Bhagwan Singh, R/o Nandiyakhedi, P.S. Sadar, Jhalawar Distt Jhalawar

----Petitioners

Versus

Lalchand S/o Nandlal, Aged About 41 Years, R/o Ram Mandir Ke Pass, Nayagaon, Soyatkallan (Madhya Pradesh) At Present Nandiyakhedi, Ps Sadar, Jhalawar, District Jhalawar (Rajasthan)

----Respondent

For State : Mr. Javed Choudhary, Addl. GA
For Respondent(s) : Mr. Pankaj Gupta, Amicus Curaie with
Mr. Naman Yadv, Mr. Hemana Singh,
Mr. Saurabh Yadav

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Order

24/04/2023

1. Present D.B. Criminal Death Reference has been moved by Special Court, POCSO No.1, Jhalawar, Rajasthan for confirmation of death sentence awarded by the Court vide judgment of conviction dated 03.03.2022 and order of sentence dated 07.03.2022 to accused-Lalchand in Sessions Case No.34/2020 (State Vs. Lalchand), FIR No.46/2020, registered at Police Station Mahila Thana, District Jhalawar.
2. It is contended by Mr. Pankaj Gupta, Amicus Curaie appearing on behalf of the accused-respondent that the statements of PW 1-10 and PW 25-30 were recorded in absence of the accused. It is argued that the same is violative of Section 273

8

of Cr.P.C. and the Trial Court has nowhere mentioned in the order-sheets, the reason for recording the statements in absence of the accused.

3. Counsel has placed reliance on State of Rajasthan Vs. Aatma Ram & Ors. "**2019 (1) Cr.L.R. (Raj.) 122**", wherein Division Bench of Rajasthan High Court has held that if statement of witnesses are recorded in absence of the accused, the same cannot be treated to be recorded in accordance with law and the Hon'ble High Court in that matter directed for de-novo trial. Accused preferred an SLP (Crl.) No.809-810 of 2019 before the Apex Court which was dismissed vide order dated 11.04.2019.

4. A prayer is made before the Court that the death reference be answered in negative and judgment of conviction and order of sentence passed by the Trial Court be quashed and set aside and the case be remanded to the Trial Court for recording the statements of PW 1-10 and PW 25-30 afresh, in presence of the accused. It is also argued that even if an appeal is filed by the accused, the judgment and sentence can be set aside and accused can be acquitted or de-novo trial can be ordered in accordance with Section 368 (c) Cr.P.C.

5. Learned Addl. Government Advocate has opposed the death reference. It is contended that since advocate for the accused, without raising any objections with regard to absence of the accused, has cross-examined the above said witnesses, therefore, no illegality has occurred and no prejudice has been caused to the accused.

6. We have considered the contentions and have perused the order-sheets of the Trial Court.

7. From perusal of the order-sheets, it is evident that statements of PW 1-10 and PW 25-30 were recorded in absence of the accused. It is not disputed that the accused was in custody during the entire trial. It is also evident that in none of the order-sheets, the Trial Court has given any justification for recording the statements in absence of the accused.

8. Rajasthan High Court faced a similar situation in State of Rajasthan Vs. Aatma Ram (supra), wherein statement of many witnesses were recorded in absence of the accused. The objection was raised therein by learned Addl. Government Advocate that counsel representing the accused, conducted cross-examination from the witnesses in absence of the accused without a demur and without raising any objection and the same is indicative of acquiescence. It was also raised before the Division Bench that not only the defence lawyer conducted extensive cross-examination from the witnesses without raising any objection, but in addition thereto, no such plea was raised before the Trial Court during final arguments that the accused were prejudiced on account of their absence in the proceedings when the statements of these witnesses were recorded.

9. Division Bench has held that the right of the accused to see the evidence being taken in their presence is recognized as an absolute right by Section 273 Cr.P.C. and the same emanates from the principles of natural justice and fair trial. Thus, without any doubt, statements of the witnesses recorded by the Trial Court in absence of the accused, more particularly, when they were in judicial custody cannot be treated as having been recorded strictly in accordance with law.

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10. Division Bench in that case quashed and set aside the judgment and remanded the case to the Trial Court for holding de-novo trial and the death reference was declined.

11. In an appeal preferred by the accused in that case before the Apex Court in Atma Ram Vs. State of Raj. (supra), Apex Court dismissed the appeal and refused to interfere in the order and directions passed by the Rajasthan High Court.

12. The present case is akin to the case referred to herein above. In this case also, statement of as many as 16 witnesses were recorded in absence of the accused, who was in judicial custody, without assigning any reason for the same. We, therefore, deem it proper to decline the death reference and set aside the judgment of conviction dated 03.03.2022 and order of sentence dated 07.03.2022 and annul the conviction. It is directed that the matter be remanded to the Trial Court for holding de-novo trial. It is further directed that the Trial Court shall summon and record the statements of PW 1-10 and PW 25-30 afresh, after securing the presence of the accused in the Court. Trial Court shall after recording the statements of the witnesses afresh, re-examine the accused under Section 313 Cr.P.C.; provide them a justifiable/proper opportunity of leading defence and decide the case afresh as per law, at the earliest.

13. Record of the Trial Court be returned forthwith and the matter be listed before the Court on 10.05.2023.

14. A copy of this order be sent to I.G. (Prisons), Jaipur and Superintendent, District Jail, Jhalawar who would also ensure that the accused is produced before the Court on 10.05.2023 and

thereafter, on day to day basis when the matter is listed before the trial court.

15. A copy of this order be also provided to the accused who is in judicial custody.

16. Registrar (General) is directed to circulate this order to all the Judicial Officers, so as to ensure that the statement of witnesses are recorded in presence of the accused in compliance of the mandate of Section 273 Cr.P.C.


(BHUVAN GOYAL),J


(PANKAJ BHANDARI),J

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