

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1356 OF 2012

Antony @ Antu and others

..Appellants

versus

State of Kerala

..Respondent

WITH

CRIMINAL APPEAL NO. 1357 OF 2012

CRIMINAL APPEAL NO. 40 OF 2015

O R D E R

Delay condoned.

We have heard learned counsel for the rival parties, and perused the impugned order, whereby the High Court has directed further investigation, and also interrogation of the concerned doctor, namely, Dr. Rajaram, who appeared in the trial of the appellants, as PW12. The High Court, in addition to the above, also directed further interrogation of the chemical analyst.

Learned counsel for the appellants invited our attention to the following statement made by Dr. Rajaram, PW12:

"Based on the post-mortem findings and result of chemical examination, my final opinion as to the cause of death of Jessy is "the post-mortem findings were consistent with death due to poisoning. However, the nature of poison could not be made out due to negative chemical analysis. This is the final report issued by me and it bears my signature. Marked as Ext. P-37."

Based on the above statement, it was the submission of the

learned counsel for the appellant, that fresh investigation or interrogation in terms of the directions of the High Court were wholly unjustified. It is the submission of the learned counsel for the appellants, that the High Court ought to have adjudicated upon the matter, on the basis of the existing material before it. We find merit in the contention of the learned counsel for the appellants. It is not possible to loose sight of the fact that the occurrence is of 26.09.1998. Once the statement of Dr. Rajaram, PW12 clearly concluded, that the death of the child as well as child's mother Jessy, was on account of poisoning, no further investigation was required in the matter, nor was the interrogation of the afore-stated doctor and chemical analyst required. It needs to be kept in mind, that the deposition of PW12, extracted above, also took into consideration the result of the chemical examination. The report of the chemical analyst was already available on the record of the case, and the determination of the High Court should have been based on the existing statement of Dr. Rajaram, PW12 as well as the report of the chemical analyst.

For the reasons recorded hereinabvoe, the impugned order passed by the High Court is hereby set aside, and the matter is remanded back to the High Court for re-consideration, in accordance with law, based on the existing material/evidence available on the record.

Needless to mention, that the instant order shall not preclude the High Court, to exercise the power vested in it under

Section 391 of the Code of Criminal Procedure, if the High Court finds it necessary to do so.

The instant appeals are allowed in the aforesaid terms.

.....J.  
[JAGDISH SINGH KHEHAR]

.....J.  
[MADAN B. LOKUR]

NEW DELHI;  
APRIL 23, 2015.

.....J.  
[KURIAN JOSEPH]

ITEM NO.106

COURT NO.4

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1356/2012

ANTONY @ ANTU &amp; ORS.

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

(with appln. (s) for permission to file additional documents and permission to file additional documents and permission to file additional documents and office report)

WITH

Crl.A. No. 1357/2012 (With Office Report)

Crl.A. No. 40/2015

(With appln.(s) for stay and appln.(s) for exemption from filing c/c of the impugned judgment and appln.(s) for c/delay in filing SLP and Office Report)

Date : 23/04/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Karapaga Vinayagam, Sr. Adv.  
 In AR 1356/2012 Dr. K.P.Kyalasanath Pillay, Sr. Adv.  
 Mr. A. Venayagam Balan, Adv.  
 Ms. V.S. Lakshmi, Adv.

In other appeals Dr. K.P.Kyalasanath Pillay, Sr. Adv.  
 Mr. A. Venayagam Balan, Adv.  
 Ms. V.S. Lakshmi, Adv.

For Respondent(s) Ms. Bina Madhavan, Adv.

Mr. G. Prakash, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

Delay condoned.

The appeals are allowed in terms of the signed order.

The matter is remanded back to the High Court for re-consideration, in accordance with law, based on the existing material/evidence available on the record.

(Parveen Kr. Chawla)

(Renuka Sadana)

Court Master

Court Master

[signed order is placed on the file]