

To,  
The Collector  
Raipur  
Madhya Pradesh

Subject: Request to file appeal in the matter of State of M.P. through S.H.O. P.S. Kotwali, Raipur versus ChandraKant Shah in Cr.C.No.1887/92 against judgement dt.29.4.95. whereby the accused was acquitted.

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Sir,

1.This is to draw your attention to the urgent need to file an appeal in the abovenoted matter against the judgement acquitting accused ChandraKant Shah of the offence under section 224I.P.C.

2.Briefly stated the facts of the present case are that accused ChandraKant Shah was in judicial custody in the matter pertaining to the murder of trade union leader comrade Shankar Guha Niyogi. The accused was transferred to Central Jail Raipur upon the orders of Durg court for treatment and admitted in the paying ward of D.K. Hospital. At the hospital security guards were posted to keep watch on the accused/ undertrial. However on 28.4.92 between 5p.m. and 6p.m. the accused escaped from the custody of the police. After over a year on 19.10.93 the accused on his own accord surrendered himself in court.

3.That the Hon'ble Chief Judicial Magistrate acquitted the accused by granting him the benefit of the doubt. The judgement is wrong both in law and on facts. However it must also be mentioned here that the manner in which the prosecution has conducted the trial casts a grave suspicion on the role and integrity of the prosecution. The prosecution has deliberately and with malafide shut out certain material evidence to enable the accused to escape from law.

4.That it is the prosecution's own case as deposed by P.W.1 Head Constable Lakshminarayan and P.W.2 Constable Akshay Kumar that when the accused escaped from the hospital Constable Bhola Singh was on duty, between 3p.m. and 6p.m. When Head Constable Lakshminarayan returned from duty he found Constable Bhola Singh in a drunk state and he told P.W.1 that he had gone to the toilet and when he returned he found the accused missing. Thus it is apparent that Constable Bhola Singh is the star witness of the trial. However the prosecution in it's wisdom decided to drop Constable Bhola Singh from the list of witnesses and did not examine him. The absence of Constable Bhola Singh's deposition has dealt a serious blow to the case.

5.That in order to establish the offence u/s224 I.P.C. against the accused the law requires the prosecution to prove that the accused was in judicial custody and he escaped from it.

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However the prosecution failed to present the warrant of Durg court. This serious flaw in the prosecution's case enabled the accused to go scot free.

6. That the hon'ble Chief Judicial Magistrate grossly erred in ignoring the testimony of P.W.1 Head Constable Lakshminarayan and P.W.2 Constable Akshay Kumar both of whom narrated how Constable Bhola Singh had told them that he had gone to the lavatory and when he returned the accused had escaped. P.W.1 also stated that he found Bhola Singh in an intoxicated condition. Thus the factum of escape from judicial custody is clearly established. The learned Judge however ignored this vital piece of evidence while acquitting the accused.

7. That P.W.7 K.L. Ahirbar Asst. Jailor Central Raipur has in his testimony proved various documents enumerated in Exhibit P5 which proves that the accused was in judicial custody and he escaped therefrom. The learned judge however completely ignored this evidence and granted the accused the benefit of the doubt.

8. Thus there is sufficient evidence on record to convict the accused of the offence u/s 224 I.P.C.

9. That a flagrant miscarriage of justice has been caused by the order of acquittal. The present matter is a fit case for appeal in view of the aforesaid submissions. It may also be mentioned here that as the present matter is connected to the murder of Comrade Niyogi it will attract the attention of the public, and so it must appear to the people that justice has been done.

10. That your goodself is urged to kindly treat the present matter as an urgent one and to promptly respond whether the State will be taking the necessary legal steps as otherwise C.M.M. shall move the Hon'ble High Court for justice.

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through it's Advocates

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