

Achyut Adhicary

Vs

State of West Bengal

Criminal Appeal No. 115 of 1960

(J. L. Kapur, K.C. Das Gupta, Raghuvar Dayal JJ)

12.04.1962

JUDGMENT

KAPUR, J. -

This is an appeal against the judgment and order of the High Court of Calcutta in which a preliminary objection has been taken that the certificate under Art. 134(1)(c) is not a proper certificate and should therefore be cancelled. A further question would arise as to whether it is a case in which special leave to appeal should be granted under Art. 136 if we find that the preliminary objection is well founded.

The appellant was tried for murder under s. 302 of the Indian Penal Code in the court of the Additional Sessions Judge at Alipore sitting with a jury. The jury returned a verdict of not guilty and the appellant was acquitted. Against this order the State took an appeal to the High Court and the Division Bench found that there was misdirection in the charge to the jury and therefore after consideration of the evidence it set aside the verdict of the jury, allowed the appeal and sentenced the appellant to imprisonment for life. The appellant then applied to the High Court for a certificate under Art. 134(1)(c) which was granted by another Division Bench of the Court which had not heard the appeal.

Three points were urged before the Bench hearing the application for certificate; (1) that there was unusual delay in delivering the judgment and the Division Bench hearing the appeal forget to consider many of the question of fact which were raised and argued before it. (2) that the High Court had no power to substitute its own estimate of the evidence in an appeal against the order of acquittal in a trial by jury and (3) that as a matter of fact there were no such misdirection as caused a failure of justice or a mistrial and therefore the High Court was not entitled to examine the evidence. The learned Judges were of the opinion that there was no substance in points Nos. 2 and 3 but the first points did raise a question of importance. The learned Chief Justice observed :-

"The delay in delivering judgment is certainly a very unusual fact, and it may lead to the result that some of the points which were argued on behalf of the petitioner before the Division Bench were lost sight of by that learned judges while delivering their judgment. As already stated, these points have been summarised by the petitioner in that paragraph 18 of the petition. The points raised in that paragraph may or may not be good points, but if these points were advanced on behalf of the petitioner, the learned Judges of the Division Bench owed it to themselves to come to a decision on those points. In the arguments before us, it is not denied on behalf of the State that the points which have been summarised in paragraph 18 of the petition

were canvassed by the defence Counsel at the hearing of the appeal and having regard to that fact. I am inclined to hold that the petitioner is entitled to a certificate under Article 134(1)(c) of the Constitution on that ground".

This is the ground on which the certificate was granted. This Court has had occasion to consider the grounds on which a certificate can be granted under Art. 134(1)(c) of the Constitution. In *Haripada Dey v. The State of West Bengal* [[1956] S.C.R. 639, 641] it was held that the High Court has no jurisdiction to grant a certificate under Art. 134(1)(c) on a mere question of fact and it is not justified in passing on such a question to the Supreme Court for further consideration thus converting the Supreme Court into a Court of Appeal on facts. Bhagwati J., there said :-

"Whatever may have been the misgivings of the Learned Chief Justice in the matter of a full and fair trial not having been held we are of the opinion that he had no jurisdiction to grant a certificate under Art. 134(1)(c) in a case where admittedly in his opinion the question involved was one of fact - where in spite of a full and fair trial not having been vouchsafed to the appellant, the question was merely one of a further consideration of the case of the Appellant on facts".

In a later case *Sidheswar Ganguly v. The State of West Bengal* [[1958] S.C.R. 749] the High Court of Calcutta granted a certificate on the ground that because of the summary dismissal of the appeal the appellant did not have the satisfaction of having been fully heard and it was held by this Court that that was no ground for the grant of a certificate and that no certificate should be granted on a mere question of fact. In that case Sinha J., (as he then was) said :-

"This Court has repeatedly called the attention of the High Courts to the legal position that that under Art. 134(1)(c) of the Constitution, it is not a case of "granting leave" but of "certifying" that the case is a fit one for appeal to this Court. "Certifying" is a strong word and therefore, it has been repeatedly pointed out that a High Court is in error in granting a certificate on a mere question of fact, and that the High Court is not justified in passing on an appeal for determination by this Court when there are no complexities of law involved in the case, requiring the authoritative interpretation by this Court."

In the present case the High Court has granted leave on the mere ground that there was delay in delivering the judgment of the court and it may have led to the result that some of the points urged by counsel were lost sight of while delivering judgment. Those points were all questions of fact. The High Court observed that the question which were sought to be raised in the petition might or might not be good points but if those points were advanced the judges "owed it to themselves to come to a decision on those points".

After the pronouncements of this Court in two judgments it is some what surprising that the High Court should have granted a certificate on the mere ground of delay in pronouncing a judgment and the equally slender ground that some of the questions which were raised were forgotten at the time of the judgment. If the appellant did have any such real grievance it was open to him to apply to this Court under Art. 136 but the mere ground of delay is not a ground on which the High Court can certify a case to be fit one for appeal to this Court. In *Banarsi Parshad v. Kashi Krishna Narain* [[1900] L.R. 28 I.A. 11] and *Radhakrishna Ayyar v. Swaminatha Ayyer* [(1920) L.R. 48 I.A. 31] the Privy Council in construing s. 109(c) of the Code of Civil Procedure pointed out that under that clause for a certificate to be granted a case had to be of great or wide public importance. A mere

ground of delay in giving a judgment does not, in our opinion, fall within the words "fit one for appeal to the Supreme Court" even if it is felt by the High Court that the delay might have led to commission to consider arguments on questions of fact and law. It is not open to a High Court to give certificates of fitness under this clause merely because in its opinion the judgment of the court delivered by another Bench suffers from an error in regard to certain facts. In our view the certificate granted by the Calcutta High Court was not a proper certificate and must be cancelled.

It was then urged that special leave should be granted under Art. 136 and the appeal be heard as the record had been printed and on that material if leave were to be granted the appeal could be properly argued. We have heard counsel for the appellant and we see no reason to grant special leave in this case. The appeal is therefore dismissed.

Appeal dismissed.

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