

The State of Gujarat

Vs

Ramprakash P. Puri and Others

The State of Gujarat

Vs

Satu Khayaldas and Others

Criminal Appeal Nos. 60 And 63 Of 1965

(V. Ramaswami-I, I.D. Dua JJ)

16.10.1969

JUDGMENT

DUA, J. –

1. These two criminal appeals (Nos. 60 and 63 of 1965) with certificate raise a common question and are, therefore, being disposed of by a common judgment. The Gujarat High Court also recorded the main judgment only in Criminal Appeal No. 60 of 1965.
2. The question which arises for determination is whether, where several accused persons jointly tried have been acquitted by the Trial Court, the State can prefer one appeal against the acquittal of all of them. The High Court held such a joint appeal not to be maintainable under Cr. P. C., and so holding rejected the appeal by the State without going into the merits. The Division Bench of the High Court speaking through Raju, J., recorded a very lengthy order though the reasoning in support of the non-maintainability of the joint appeal is confined to a couple of pages only. The High Court in its order referred to Sections 258, 410, 417, 419 and 423 of the Code and came to the conclusion that the scheme of Chapter XXXI of the Code as disclosed by these sections and particularly by Section 419 is against the maintainability of a joint appeal by the State against an order acquitting several accused persons tried jointly. Section 419 was construed by the High Court to contain a bar against a joint appeal. The major portion of the impugned order dealt with the question of binding character to the Full Bench decision of that High Court since reported as *Lalu Jela v. State of Gujarat* on the Division Bench hearing the present appeals. After a lengthy discussion the Division Bench came to the conclusion that the Full Bench decision holding a joint appeal to be maintainable in law was not binding on it.
3. On the view that we propose to take on the question of maintainability of a joint appeal against a common order acquitting several accused persons tried jointly, we do not consider it necessary to embark on a lengthy discussion on the question of binding character of decisions of Full Benches and of Division Benches on future Benches of co-ordinate jurisdiction of the same High court. We may only make a passing reference to the decisions of this Court cited at the bar in support of such binding character. In *Mahadeolal Kanodia v. The Administrator General of West Bengal*, this Court observed as follows :

"We have noticed with some regret that when the earlier decision of two judges of the same High Court in Deorajan's case was cited before the learned judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start over-ruling one another's decision. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion."

Other decisions cited containing similar observations are : Jai Kaur and Others v. Sher Singh etc. and Atma Ram v. State of Punjab and Others. We are aware of a still more recent decision of this Court in Jaisri Sahu v. Raj Dewan in which reference is made to a Privy Council decision in Budha Singh v. Laltu Singh.

4. The question of competency of a joint appeal by several persons convicted by one order at a joint trial was referred for authoritative decision to a Full Bench of the Gujarat High Court in Lalu Jela's case (supra). The argument before the Full Bench was that Rule 6 in Chapter XXVI of the Bombay High Court Appellate Side Rules (which are applicable to the proceedings in the Gujarat High Court) was inconsistent with Chapter XXXI of the code of Criminal Procedure, with the result that a joint appeal to the High Court by several persons convicted at a joint trial was not maintainable. The Full Bench on an exhaustive discussion held such an appeal to be competent and did not consider Rule 6 to be inconsistent with Chapter XXXI of the Code. The decision of this Court in Rabari Ghela Jadav v. State of Bombay was explained and distinguished. If we agree with the principle accepted in the Full Bench decision then the present appeals would on the reasoning of that decision seem prima facie to possess merit and in the absence of some other cogent reason to the contrary the appeals would have to succeed.

5. Chapter XXVI of the Bombay High Court Appellate Side Rules, 1960, deals with "criminal business" and Rule 6 is in the following words :

"6. Joint appeal or application by persons affected by the same judgment. - All persons aggrieved by a judgment or an order passed in a criminal case, may join in one appeal or application for revision, and one copy of the judgment or order complained of shall be sufficient."

This rule, of course, does not in terms cover the case of an appeal by the State against several accused persons jointly tried and acquitted by the Trial Court by a common order, but if an appeal by persons jointly tried and convicted is competent, then on principle it is difficult to negative the maintainability of one appeal by the State against a common order acquitting several persons tried jointly. This rule deals with a matter of procedure and not of substantive rights and seems to be based on sound common sense. Procedure has been described to be a hand maid and not a mistress of law, intended to subserve and facilitate the cause of justice and to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause. So construed a joint appeal, in compliance of this rule must be sustained. The power to frame this rule is specifically conferred on the High Court by Section 554(2)(c), Cr. P. C. and Rule 6 does not seem to

us to be inconsistent with any provisions of the said Code. Holding this rule to be valid, in agreement with the decision of the Full Bench, the competency of a joint appeal by several accused persons convicted at one trial must be upheld. On the same reasoning a joint appeal by the State against several accused persons acquitted at a joint trial has also to be held not to be contrary to any provision of the Code and therefore not legally prohibited. Section 419 of the Code on which the High Court seems to have relied in support of the non-maintainability of a joint appeal by the State, lays down inter alia that every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader and every such petition shall, unless the court otherwise directs, be accompanied by a copy of the judgment or order appealed against. This section does not seem to us to prohibit a joint appeal by the state against more than one accused persons. The contrary view taken by the High Court on the construction of this section is clearly unacceptable. Section 417 which provides for an appeal in a case of acquittal empowers the State Government to direct the public prosecutor in any case to present an appeal from an order of acquittal. This section also does not suggest any bar or prohibition against presentation of a joint appeal against several accused persons acquitted in a case. On the other hand, it provides for an appeal in a case, and not against an accused person, who has been acquitted. The plain reading of this section, therefore, seems to be wide enough to permit a joint appeal. Sections 258, 410 and 423 of the Code also do not seem to indicate any bar as is suggested by the order of the High Court. This Court in Rabari Ghela Jadav's case (supra), on the basis of which the judgment of the High Court mainly proceeds, merely lays down that the Appellate Court hearing an appeal cannot admit it only on a question of sentence and that such a restricted order of admission being invalid, the appellant would be entitled to insist that his appeal should be heard on the merits. This decision, in our opinion, does not militate against the maintainability of a joint appeal. The Full Bench decision of the Gujarat High Court rightly distinguished and explained this decision. As observed earlier, once we accept the Full Bench to lay down the correct rule of law, then there cannot be much difficulty in upholding the maintainability of a joint appeal by the State against several accused persons acquitted at a joint trial. There being no legal bar (at least we are aware of none either in the Cr. P. C. or elsewhere), such an appeal cannot be had to suffer from any serious legal infirmity. And then the matter being one of mere form it calls for a liberal approach requiring the appeal to be heard on the merits. To hold it to be unmentionable on this ground would defeat the larger cause of justice. Unfortunately, we did not have the advantage of arguments on behalf of the respondents because they were unrepresented, but on considering the scheme of the relevant provisions of the Code of Criminal Procedure, we are of the view that the High Court was wrong in holding the joint appeal not to be maintainable and in summarily rejecting the same.

6. We accordingly allow the appeal, set aside the order of the High Court and remit the case back to it for decision of the appeal on the merits.

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