

Siddanna Apparao Patil

Vs

The State of Maharashtra

Criminal Appeal No. 180 of 1967

(A. N. Ray, I. D. Dua JJ)

06.03.1970.

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment of the High Court of Bombay, dated December 5, 1966, dismissing in limine the appeal preferred against the judgment and order, dated August 16, 1966, passed by the Sessions Judge, Sholapur. The High Court by an order, dated April 3, 1967, also refused leave to appeal to this Court.
2. The appellant was accused No. 1. He was convicted under Section 302, read with section 34 of the Indian Penal Code and sentenced to imprisonment for life.
3. Broadly stated, the charge against the appellant was that he in conspiracy with his brother, accused No. 2, committed murder of Revansidhappa Shivappa Patil and Mahadeo Sidran Patil. The defence of both the appellant and his brother was one of total denial.
4. The right to prefer an appeal from sentence of Court of Sessions is conferred by Section 410 of the Criminal Procedure Code. The right to appeal is one both on a matter of fact and a matter of law. It is only in cases where there is a trial by jury that the right to appeal is under Section 418 confined only to a matter of law.
5. This Court in several decisions dealt with Section 410 of the Criminal procedure Code and the rights of the appellant thereunder. Reference may be made to one of the earlier decisions of this Court in *Mushtak Hussain v. The State of Bombay*, (1953 SCR 809) and the recent unreported decision in *Govinda Kadtuji Kadam and Others v. State of Maharashtra*, (1970 (1) SCC 496 : 1970 SCC (Cr) 204) where several previous decisions of this Court have been noticed.
6. The following principles emerge from the decisions : first, the Appellant Court undoubtedly has power of summary dismissal; secondly, if the appeal raises arguable and substantial points the High Court should give reasons for rejection of appeal; thirdly, rejection of an appeal by using only one word of dismissal causes difficulties and embarrassment in finding out the reasons which weighed with the High Court in dismissal of the appeal in limine; fourthly this Court in *Chittaranjan Das v. State of West Bengal*, ((1964) 3 SCR 237) held that the High Court should not summarily reject criminal appeals if they raise arguable and substantial points.
7. As to what is an arguable and a substantial point may be illustrated with reference to a few decisions.

8. In *Narayan Swami v. State of Maharashtra*, ((1968) 2 SCR 88) this Court stated that a ground in preferring an appeal from the judgment of the Sessions Court that a gross illegality was committed in relying upon the evidence given by a co-accused in a dacoity case and using the answers given by him as a co-accused against the accused appellant would be a substantial question. Again it was noticed that denial of an opportunity to an appellant in a dacoity case of being heard as required under Section 479-A of the criminal Procedure Code would be an arguable point.

9. In an unreported decision of this Court in *Bhanwar Singh v. State of Rajasthan*, (1969 (3) SCC 763) it was held that failure to consider the position in which the appellant was placed when his immediate superior admittedly ordered him to ring out the currency notes which were required not for the purpose of investigation of any case but only for the purpose of being shown to a person whom the Sub-Inspector wanted to hold in laying down a new trap would be a substantial ground in a conviction under Prevention of Corruption Act and Section 409 of the Indian Penal Code.

10. In another unreported decision of this Court in *Vishwanath Shanker Beldar v. State of Maharashtra*, (1969 (3) SCC 883) it was said that if the Trial Judge did not accept the witness as a wholly truthful witness as a wholly truthful witness in the light of reports sent by police officers and his statement under Section 162 of the Criminal Procedure Code and remarked that a portion of the evidence was clearly an improvement it was necessary for the High Court to consider the evidence afresh.

11. In another unreported earlier decision of this Court in *Bashir Husain Peshimani v. The State of Maharashtra*, (Criminal Appeal No. 262 of 1968, decided on December 20, 1968) the offences alleged were under the Indian Penal Code; the Sea Customs Act, 1887; and the Foreign exchange Regulation Act, 1947 in respect of gold alleged to have been brought into India in pursuance of a conspiracy. There was oral testimony of accomplices. That evidence was held by the Trial Court to have been corroborated by the actual finding of gold from the place of one of the accused. Another piece of evidence was the recovery of duplicate set of keys at the residence of accused No. 2. Reliance was placed by the Trial Court on the confession of the appellant which had been retracted as corroborative evidence of the accomplice witnesses. In preferring appeal to the High Court the grounds urged were that there were serious infirmities in the evidence and the manner in which the keys were recovered was open to objection. The High Court dismissed the appeal in limine. This Court remitted the matter back to the High Court for disposal of the appeal in accordance with law by expressing the view that these were arguable points. In the same case it was said that it would be open to the appellant to canvass before the High Court in appeal every point even on a question of fact in his favour to demolish by reference to other material the evidence that had been used against him.

12. In the present case, one of the contentions of the appellant in the appeal preferred was that the appellant was charged under Section 302, read with Section 34 of the Indian Penal Code for committing murder of both the Patil's in furtherance of the common intention of the appellant and accused No. 2 and on accused No. 2 being acquitted the appellant could not be convicted with the aid of Section 34. In aid of that contention reliance was placed on the decisions of this Court in *Prabhakar Navale v. State of Bombay*, (AIR 1963 SC 51) and *Krishna G. Patil v. State of Maharashtra*. (AIR 1963 SC 1413) Another contention raised in the appeal was that it would be an error to hold that there was intimacy between the appellant and Nilava wife of Babanna on the evidence of third parties when neither Babanna nor Nilava gave evidence. We have only referred to two contentions amongst several others to illustrate both arguable and substantial matters of law and of fact.

13. In the present case the High Court dismissed the appeal by a single word and it is not possible to know the reasons which persuaded the high Court to dismiss the appeal.

14. In the result the appeal is allowed. The order of dismissal of the appeal is set aside. The matter is sent back to the High Court for fresh consideration on hearing the parties.

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