

Rajpal Bhiraram

Vs

The State of Maharashtra

Criminal Appeal No. 88 of 1970

(Y. V. Chandrachud, S. N. Dwivedi JJ)

13.11.1973

JUDGMENT

DWIVEDI, J. -

1. The appellant was convicted by the Additional Chief Presidency Magistrate, Bombay, under Section 122(a) and Section 125(1) read with Section 37(1)(a) of the Bombay Police Act and was sentenced to three months' imprisonment under the first count. No separate sentence was passed on the second count. He filed an appeal against his conviction and sentence in the High Court of Bombay. The appeal was summarily dismissed by a monomial order "dismissed."

2. The main argument of Counsel for the appellant is that, as the order of the Bombay High Court does not state any reasons, it should be set aside. In support of his argument he has relied on *Govinda Kadtuji Kadam v. The State of Maharashtra* ((1970) 1 SCC 469 : 1970 SCC (Cri) 204) and *Challappa Ramaswami v. State of Maharashtra*. ((1970) 2 SCC 426 : 1970 SCC (Cri) 472) In *Govinda Kadtuji Kadam* (supra) five persons were convicted and sentenced to rigorous imprisonment for six months and to a fine of Rs. 50. All of them filed a joint appeal in the Bombay High Court. The appeal was admitted only on behalf of one of them named Kondu; it was dismissed summarily in respect of the remaining four appellants. They filed an appeal in this Court. Their appeal was allowed and the order of the Bombay High Court was set aside and the case was sent back to the High Court for hearing their appeal on merits after notice to the State. The defence of Kondu was that Vithalrao, the injured person, had sustained the injury by falling on a stone while chasing him (Kondu) and his other companions. Evidently, if his defence was upheld by the Bombay High Court in his appeal, the case against the remaining four appellants would require serious consideration. We think that this consideration persuaded the Court to pass the aforesaid order. The facts of the case before us are entirely distinguishable, as we shall presently point out. Two observations of the Court are instructive. The Court said : (p. 471)

"An order summarily dismissing an appeal by the word 'rejected' as in the case before us, though not violative of any statutory provision, removes nearly every opportunity for detection of errors in the order. In our opinion, therefore, when an appeal in the High Court raises serious and substantial point which is prima facie arguable, it is improper for that Court to dismiss it summarily without giving some indication of its view on the points raised."

The Court also said : (p. 4773)

"We would perhaps have persuaded ourselves to go into the merits of the case as this

Court has some times done, but since Kondu's appeal is pending in the High Court, it seems to us to be more appropriate and just that the entire appeal is heard by that Court on merits."

3. In *Challappa Ramaswami (supra)* the appellant was convicted of the offence under Section 302, I.P.C. and sentenced to life imprisonment by the Court of Session. The appeal was dismissed summarily by the one word order "dismissed". This Court set aside the order and remanded the case of the appellant for hearing on merits. It appears from the decision that the Sessions Judge had relied on two eye-witnesses. One of them was the uncle of the deceased. It also appears that in the dying declaration of the deceased made to his uncle, the name of the appellant as his assailant was not mentioned. This Court therefore said : (p. 427)

"In a case like this ... in our opinion, it was incumbent on the High Court to issue notice to the State and hear the appellant with the record before it and after evaluating the evidence to record a speaking order so that this Court could also have before it the reasoning of the High Court for upholding the appellant conviction."

On account of certain special features of the evidence in that case, pointed out by this Court, the order of the Bombay High Court set aside. The facts of the case are again distinguishable from the facts of the present case.

4. In *Siddanna Apprao Patil v. State of Maharashtra ((1970) 1 SCC 547 : 1970 SCC (Cri) 224)* this Court was faced with another similar order of the Bombay High Court. The appellant was charged along with another person under Section 302 read with Section 34, I.P.C. for the murder of two persons in furtherance of their common intention. The co-accused was, however, acquitted. The appellant was convicted under Section 302 read with Section 34, I.P.C. Obviously, the appellant's appeal in the Bombay High Court raised a serious point for consideration as to whether on the acquittal of the only co-accused he could be convicted under Section 302 read with Section 34, I.P.C. The facts of this case are also distinguishable from the facts of the present case.

5. It will appear from these decisions that the appellate Court has got power to dismiss summarily a criminal appeal. If, however, the appeal raises an arguable and substantial point, the High Court should give reasons for rejecting the appeal. In appropriate cases this Court may examine the evidence for itself and dispose of the appeal on merits order "dismissed" and has given no reasons in support of the order. So the impugned order cannot be set aside for the solitary reason that it is not a speaking order. We have, however, examined the evidence and we are satisfied that no interference is called for with the order of the High Court.

6. The appellant has been convicted under two counts, but no sentence was awarded on the second count. Accordingly, we have examined the evidence only with respect to the first count relating to the offence under Section 122(a) of the Bombay Police Act. Section 122(a) reads :

"Whoever is found between sunset and sunrise -

(a) armed with any dangerous instrument with intent to commit an offence ...

shall on conviction be punished with imprisonment for a term which may extend to three months."

7. The appellant was charged with the possession of a Rampuri knife on or about September 13,

1969 at about 3.30 a.m. on Jagannath Rao Bhonsle Marg, Colaba, with intent to commit an offence. The prosecution examined three witnesses in support of its case. They are Srinivas Mahadeo Jamdale, Sayed Mumtaz Hussain and Krishna Jiwa Pawar.

8. Sayed Mumtaz Hussain is an Assistant Mechanic in the Indian Airlines. He has deposed that he was returning in his car from his friend's house at about 1.30 a.m. or 2 a.m. When his car reached near a bungalow adjacent to the Sachivalaya, three persons came in front of his car. They raised their hands to stop the car. He slowed down the speed of the car. One of them who was ahead of the other two came to the right side of the car. He suspected that that person had a knife in his right hand. Accordingly, he speeded the car and seen (sic) off. On the way he met the police patrol. He reported the matter to them. Srinivas Mahadeo Jamdale is a havaldar. He was on patrol duty along with some other constables. He said that Sayed Mumtaz Hussain reported the incident to him. Then his party went to the place of incident. There they saw another car coming from Cuffi Parade side. Three persons tried to stop the car. It did not stop and passed off. There upon he arrested the three persons. A Rampuri knife was found in the pant pocket of the appellant. Krishna Jiwa Pawar is a constable. He was in the company of Srinivas Mahadeo Jamdale. He has corroborated the statement of Jamdale.

9. The appellant denied that a knife was recovered from his person. His defence was that he was sleeping in a room on the first floor in the Abubakar Mansion. From that room he was arrested by the police at 5.30 a.m. His brother-in-law Daya Ram who was also sleeping near him was also taken to the police station. Both of them were assaulted in the police station. Later, Daya Ram was set free and he was arrested. As regards the evidence of Sayed Mumtaz Hussain he said that he had nothing to say. He examined two witnesses Bilaldas Bholadas and Ganesh Singh Chanchal. The former has deposed that he lived in the Abubakar Mansion. He has supported the statement of the appellant that the police arrested him in the Abubakar Mansion. The other witness has attested to his being a member of a respectable family.

10. The Additional Chief Presidency Magistrate believed the evidence of the prosecution and disbelieved the testimony of Bilaldas Bholadas. As regards the second witness of the appellant, he right observed that his evidence did not help the appellant in his defence. As regards the prosecution evidence he stated :

"That two havaldars have given their evidence in a straight-forward man and have corroborated each other in material particulars. Their evidence further been corroborated by the independent evidence of witness Hussain. This is absolutely no reason why witness Hussain should give false evidence. It as a result of the statement made by witness Hussain that the Havaldars went the place mentioned by him and succeeded in arresting this accused and his companions. Nothing has been alleged as to why the two Havaldars should the given false evidence against the accused."

He went on to add :

"The accused and his two companions were found at Jagannath Bholadas Marg which is lonely road at about 3.30 a.m. The accused has a Ram knife with him. It is obvious that the accused had the knife with the intend to commit an offence."

11. Counsel for the appellant could not point out any serious infirmity in the prosecution evidence and in the two aforesaid finding. The mere fact that the police did not prepare the seizure memo

regard the Rampuri knife is not sufficient to discard their evidence. They had no ill-will against the appellant. Sayed Mumtaz Hussain also is not should to have any ill-will against him. As remarked by the Additional Chief Presidency Magistrate, there is no reason why they should have false implicated him of the possession of a Rampuri knife.

12. Counsel for the appellant has submitted that, assuming that the appellant was in possession of a Rampuri knife, it does not necessary follow that he was in such possession with the intent to commit an offend. We are unable to accept this submission. There are several reasons it. The place where the appellant was arrested is a lonely place. It was found there once at about 1.30 or 2 a.m. and again at 3.30 a.m. He had tried to stop two cars. There were two more companions with him. He had not offered any satisfactory explanation for his present with a Rampuri knife at that odd hour in that lonely place. In the absence of a satisfactory explanation whatsoever, it is a reasonable inference that he and his companions were there at that odd hour with interneers to commit an offence.

13. In the result, we find no impropriety in the summary dismiss by the High Court of the appeal by a one word order. The appeal dismissed.

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