

Rajput Ruda Meha and Others

Vs

State of Gujarat

Criminal Appeal No. 718 of 1979

(Syed M. Fazal Ali, P.S. Kailasam, A.D. Koshal JJ)

05.12.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal is preferred by the three accused in Sessions Case No. 46 of 1976 against their conviction and sentence imposed upon them by the High Court under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.
2. The three appellants were tried by the Sessions Judge for committing offences punishable under Section 302/120-B/323/324 read with Sections 34 and 109 of the Indian Penal Code for Committing the murder of one Karsan Kala on January 19, 1976. The learned Sessions Judge acquitted all the three appellants of the charges leveled against them. The State of Gujarat filed an appeal against the order of Sessions Judge acquitting them, to the High Court of Gujarat. A Division Bench of the High Court in Criminal Appeal No. 110 of 1977 allowed the appeal of the State and reversed the order of acquittal by the learned Sessions Judge and convicted them for offence under Section 302/120-B and sentenced them to imprisonment for life. They were also convicted for lesser offence and sentenced to varying terms of imprisonment.
3. The prosecution strongly relied on the evidence of three eyewitnesses Rata Mala, Ganesh and Ruda. Rata Mala was an injured eyewitnesses having received several incised injuries. The evidence of Ruda was not accepted. The complainant Sevai Kala, the brother of the deceased saw the latter part of the occurrence when the deceased was being carried away by the accused. When questioned the accused attacked him and he was also injured. The High Court in an elaborate judgment after thoroughly scrutinising the evidence of the eyewitnesses accepted their testimony. It observed that the evidence of the eyewitness Rata Mala is most reliable and trustworthy and so also the evidence of Ganesh. The High Court has referred to the Circumstances under which the order of acquittal could be interfered with in the light of the various decisions of this Court. The High Court taking into consideration the reasons given by the Sessions Judge for not accepting the testimony of the eyewitnesses found them to be totally unacceptable. We have been taken through the evidence of the material witnesses. We have no hesitation in agreeing with the conclusion arrived at by High Court that the reasons given by the trial Court for acquitting the accused are totally unacceptable. After hearing the learned counsel and examining the petition of appeal and after going through the relevant part of the judgment of the High Court and the Sessions Court, we find that there are no sufficient grounds of interference. The appeal is summarily dismissed under Section 384 of the Code of Criminal Procedure.
4. After we pronounced our judgment dismissing the appeal summarily under Section 384 of the

Code of Criminal Procedure, but before signing the judgment, a decision of this Court is *Sita Ram v. State of U. P.* ((1979) 3 SCR 1085 : (1979) 2 SCC 656 : 1979 SCC (Cri) 376) was brought to our notice wherein the scope of power of the court to dismiss an appeal summarily under Section 384 of the Code of Criminal Procedure has been referred. In that case an appeal was preferred to this Court under Section 379 of the Code of Criminal Procedure, 1973 read with Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The appeal was listed for preliminary hearing under Rule 15(1)(c) of Order XXI of the Supreme Court Rules, 1966. The appellants filed an application for additional grounds, namely, (1) the provision under clause (c) of sub-rule (1) of Rule 15 of Order XXI of the Supreme Court Rules empowering the Court to dismiss the appeal summarily, is ultra vires being inconsistent with the provision of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970; (2) the power of the Supreme Court to frame rules under Article 145 of the Constitution cannot be extended to annul the rights conferred under an Act of Parliament and (3) an appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 cannot be dismissed summarily without calling for the records ordering notice to the State and without giving reasons. When the petition for leave to adduce additional grounds came up before the Court, this Court ordered :

The appellants have challenged the constitutional validity of clause (c) of sub-rule (1) of rule 19 of Order XXI of the Supreme Court Rules, which enables an appeal of the kind with which we are concerned, to be placed for hearing ex parte before the Court for admission. In that view of them after, we think that unless the question of the constitutional validity of the rule is decided, we cannot have a preliminary hearing of this appeal for admission. Let the records therefore, be placed before the Hon'ble the chief Justice for giving such direction as he may deem fit and proper.

5. The matter was placed before a Bench of five Judges by the Hon'ble the Chief Justice as the constitutional validity of clause (c) of Rule 15(1) of Order XXI of Supreme Court Rules, was challenged. Along with the question of constitutional validity, two other grounds referred to earlier were also raised. The contention of the learned counsel that a right of appeal cast an obligation on the Court to send for records of the case, to hear both the parties and to make a reasoned judgment, was not accepted by the judgment of the Court. Reasons given by the Court are as follows : (SCC p. 666, para 24)

Counsel for the appellant insisted that an absolute right of appeal, as he described it, casts an inflexible obligation on the court to send for the record of the case, to hear both parties, and to make a reasoned judgment. Therefore, to scuttle the appeal by a cursory hearing on a preliminary posting absent record, parte and absolved from giving reasons is to be absolutist - a position absonant with the mandate of the Enlargement Act, and indeed, of the Constitution in Article 134(1). Counsel's ipse dixit did convince up but we have pondered over the issue in depth, being disinclined summarily to dismiss.

Regarding the power of the Court to summarily dismiss the appeal under Section 384 of the Code of Criminal Procedure, the submission of the learned counsel was that the provisions of the Code of Criminal Procedure are not applicable to the Supreme Court which contention was not accepted by the Court.

6. Neither in the application for adducing additional grounds nor in the order of the Court directing the matter to be placed before the Constitution Bench, there was reference to the validity of Section

384 of the Code of Criminal Procedure. Neither was it pleaded during the arguments that Section 384 of the Code of Criminal Procedure is ultra vires of the Constitution. As the question of validity of Section 384 of the Code of Criminal Procedure was neither raised nor argued, a discussion by the Court after "pondering over the issue in depth" would not be a precedent binding on the courts. The decision is an authority for the proposition that Rule 15(1)(c) of Order XXI of the Supreme Court Rules should be read down as indicated in the decision.

7. We are satisfied for the reasons stated above that the decision is no authority regarding the scope of Section 384 of the Code of Criminal Procedure. The order of dismissal of the appeal summarily will stand.

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