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**(1979) 12 SC CK 0007**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 718 of 1979**

Rajput Ruda Meha and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision : 05-12-1979**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 379, 384  
Penal Code, 1860 (IPC) — Section 109, 120B, 302, 323, 324  
Supreme Court Rules, 1966 — Order 21 Rule 15(1)

**Citation :** AIR 1980 SC 1707 : (1980) CriLJ 1246 : (1980) 21 GLR 40 : (1980) 1 SCC 677 : (1980) SCC(Cri) 317 : (1980) 2 SCR 353

**Hon'ble Judges :** S. Murtaza Fazal Ali, J; P. S. Kailasam, J; A. D. Koshal, J

**Bench :** Full Bench

**Advocate :** A.K. Trivedi and S.S. Khanduja, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

S. Murtaza Fazal Ali, J.—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 u/s 302/120-B/323/324 read with Section 34 and 109 of the Indian Penal Code for committing the murder of one Karsan Kala on 19-1-1976. 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. 110/77 allowed the appeal of the State and reversed the order of acquittal by the Learned Sessions. Judge and convicted them for offences u/s 302/120-B and sentenced them to imprisonment for life. They were also convicted for lesser offences 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 eye-witness having received several incised injuries. The evidence of Ruda was not accepted. The complainant Savai Kala, the brother of the deceased saw the latter part of the occurrence when the deceased was being carried away by the accused. When Savai Kala 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 eye-witnesses 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 eye-witnesses 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 the 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 parts 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 u/s 384 of the CrPC.

4. After we pronounced our judgment dismissing the appeal summarily u/s 384 of the CrPC, but before signing; the judgment, a decision of this Court AIR 1979 745 (SC) was brought to our notice wherein the scope of the power of the Courts to dismiss an appeal summarily u/s 384 of the CrPC has been referred. In that case an appeal was preferred to this Court u/s 379 of the CrPC, 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 adducing additional grounds, namely, (1) the provisions 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 provisions 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 15 of O.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 the matter, 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 O.XXI of Supreme Court Rules, was challenged. Alongwith 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:

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 summary hearing on a preliminary posting absent record, ex parte and absolved from giving reasons is to be absolutist-a position absonent with the mandate of the Enlargement Act and, indeed, of the Constitution in Article 134(1). Counsel's ipsi dixit did not convince us 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 u/s 384 of the CrPC, the submission of the Learned Counsel was that the provisions of the CrPC are not applicable to the Supreme Court which contention was not accepted by the Court.

6. Neither in the application for adducing additional grounds or in the order of the Court directing the matter to be placed before the Constitution Bench, there was any reference to the validity of Section 384 of the CrPC. Neither was it pleaded during the arguments that Section 384 of the CrPC is ultra vires of the Constitution. As the question of validity of Section 384 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 CrPC. The order of dismissal of the appeal summarily will stand.