
(1970) 03 SC CK 0013

In the Supreme Court Of India

Case No : Criminal App. No. 180 of 1967

Sidhanna Apparao Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-03-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 162, 410, 418, 479A
Penal Code, 1860 (IPC) — Section 302, 34, 409

Citation : (1974) LW(Cri) 85 : (1973) MhLj 289

Hon'ble Judges : Ray, J;Dua, J

Bench : Division Bench

Advocate : M.S.K. Sastri and S.P. Nayar, for the Respondent

Final Decision : Allowed

Judgement

Ray, J.—This is an appeal by special leave against the judgment of the High Court of Bombay dated 5th December, 1966 dismissing in limine the appeal preferred against the judgment and order dated 16th August, 1966 passed by the Sessions Judge, Sholapur, the High Court by an order dated 3rd April, 1967 also refused have to appeal to this Court.

2. The Appellant was accused No. 1. He was convicted u/s 302 read with Section 34 of the I.P.C 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 Siddappa 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 Session is conferred by Section 410 of the Code of Criminal Procedure. 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 u/s 418 confined only to a matter of law.

5. The Court is several decisions dealt with Section 410 of the Code of Criminal Procedure and the rights of the Appellant thereunder. Reference may be made to one of the earlier decisions of this Court in Mushtak Hussein Vs. The State of Bombay, and the recent unreported decision in Govinda Kadtuji Kadam and Ors. v. State of Maharashtra Criminal Appeal No. 188 of 1969 decided on 9 February 1970 where several previous decisions of this Court have been noticed.

6. The following principles emerge, from the decisions; first, the Appellate 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 Vs. State of West Bengal, 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 Vs. State of Maharashtra, 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 Appellant in a dacoity an opportunity to case of being heard as required u/s 479A of the Code of Criminal Procedure would be an arguable point.

9. In an unreported decision of this Court in Bhanwar Singh v. State of Rajasthan Criminal Appeal No. 38 of 1969 decided on 17th September, 1969 it was held that failure to consider the position in which the Appellant was placed when his immediate superior admittedly ordered him to bring 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 help in laying down a new trap would be a substantial ground in a conviction under Prevention of Corruption Act and Section 409 of the I.P.C.

10. In another unreported decision of this Court in Vishwanath Shankar Beldar v. State of Maharashtra Criminal Appeal No. 95 of 1969 decided on 18th September, 1969 it was said that if the trial Judge did not accept the witness as a wholly truthful witness in the light of reports sent by police officers and his statement u/s 162 of the Code of Criminal Procedure 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 Hussain Peshimani v. The State of Maharashtra Criminal Appeal No. 262 of 1968 decided on 20th December, 1968, the offences alleged were under the I.P.C., 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 (he 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 witness. 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 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 contention of the Appellant in the appeal preferred was that the Appellant was charged u/s 302 read with Section 34 of the I.P.C. for committing murder of both the Patils 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 S.C. 51 and Krishna G. Patil v. State of Maharashtra AIR 1963 S.C. 141. 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.