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SIDDANNA APPARAO PATIL

v.

STATE OF MAHARASHTRA**March 6, 1970**

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[A. N. RAY AND I. D. DUA, JJ.]

Code of Criminal Procedure (5 of 1898), s. 410—Appeal to High Court involving substantial and arguable questions—Appeal dismissed in limine summarily—Propriety.

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The appellant and another were charged under s. 302 read with s. 34, I.P.C. The second accused was acquitted but the appellant was convicted and sentenced to imprisonment for life by the Sessions Court. In appeal to the High Court, the appellant raised various arguable and substantial questions of law and fact, but the High Court dismissed the appeal *in limine summarily—Propriety.*

I appeal to this Court by special leave,

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HELD : The order of dismissal of the appeal should be set aside and the matter remitted to the High Court for fresh consideration. [912 D]

The High Court has undoubtedly the power to dismiss summarily an appeal under s. 410 Cr. P.C., but, it should not do so if the appeal raises arguable and substantial points. Further, in such appeals, the High Court should give reasons for the rejection of the appeal. [910 E; 912 Cl]

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Mushtak Hussain v. State of Bombay, [1953] S.C.R. 809, *Govinda Kaduji Kadamb & Ors. v. State of Maharashtra*, [1970] 3 S.C.R. 525 and *Chittaranjan Das v. State of West Bengal* [1964] 3 S.C.R. 237, followed. 237, followed.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 180 of 1967.

Appeal by special leave from the order dated December 5, 1966 of the Bombay High Court in Criminal Appeal No. 1444 of 1966.

The appellant did not appear.

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M. S. K. Sastri and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by

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

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.

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.

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.

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*⁽¹⁾ and the recent decision in *Govinda Kadiuji Kadam & Ors. v. State of Maharashtra*⁽²⁾ where several previous decisions of this Court have been noticed.

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 v. State of West Bengal*⁽³⁾ held that the High Court should not summarily reject criminal appeals if they raise arguable and substantial points.

As to what is an arguable and a substantial point may be illustrated with reference to a few decisions.

In *Narayan Swami v. State of Maharashtra*⁽⁴⁾ 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

(1) [1953] S.C.R. 809.

(2) [1970] 3 S.C.R. 525.

(3) [1964] 3 S.C.R. 237.

(4) [1968] 2 S.C.R. 88.

A case of being heard as required under section 479A of the Criminal Procedure Code would be an arguable point.

In an unreported decision of this Court in *Bhanwar Singh v. State of Rajasthan*⁽¹⁾, 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 Indian Penal Code.

B In another unreported decision of this Court in *Vishwanath Shankar Beldar v. State of Maharashtra*⁽²⁾ 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 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.

C In another unreported earlier decision of this Court in *Bashir Husain Peshimani v. The State of Maharashtra*⁽³⁾ 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

F 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.

H In the present case, one of the contentions of the appellant in the appeal preferred was that the appellant was charged under

1) Criminal Appeal No. 38 of 1969 decided on 17 September, 1969.

2) Criminal Appeal No. 95 of 1969 decided on 18 September 1969.

3) Criminal Appeal No. 262 of 1968 decided on 20 December, 1968.

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section 302 read with section 34 of the Indian Penal Code 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*⁽¹⁾ and *Krishna G. Patil v. State of Maharashtra*⁽²⁾. 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 or 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.

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.

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.

V.P.S.

Appeal allowed.

(1) A.I.R. 1963 S.C. 51.

(2) A.I.R. 1963 S.C. 1413.