

KRISHNA VITHU SUROSHE

v.

STATE OF MAHARASHTRA

August 30, 1973

[H. R. KHANNA AND A. ALAGIRISWAMI, JJ.]

*Code of Criminal Procedure 1898, s. 421—High Court's power to dismiss appeal in limine.*

The appellant was convicted of murder by the Trial Court. He appealed to the High Court contending, *inter alia*, that he had not been mentioned as an offender by two of the eye-witnesses of the occurrence. The High Court dismissed the appeal in limine.

Allowing the appeal to this Court,

HELD : It is true that under s. 421 Code of Criminal Procedure Code the High Court can dismiss an appeal *in limine* if, on a perusal of the petition of appeal and the judgment appealed from, it were to form the view that there was no sufficient reason for its interference. At the same time, it is now settled law, repeatedly laid down by this Court in a series of decisions, that the High Court would not be justified in dismissing summarily and without a speaking order an appeal which raises arguable questions either on points of law or on points of fact. [569A]

In the present case the appellant had an arguable case and the High Court was not justified in dismissing summarily the appeal of the appellant.

*Shaikh Mohd. Ali v. State of Maharashtra*, A.I.R. 1973 S.C. 43 and *Kapurchand Kesrimal Jain v. State of Maharashtra*, A.I.R. 1973 S.C. 243, applied.

*Chittaranjan Das v. State of West Bengal*, [1964] 3 S.C.R. 237, held inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 96 of 1973.

Appeal by special leave from the judgment and order dated 4th December, 1972 of the Bombay High Court at Bombay in Criminal Appeal No. 1439 of 1972.

Y. S. Chitale, V. N. Ganpule and P. C. Kapur, for the appellant,

H. R. Khanna and M. N. Shroff, for the respondent

The Judgment of the Court was delivered by

KHANNA, J. Janardhan Narayan Suroshe and Krishna Vithu Suroshe were convicted by the Additional Sessions Judge Thana under section 302 Indian Penal Code on the allegation that they had caused the death of Bhaskar Narayan Suroshe. Each of them was sentenced to undergo imprisonment for life. Krishna Vithu Suroshe filed an appeal against the judgment of the trial court but the same was dismissed summarily by the Bombay High Court. Krishna Vithu Suroshe thereafter filed the present appeal to this Court by special leave. At the time the leave was granted it was directed that the appeal would be limited only to the ground wherein it had been stated that the High Court should not have dismissed the appeal *in limine*.

Bhaskar Narayan Suroshe was the brother of Janardhan Narayan Suroshe accused. The houses of Bhaskar Narayan Suroshe and Janardhan Narayan Suroshe are situated in village Raite and there intervenes a small lane between the two houses. On March 24, 1972 at about 9 p.m., it is stated, the two accused started abusing Bhaskar deceased. Bhaskar then came to the kitchen of his house and standing in the door of the kitchen he also abused the accused. The exchange of abuses went on for about 10-15 minutes. Janardhan accused, according to the prosecution, then came forward and gave a blow with a long knife in the abdomen of Bhaskar. Janardhan also tried to pull Bhaskar. Krishna Vithu Suroshe appellant then gave a blow with a long knife in the back of Bhaskar. The occurrence, it is stated, was witnessed by Parvatibai and Janabai, the two wives of Bhaskar deceased as well as by his daughter Lata. Pandurang, servant of Bhaskar, was also attracted to the place of occurrence. Bhaskar was thereafter taken in a cart to Govili dispensary. The doctor incharge of the dispensary advised that Bhaskar should be removed to the hospital. Bhaskar was thereafter taken in a taxi to Kalyan but by the time they arrived in the hospital at Kalyan, Bhaskar was declared to be dead. Report about the occurrence was lodged by Parvatibai at Kalyan police station at 11.45 p.m.

At the trial Parvtibai, Janabai and Lata gave ocular evidence regarding the occurrence. The appellant in his statement under section 342 Code of Criminal Procedure denied his presence at the scene of occurrence and his participation in the assault on Bhaskar deceased. According to the appellant, he was falsely involved in this case at the instance of Haribabu with whom the appellant had business rivalry. Haribabu is another brother of Bhaskar deceased.

The trial court accepted the prosecution allegations and convicted and sentenced the accused as mentioned earlier.

Mr. Chitale on behalf of the appellant has urged before us that the appeal filed by the appellant before the High Court raised arguable and substantial points and the High Court was not justified in dismissing the appeal *in limine*. The learned counsel in this connection has invited our attention to that part of the judgment of the trial court which deals with the evidence of Janabai and Lata PWs. It would appear from the judgment of the trial court that Janabai and Lata only saw the infliction of the blow on the deceased by Janardhan accused. Janabai and Lata did not see Krishna Vithu Suroshe appellant at the time of the occurrence much less did they see the appellant inflicting knife blow on the back of Bhaskar deceased. The evidence of Janabai and Lata, it is urged, creates considerable doubt regarding the correctness of the statement of Parvatibai in so far as she has stated that the appellant too was present at the time of the occurrence and he gave a knife blow in the back of Bhaskar deceased. It is also pointed out that the injury on the back of the deceased could also be caused with the same weapon with which Janardhan gave the blow in the abdomen of the deceased.

- A In our opinion the appellant had an arguable case and the High Court was not justified in dismissing summarily the appeal of the appellant. It is true that under section 421 Code of Criminal Procedure the High Court can dismiss an appeal *in limine* if on a perusal of the petition of appeal and the judgment appealed from it were to form the view that there was no sufficient reason for its interference. At the same time, it is now settled law, repeatedly laid down by this Court in
- B a series of decisions, that the High Court would not be justified in dismissing summarily and without a speaking order an appeal which raises arguable questions either on points of law or on points of fact (see in this context two of our recent decisions : *Shaikh Mohd. Ali v. State of Maharashtra*<sup>(1)</sup> and *Kapurchand Kesrimal Jain v. State of Maharashtra*<sup>(2)</sup>).
- C Mr. Khanna on behalf of the State has invited our attention to the decision of this Court in *Chittaranjan Das v. State of West Bengal*<sup>(3)</sup>. There is nothing in this judgment which runs counter to the view expressed by this Court in the two cases mentioned earlier by us. What was laid down in *Chittaranjan Das's* case was that the High Court is not justified in granting a certificate of fitness for appeal on the ground that the criminal appeal had been dismissed summarily.
- D We, therefore, accept the appeal, set aside the order of the High Court dismissing the appeal *in limine* and direct that the appeal be disposed of in due course according to law.

G.C.

*Appeal allowed.*

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(1) A. I. R. 1973 S. C. 43.

(2) A. I. R. 1973 S. C. 243.

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