RAJPUT RUDA MAHA AND ORS.

v.

STATE OF GUJARAT

December 5, 1979

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970-*S.2(a)—Scope—Supreme Court, if could summarily dismiss an appeal under section* 384 *Cr. P.C.*

The appellants who were charged with the offence of committing murder were acquitted by the Sessions Judge. But on appeal by the State, the High Court convicted and sentenced them. In their appeal under section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, this court, after a detailed analysis of the High Court's judgment and the evidence led in the case summarily dismissed the appeal under section 384 of the Code of Criminal Procedure, 1973.

After the pronouncement of the judgment but before it was signed, the attention of the court was drawn to the judgment in *Sita Ram* v. *State of U.P.* [1979] 2 S.C.R. 1085 which, according to them, held that the Supreme Court had no power to summarily dismiss an appeal under section 384, Cr. P.C. in an appeal under section 2(a) of the 1970 Act. Dismissing the appeal.

HELD : The decision in *Sita Ram* v. *State of U.P.* is no authority regarding the power of the court to summarily dismiss an apeal under section 384 of the Criminal Procedure Code. In that case 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 was there any reference to the validity of section 384 nor was it pleaded that the section was *ultra-vires* the Constitution. [356E]

Therefore the observaion of the Court that it has "pondered over the issue in depth" would not be a precedent binding on the court. 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 that decision. [356F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 718 of 1979.

From the Judgment and Order dated 11-10-1979 of the Gujarat High Court in Criminal Appeal No. 110/77.

A. K. Trivedi and *S. S. Khanduja* for the Appellant.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal is preferred by the three accused in Sessions Case No. 46 of 1976 against their conviction and sentence

A imposed upon them by the High Court under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

The three appellants were tried by the Sessions Judge for committing offences punishable under s. 302/120-B/323/324 read with s. 34 and 109 of the Indian Penal Code for committing the murder of one B Karsan Kala on 19-1-1976. The learned Sessions Judge acquitted all the three appellants of the charges levelled 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 C Judge and convicted them for offences under 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.

The prosecution strongly relied on the evidence of three eye-witnesses Rata Mala, Ganesh and Ruda. Rata Mala was an injured D eye-witness having receives 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 E him and he was also injured. The High Court in an elaborate judgment after thoroughly scrutinising the evidence of the eye-witnesses 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 F 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 G 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 under S. 384 of the Code of Criminal Procedure.

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After we pronounced our judgment dismissing the appeal summarily under S. 384 of the Code of Criminal Procedure, but before signing

the judgment, a decision of this Court—*Sita Ram & Ors.* v. *State of U.P.*(1) was brought to our notice wherein the scope of the power of the Courts to dismiss an appeal summarily under S. 384 of the Code of Criminal Procedure has been referred. In that case an appeal was preferred to this Court under S. 379 of the Code of Criminal Procedure, 1973 read with S. 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 O.XXI of the Supreme Court Rules, 1966. The appellants filed an application for adducing additional grounds, namely, (1) the provisions under cl.(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 Art. 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 cl. (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."

The matter was placed before a Bench of five Judges by the Hon'ble the Chief Justice as the constitutional validity of cl. (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

(1) [1979] 2 S.C.R. 1085.

A 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 under S. 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.

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 S. 384 of the Code of Criminal Procedure. Neither was it pleaded during the arguments that S. 384 of the Code of Criminal Procedure is *ultra vires* of the Constitution. As the question of validity of S. 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 O.XXI of the Supreme Court Rules should be read down as indicated in the decision.

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

P.B.R. *Appeal dismissed.*