Raja Ram And Ors. vs State on 11 December, 1950

Equivalent citations: AIR1953ALL133, AIR 1953 ALLAHABAD 133

JUDGMENT

Malik, C.J.

1. This is an application under Article 134(1)(c) of the Constitution for leave to appeal to the Supreme Court. The applicants were convicted under Section 302, I. P. C., and each of them was sentenced to death by the learned Sessions Judge of Faizabad on the 18th April 1950. The charge against the applicants was that on the 10th October 1949 they had murdered one Chhutkun at about sunset. The evidence against the applicants consisted of the statements of eight persons who claimed that they were eye-witnesses to the murder. There was also the dying declaration of the deceased made before the village Sarpanch Dubri Sharma and Asharam Panch. The learned Sessions Judge believed the evidence, and was satisfied that the guilt had been fully brought home to the accused. On appeal, a Bench of this Court considered the evidence and agreed with the" learned Sessions Judge that the evidence of the prosecution witnesses was reliable and the accused had been satisfactorily proved to have been guilty of the offence with which they had been charged.

2. The learned counsel for the applicants has laid great stress on two points, and his submissions are that the dying declaration and the evidence of the eye-witnesses should not have been accepted. The reason suggested why the evidence of the eye-witnesses should not have been accepted is that these eye-witnesses did not mention the names of the assailants to any one till Chhutkun had made his statement to Dubri Sharma, the Sarpanch. The suggestion is that this is most unnatural conduct on the part of the eye-witnesses and it was made more unnatural by the admission of Ram Raj who said that the witnesses, when they mentioned to him that Chhutkun had been murdered, did not give him the names of his assailants. Ram Raj was the maternal grand-father of a boy Kamla and it was said that in connection with the management of the property of the minor Kamla, a dispute arose and Chhutkun deceased was the Pairo-kar of Ram Raj, and, as a result of this enmity, Chhutkan was murdered. The learned Judges have noticed this argument, and the objection raised by learned counsel is that, when the witnesses did not suggest any reason why they did not mention the names of the assailants earlier than the time given by them, it was not open to the learned Judges to speculate and to suggest reasons for this unnatural conduct on the part of the witnesses. Learned counsel has suggested that, if necessary, the witnesses might have been recalled under Section 540, Criminal P. C. If the learned Judges hearing the appeal had thought that this conduct of the witnesses was such that it would 'per se' make their evidence unworthy of credit, they would have probably investigated the matter further. As regards the argument advanced by learned counsel that the evidence of the witnesses should have been rejected on the ground that they had not mentioned the names of the assailants earlier, the learned Judges had merely suggested some reasons why they might not have given the names at an earlier stage; the learned Judges could not have intended to

lay down that, in the absence of the explanation as suggested by them, they would have rejected the testimony of the eye-witnesses.

3. As regards the dying declaration, the question of the weight to be attached to it was raised. It has been said that the deceased made the dying declaration one and a half hours after having received the injuries, and immediately after he gave the five names to the Sarpanch and the Panch, he became unconscious. It is suggested that the man must have been on the point of losing his senses and in such circumstances his dying declaration could not be relied upon. This also is a question of the weight to be attached to the dying declaration. Both the questions raised by learned counsel really amount to the weight to be attached to the evidence on the record, which, to our minds, cannot be deemed to be a sufficient ground for allowing leave under Article 134(1)(c).

4. The learned counsel for the appellant has suggested that the words 'fit case' in Article 134(1)(c) should be given the same meaning as in Section 3, Criminal Appeal Act of 1907, 7 Edw. 7. The words 'fit case' in that section of the Act are followed by certain other words which clearly define the meaning intended to be attached to the words 'fit case'. The circumstances in England are entirely different from the circumstances in this country. In England it is the trial Judge who gives leave at the time of pronouncing the sentence, and it is only when he has refused to give leave or the Attorney-General has not certified the case to be a fit one that the Court of Criminal Appeal can be moved for leave. In India, the High Courts were final Courts of Appeal in all criminal matters before the 26th January 1950. Though the Judicial Committee had in some exceptional cases granted special leave, it had remarked more than once that it was not a Court of Criminal Appeal against convictions recorded by the High Courts in India. No appeal would have lain to the Supreme Court it there was no provision in the Constitution for an appeal to that Court. As the Supreme Court, could not claim the right to entertain appeals on the ground that it was exercising the prerogative right of the King, it was necessary to make special provision in the Constitution for appeals to the Supreme Court in criminal matters. There was an exception made in those cases where the High Courts had reversed an order of acquittal and sentenced the accused to death or had withdrawn the case from the subordinate court to the High Court and had convicted the accused and sentenced him to death in those cases an appeal lay as a matter of right. In all other cases the High Court has to certify the case as a 'fit' one for appeal. We do not think that the intention was to alter the old established practice and to make the Supreme Court a court of Criminal Appeal so that it may exercise jurisdiction materially different from the jurisdiction exercised by the Judicial Committee of the Privy Council. The Judicial Committee entertained Criminal Appeals only where there was some contravention of the rules of natural justice and they were satisfied that it had led to miscarriage of justice. On the question of mere weight to be attached to the evidence of witnesses, no appeal used to be entertained by the Privy Council, and we do not think that an appeal on that ground would be entertained by the Supreme Court either.

5. The learned counsel has urged that in all cases where a judgment contains matters, which, if included in a charge to the jury would amount to a misdirection and vitiate their verdict, leave to appeal to the Supreme Court should be granted. We do not think there is any substance in this argument. In a charge to the jury, the Judge's duty is to sum up the entire material on the record and he is not called upon to give his own conclusions, A judgment, however, is not the same thing as

a charge to the jury. There the Judge is required to give his findings on the points at issue and his reasons therefor.

6. There is, therefore, no force in this application and it is dismissed.