Challappa Ramaswami vs State Of Maharashtra on 13 August, 1970

Equivalent citations: AIR1971SC64, 1971CRILJ19, (1970)2SCC426, AIR 1971 SUPREME COURT 64, 1970 UJ (SC) 723, (1971) 2 SC CRI R 238, 1971 UJ (SC) 723, 1970 SCD 926

Author: I.D. Dua

Bench: I.D.Dua, K.S. Hegde

JUDGMENT

I.D. Dua, J.

1. The short and the only point raised in this appeal by special leave pertains to the justification of the High Court in summarily dismissing in limine the appeal preferred by the appellant in that Court against his conviction and sentence of life imprisonment by the Court of Session, Greater Bombay under Section 302, I.P.C.

2. We do not consider it necessary to enter into an exhaustive discussion of the prosecution story and the evidence led in its support. Suffice it to say that the trial Court relied in support of its order on two eye witnesses - one of whom is stated to be the uncle of the deceased. That Court also noticed that in the dying declaration by the deceased made to his uncle the name of the accused as his assailant was not mentioned. In a case like this, therefore, in our opinion, it was incumbent on the High Court to issue notice to the State and hear the appeal with the record before it and after evaluating the evidence, to record a speaking order so that this Court could also have before it the reasoning of the High Court for upholding the appellant's conviction. The dismissal of the appeal by the High Court with one word "dismissed" has left us guessing about the line of reasoning which the High Court would have adopted after appropriate scrutiny of the material on the record. This Court has very recently in Govinda Kadtuji Kadam v. State of Maharashtra , on a review of the case law reiterated the legal position in these words:

> We may at the outset point out that though on appeal under Section 410, Criminal P.C. by a person convicted at a trial held by a Sessions Judge or an Additional Sessions Judge the appellant is entitled under Section 418 of the Code to challenge the conclusions both of facts and of law and to ask for a reappraisal of the evidence, the appellate Court has nevertheless full power under Section 421, Criminal P.C. to dismiss the appeal in limine even without sending for the records, if on perusal of the impugned order and the petition of appeal it is satisfied with the correctness of the

order appealed against. This power, it may. be emphasised, has to be exercised after perusing the petition of appeal and the copy of the order appealed against and after affording to the appellant or his pleader a reasonable opportunity of being heard in support of the appeal. The summary decision is accordingly a judicial decision which vitally affects the convicted appellant and in a fit case it is also open to challenge on appeal in this Court. An order summarily dismissing an appeal by the word "rejected", as is the case before us, though not violative of any statutory provision removes nearly every opportunity for detection of errors in the order. Such an order does not speak and is inscrutable giving no indication of the reasoning underlying it. It may at times embarrass this Court when the order appealed against prima facie gives rise to arguable points which this Court is required to consider without having the benefit of the views of the High Court on those points. In our opinion, therefore, when an appeal in the High Court raises a serious and substantial point which is prima facie arguable it is improper for that Court to dismiss it summarily without giving some indication of its view on the points raised. The interest of justice and fairplay require the High Court in such cases to give an indication of its views on the points argued s6 that this Court, in the event of an appeal from that order being presented here, has the benefit of the High Court's opinion on those points.

A month later this Court again in Siddanna Apparao Patil v. State of Maharashtra reaffirmed that view. It was undoubtedly open to this Court to go into the evidence led in this case and consider the appellant's conviction on the merits, notwithstanding that the present appeal is by special leave. But, in our opinion, it would be more appropriate and would serve the ends of justice better, if the High Court hears and decides the appeal in the light of the aforesaid decisions. This appeal accordingly succeeds and allowing the same we set aside the order of summary dismissal and remit the case back to the High Court for hearing and deciding the appeal in accordance with law. It may be pointed out that this order is not to be considered as containing any expression of opinion on the merits of the case.