

ISHVARBHAI FULJIBHAI PATNI

A

v.

STATE OF GUJARAT

NOVEMBER 24, 1994

[DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

B

Criminal Procedure Code, 1973—Section 386—Indian Penal Code, 1860—Section 302—Appeal against conviction—Conviction upheld—Evidence not discussed—Cryptic judgment conviction not sustainable.

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The appellant was found guilty of offence u/s 302 IPC and sentenced to suffer imprisonment for life. The High Court dismissed the appeal filed by the appellant holding that the trial court had rightly separated the case of the appellant from the case of the rest of the accused who had been acquitted and that his conviction and sentence did not require interference. This appeal has been filed against the judgment of conviction as upheld by the High Court.

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Allowing the appeal, this Court

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HELD : Since, the High Court was dealing with the appeal in exercise of its appellate jurisdiction, against conviction and sentence of life imprisonment, it was required to consider and discuss the evidence and deal with the argument raised at the bar. In this case none of the arguments of the counsel for the appellant have been noticed, much less considered and discussed. The judgment is cryptic. On a plain requirement of justice, the High Court while dealing with the first appeal against conviction and sentence is expected to, howsoever, briefly, depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. In view of the infirmities pointed out, the judgment under appeal cannot be sustained. [67 A-F]

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 832 of 1994.

From Judgment and Order dated 14th December, 1993 of the High Court of Gujarat in Criminal Appeal No. 1192/93.

B Vimal Dave for the Appellant.

Ms. Hemantika Wahi for the Respondent.

C The following Order of the court was delivered:

Leave granted

D The appellant alongwith three others was tried by the learned Sessions Judge at Ahmedabad and found guilty of an offence under Section 302 IPC. He was sentenced to suffer imprisonment for life. The appellant was also found guilty of an offence under Section 135 of the Bombay Police Act but no separate sentence was pronounced for the said offence. The appellant filed the first appeal against his conviction and sentence before the High Court. By its judgment dated 14th December, 1993, the High Court dismissed the appeal filed by the appellant holding *inter alia* that the trial court had rightly separated the case of the appellant from the case of the rest of the accused who had been acquitted and that his conviction and sentence did not require interference. Aggrieved, the appellant is before us through this appeal.

G We have gone through the judgment of the High Court dated 14th December, 1993 and are pained to note that after narrating the prosecution case, the only discussion for the purpose of disposal of the appeal is contained in paragraph of the judgment which reads thus:

H “For this purpose, the record was called for and after perusal of the original record, we are satisfied about the correctness

of the aforesaid conclusion. It is very much warranted by the evidence on record and the learned Sessions Judge, Ahmedabad, after taking into consideration the entire material placed before him and properly appreciating the arguments advanced on either side has held that the accused-appellant is guilty. We, therefore, would not interfere in this matter for the reasons stated above and the matter is dismissed.”

Since, the High Court was dealing with the appeal in exercise of its appellate jurisdiction, against conviction and sentence of life imprisonment, it was required to consider and discuss the evidence and deal with the arguments raised at the bar. Let alone, any discussion of the evidence, we do not find that the High Court even cared to notice the evidence led in the case. None of the arguments of the learned counsel for the appellant have been noticed, much less considered and discussed. The judgment is cryptic and we are at loss to understand as to what prevailed with the High Court to uphold the conviction and sentence of the appellant. On a plain requirement of justice, the High Court while dealing with a first appeal against conviction and sentence is expected to, howsoever, briefly, depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. In view of the infirmities pointed out by us, the judgment under appeal cannot be sustained. We, therefore, accept the appeal, set aside the judgment of the High Court and remand the case to the High Court for its fresh disposal after hearing the appeal on merits in accordance with law. We clarify that we have not gone into the merits of the case and no observation made by us shall be construed as any expression of opinion on the merits of the case.

Since, the appellant is in custody, we request the High Court to dispose of the appeal within three months from the date of the receipt of the copy of

A this order. The appellant shall, however, continue to remain in custody till the disposal of the appeal by the High Court, unless admitted to bail by the High Court in the meanwhile.

A.G.

Appeal allowed