

[2012] 8 S.C.R. 1012

A IQBAL ABDUL SAMIYA MALEK
v.
STATE OF GUJARAT
(Criminal Appeal No. 1584 of 2012)

B OCTOBER 1, 2012
[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

C *Code of Criminal Procedure, 1973 – s. 386 – Criminal
appeal – Disposal of – Procedure for – High Court disposing
of the criminal appeal without adverting to all the materials –
On appeal, held: The procedure followed by High Court in
disposal of the appeal not acceptable – The procedure
prescribed u/s. 386 is required to be followed – It is the duty
of the appellate court to look into the evidence adduced to
arrive at an independent conclusion – Appeal – Criminal
Appeal.*

E *Padam Singh vs. State of U.P. AIR 2000 SC 361: 1999
(5) Suppl.SCR 59; Bani Singh and Ors. vs. State of U.P.
1996 (4) SCC 720: 1996 (3) Suppl. SCR 247 – relied on.*

Case Law Reference:

1999 (5) Suppl. SCR 59 Relied on Para 3

1996 (3) Suppl. SCR 247 Relied on Para 3

F CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal No. 1584 of 2012.

G From the Judgment & Order dated 18.3.2009 of the High
Court of Gujarat at Ahmedabad in Criminal Appeal No. 207 of
2003.

WITH

CrI. A. No. 1585 of 2012.

H 1012

Manoj K. Mishra, Deepak Mishra, V.K. Mishra, Shivpati B. Pandey for the Appellant. A

K. Enatoli Sema, S. Panclu, Hemantika Wahi for the Respondent.

The following Order of the Court was delivered B

O R D E R

1. Heard both sides.

2. Leave granted. C

3. It is the grievance of the appellants/accused that when they filed regular appeal before the High Court challenging the conviction under Section 302 IPC and sentence of life imprisonment, the High Court without going into all the materials including oral and documentary evidence disposed of their appeal affirming the judgment of the Trial Court. D

4. In view of the above contention, we have gone through the impugned judgment of the High Court. As rightly pointed out by the learned counsel appearing on behalf of the appellants, after narrating the case of the prosecution and the defence as well as the order of the Sessions Judge convicting the appellants, without adverting to all the materials, the High Court has merely disposed of the appeal. The procedure followed by the High Court in a matter of this nature is not acceptable. Elaborate procedures have been prescribed under Section 386 of CrI.P.C. for disposal of the appeal by the Appellate Court. E F

5. It is the duty of an Appellate Court to look into the evidence adduced in the case arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by Appellate Court in drawing inference from H

A proved and admitted facts. Further appeal cannot be disposed of without examining records/merits (*Vide Padam Singh Vs. State of U.P., AIR 2000 SC 361 and Bani Singh & Others Vs. State of U.P. 1996 (4) SCC, 720*). The said recourse has not been followed by the High Court.

B 6. In view of the same, without expressing anything on the merits of the claim of either party, we set aside the impugned judgment of the High Court and remit it to the High Court. We request the High Court to restore the appeal on its file and dispose of the same as early as possible preferably within a period of six months.

C 7. Learned counsel for the appellants has brought to our attention to the fact that the appellants are in jail for a period of more than 11 years and seek for an order of bail from this Court. Since we are now remitting the matters to the High Court, the appellants are free to make such claim before the High Court.

D 8. With the above observation, the appeals are disposed of.

E K.K.T.

Appeals disposed of.