

(1961) 09 GUJ CK 0003

Gujarat High Court

Case No: Criminal Appeal No. 395 of 1961

Lalu Jela and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: Sept. 16, 1961

Acts Referred:

- Bombay High Court (Appellate Side) Rules, 1960 - Rule 6
- Criminal Procedure Code, 1898 (CrPC) - Section 410, 421, 423, 431

Citation: AIR 1962 Guj 125 : (1962) 3 GLR 397

Hon'ble Judges: K.T. Deasai, C.J; M.R. Mody, J; J.M. Shelat, J

Bench: Full Bench

Advocate: A.H. Mehta, for the Appellant; B.R. Sompura, Asstt. Govt. Pleader, M.K. Shah, Amicus Curiae and M.R. Barot, Amicus Curiae, for the Respondent

Judgement

Desai, C.J.

The questions referred for decision to this Full Bench are:

(1) Whether when several persons are convicted at a single trial by a Sessions Judge or by an Additional Sessions Judge, all or some of the convicted persons can file one joint petition of appeal to the High Court, or whether in such a case it is necessary to file separate appeals with separate petitions?

(2) Whether Rule 6 in Chapter XXVI of the Bombay High Court Appellate Side Rules is inconsistent with Chapter XXXI of the Criminal Procedure Code?

At the outset it was urged before us that the Reference to this Full Bench by the Division Bench consisting of Justice Raju and Justice Bakshi is not competent we see no force in this contention. The Chief Justice has the power to constitute a Full Bench and in the exercise of the power of the Chief Justice this Full Bench has been constituted on a reference being made for that purpose by a Division Bench of this Court. Ordinarily except for compelling reasons a Division Bench does not refer a

matter to the Chief Justice for constituting a Full Bench. Such an occasion sometimes arises when a Division Bench finds itself in a predicament when two former decisions of Division Benches conflicting with each other are present to its mind, with the result that whatever decision it may give, it would be going contrary to the decision of one Division Bench. Apart from such conflicts, it is in rare cases that a Reference is made to the Chief Justice for constituting a Full Bench. In the present case, In view of the fact that there was a Rule of long standing which had worked exceedingly well in the past which appeared to the referring Bench to be invalid as being contrary to the provisions of the Criminal Procedure Code and in view of the fact that the result of holding the rule to be invalid would be to upset the existing practice of many years that the Division Bench thought it fit to make a request for the formation of a Full Bench. The Full Bench has been duly constituted and it has jurisdiction to determine the aforesaid questions including the question of the validity of the aforesaid High Court rule.

2. Dealing with the merits of the matter, the Bombay High Court, as far back as 12th April, 1960, framed a rule to the effect that in criminal matters when several persons complain of one order or judgment convicting them, all may join in one appeal or application for revision. A rule to this effect has been in operation since over sixty years and is now sought to be challenged on the ground that the same is inconsistent with the provisions of Chapter XXXI of the Criminal Procedure Code.

3. It will be necessary to examine some of the provisions of Chapter XXXI which it is urged, militate against the validity of this rule. Section 421 of the Criminal Procedure Code relating to appeals provides as under:-

"(1) On receiving the petition and copy u/s 419 or Section 420, the appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily;

Provided that no appeal presented u/s 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same."

Another provision invoked in this connection is Section 423 dealing with powers of the appellate Court in disposing of an appeal. It provides as under:-

"The appellate Court shall then sent for the record of the case if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal u/s 411-A, Sub-section (2) or Section 417, the accused if he appears, the Court may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law:

- (b) In an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction Subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of Section 106, Sub-section (3), not so as to enhance the same;
- (c) in an appeal from any other order, alter or reverse such order;
- (d) make any amendment or any consequential or incidental order that may be just or proper."

Section 431 relating to abatement of appeal, which is also invoked in this connection, provides as under:-

"Every appeal u/s 411-A, Sub-section (1) or Section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter except an appeal from a sentence of fine shall finally abate on the death of the appellant"

Section 421 provides for summary dismissal of an appeal. It is urged that an appeal may be summarily dismissed u/s 421 or if it is not so dismissed, action has to be taken as provided in Section 422 by issuing notice of appeal. It is urged that an appeal cannot be split up if several persons have filed one appeal and that either it has to be summarily rejected as a whole or a notice of appeal must be issued u/s 422. In connection with the provisions of Section 423 it is stated that the appellate Court is empowered to pass various orders as therein provided. It is urged that the appellate Court may choose any of the orders therein provided, but can only pass one of the several orders therein mentioned in one appeal. It is urged that the appellate Court is not competent to pass orders of more than one kind in a single appeal. In connection with Section 431, it is urged that the death of an accused in the cases mentioned therein would operate by way of abatement of the appeal. If more than one accused are permitted to file one single appeal, then, in spite of the death of one of the accused, the appeal cannot be said to abate. If it is directed that such appeal abates, then it would abate as regards all the accused. In the referring judgment it has been stated that all these provisions clearly indicate that there should be a separate appeal filed by each person who is aggrieved by a conviction against him. At first blush, this approach appears to be logical. What these sections however lay down are the powers of the Court relating to summary dismissal, the powers of the Court relating to an appeal and the abatement of an appeal when filed. These sections do not deal with the question of joinder of parties for the purpose of an appeal and the effect of such joinder.

4. Rule 6 of the Appellate Side Rules dealing with a joint appeal or application by persons convicted by the same judgment, provides as under:-

"All persons aggrieved by a judgment or an Order passed in a criminal case, may join in one appeal or application for revision and One copy of the judgment or order complained of shall be sufficient."

What we have to consider is the effect of this rule. This rule provides that where there is a single judgment or order and more persons than one are aggrieved by that judgment, they may join in instituting one appeal or a single application for revision. This rule is a rule not dealing with substantive rights, but a rule dealing with procedure. Under the Criminal Procedure Code, Section 430. a right is given to any person convicted at a trial held by a Sessions Judge or an Additional Sessions Judge to appeal to the High Court. In exercise of that right, more than one persons are enabled to join together to prefer one appeal under the provisions of Rule 6. This rule is pre-eminently a rule of convenience and a rule based on sound common sense. So far as we are aware, this rule has stood the test of time and has not during the last sixty years, at any time been challenged before the Bombay High Court. The fundamental fallacy underlying the argument based on Sections 421, 423 and Section 431 of the Criminal Procedure Code is in assuming that when one joint appeal is filed by several persons it is to be treated for all purposes as if it was a single appeal by a single person. When a joint appeal is instituted under Rule 6, ii that appeal is regarded as only one joint appeal jointly made which could only jointly subsist and in respect Whereof only one common order Could be passed, then, there is something to be said about such a rule being in contravention of the provisions of Section 421, 422 and 431 of the Criminal Procedure Code. If an appeal is filed under the provisions of Rule 6 by several persons and if that is treated as an appeal which can either abate as a whole against all persons or does not abate at all, as one in respect whereof a summary order of dismissal can be passed against all tie persons preferring the appeal or against none or in respect whereof only one of the several kinds of orders referred to in Section 431 could be passed against all the accused, then it is possible to suggest that by Rule 6 something has been sought to be done which is not permissible under the Criminal Procedure Code to do and which is contrary to the provisions of the Criminal Procedure Code. Rule 6 however is not operative so as to bring about the aforesaid result. Merely because several persons join in one appeal it does not become one indivisible non-separable appeal. The effect of several persons joining in one appeal is that they are enabled by a single petition to institute an appeal which is liable to be regarded treated and dealt with as if it was an appeal by each of the persons instituting that appeal. In connection with such an appeal, it is open to the Court under the provisions of Section 421 of the Criminal Procedure Code to summarily dismiss the appeal of one of the appellants and to proceed to issue notice in respect of the appeal instituted by the remaining appellants. Such an appeal is liable to abate only in respect of the appellant, who dies who comes within the provisions contained in Section 431. In connection with such an appeal, it is open to the High Court to confirm the sentence against one of the appellant to acquit another appellant and to direct a notice of

enhancement against the third and to pass an enhanced sentence. These powers of the High Court are in no way interfered with or sought to be affected by the provisions of Rule 6. Even though there is one appeal which is allowed to be filed under Rule 6, the effect of such filing in the same as if the appeal had been instituted by each one of the appellants. This rule has been framed merely as a rule of convenience.

5. In this connection, it would not be out of place to consider a case where a number of persons who had been jointly tried have been acquitted and the Government desires to prefer an appeal against the order of acquittal passed against several accused jointly tried. In such a case, a single appeal has been regarded as competent. Such appeal does not fall within the ambit of Rule 6. In this connection a reference may be made to a decision of the Calcutta High Court reported in [Superintendent and Remembrancer of Legal Affairs Vs. Golok Tikadar and Others](#), in the case of Superintendent and Remembrancer of Legal Affairs Bench v. Golok Tikadar. In that case, the Government filed an appeal u/s 417 against 58 persons. Orders had been passed in that appeal directing issue of notice against all the 58 accused persons. Notices however were served only on 40 out of the 58 accused. It was contended in that case that as only one appeal had been presented, the appeal could not be heard until all the accused persons named in the memorandum of appeal had been served as piece-meal hearing of the appeal was contrary to the fundamental principles of criminal justice. It was held that there had been in effect 58 appeals against 58 different accused persons presented by the local Government and that there was no legal bar to separate hearing of the appeal against each separate accused person and that the appeal could proceed against those accused who had been served with notice of appeal. This decision can also be usefully referred to for the purpose of considering the effect of instituting one appeal under the provisions contained in Rule 6 framed by the Bombay High Court which is now applicable to the proceedings in this Court.

6. There is also a decision of the Lahore High Court reported in AIR 1936 Lah 859, in the case of Mulhe v. Emperor. In that case it was laid down that a joint appeal by persons with common interest convicted at the same trial is in accordance with law and should be heard.

7. There is however a decision of the Nagpur High Court reported in AIR 1927 48 (Nagpur) in the case of Maharaj Sing Gond v. Emperor, where a contrary view appears to have been taken. That is a decision of a single Judge of the Nagpur High Court. In that case, six persons were convicted of rioting who filed one appeal by a single petition before the District Magistrate. This, according to the learned Judge, was "obviously wrong". Beyond stating that what was done was obviously wrong, no reason is given why it was regarded as being wrong. This decision does not throw any light upon the problem. We have, on the other hand, a decision of a Division Bench of the Nagpur High Court reported in AIR 1954 Nag 231, in the case of State

Govt., Madhya Pradesh V. Vishwanath Nidhanji. In that case one appeal had been filed against several persons who had been jointly tried before the Nagpur High Court. One of the respondents was proclaimed an absconder u/s 87 of the Criminal Procedure Code. That appeal was heard against all respondents other than the one against whom a proclamation had been issued u/s 87 and was disposed of. No objection was taken to the course adopted in that case. We are not aware whether the decision reported in AIR 1927 48 (Nagpur) has been followed in the Nagpur High Court itself. In fact, we find that the same has not in fact been followed in the case reported in AIR 1954 Nag 231.

8. Reliance was placed, in support of the argument that Rule 6 is beyond the competence of the Bombay High Court, on a decision of the Supreme Court reported in [Rabari Ghela Jadav Vs. The State of Bombay](#), in the case of Rabari Ghela Jadav v. State of Bombay. In that case, the appellate Court had, in the purported exercise of the powers given u/s 421 of the Criminal Procedure Code, directed that the appeal should be heard only on the point of sentence. The appellate Court summarily dismissed the appeal as regards the conviction and limited the hearing of the appeal only on the question of the sentence. In dealing with the matter, the Supreme Court observed that while an appellate Court had power to dismiss an appeal summarily if he considered that there was no sufficient ground for interfering, it had no power to direct that the appeal should be heard only on the point of sentence and that such an order was not an order of summary dismissal u/s 421 and that it was not also an order warranted by the provisions of Section 422 of the Criminal Procedure Code. It was held by the Supreme Court that the provisions of Section 421 do not contemplate a partial summary dismissal of an appeal. These observations have been made in connection with an appeal by a single individual. The Supreme Court had not to consider in that case the effect of several persons joining together in one appeal. That decision does not in any way help in construing the provisions of Rule 6 framed by the Bombay High Court and considering the effect of an appeal instituted under the provisions contained in the said rule, or the validity of the rule. A single appeal has been filed by several persons under the Provisions framed by the Bombay High Court since the year 1900 without any objection. The rule has worked exceedingly well and has conduced to convenience. We do not see anything in the provisions of the Criminal Procedure Code which would in any way affect the validity of that rule. That rule is in no way contrary or repugnant to any of the provisions contained in the Criminal Procedure Code. In our view, the rule is valid and persons convicted at a single trial can join together and file one petition of appeal.

9. Our answer to the questions are : (1) when several persons are convicted at a single trial by a Sessions Judge or by an Additional Sessions Judge, all persons or some of the convicted persons can file one joint appeal in the High Court, and it is not necessary for them to file separate appeals with separate petitions, and (2) in the negative. The appeal will be dealt with by the Referring Bench in the light of the

observations aforesaid.