

Rajendra Kumar Vs. State

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Court : Allahabad

Decided On : Nov-27-1964

Reported in : AIR1966All42; 1966CriLJ4

Judge : M.H. Beg, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103, 164, 423(1), 497A and 479A(1); [Evidence Act, 1872](#) - Sections 25; [Central Excise Act, 1944](#) - Sections 21(2)

Appeal No. : Criminal Appeal No. 878 of 1963

Appellant : Rajendra Kumar

Respondent : State

Advocate for Def. : (sic)

Advocate for Pet/Ap. : A. Banerji, Adv.

Disposition : Appeal dismissed

Judgement :

M.H. Beg, J.

1. The appellant has been convicted under Sections 471 and 473 read with Sections 466 and 474, I. P. C. and has been sentenced to two years R. I. and a

fine of Rs. 500 for each of the two offences. He has also been convicted under Section 9 of the Central Excises and Salt Act, and sentenced to six months' R. I. The sentences were directed to run concurrently.

2. It was alleged that the appellant was caught travelling in a truck in which he was trying to carry some contraband tobacco without the required permit, on 9th of June, 1960, at about 11.80 p.m. Information had been received by Sri C. P. Anand (P. W. 1), Superintendent, Central Excise, Kannanj, who was camping at Gursahaiganj, that a truck loaded with tobacco, on which no duty had been paid, was to be found in Chhibramau Tahsil, in district Farrukhabad, coming from Purabhoj on the Grand Trunk Road. Consequently, the Superintendent of Central Excise arranged two parties, one headed by Sri R.D. Kapil and another by Sri A.M. Warse. The party of Sri R.D. Kapil was posted at Gursahaiganj Railway Crossing and the party of Sri A.M. Warse was directed to proceed to Purabhoj. Information was also sent to Sri S.P. Bakshi, Deputy Superintendent, Central Excise, Chhibramau, to reach toll tax barrier No. 1 of Chhibramau. After making this arrangement, Sri Anand, accompanied by Sri H.C. Siddiqi, another Deputy Superintendent, Central Excise, proceeded on a scooter and waited near a culvert on the Grand Trunk Road.

At about 11 p.m., they detected a truck, with its head lights off, coming from the direction of Purabhoj, and they tried to stop it, but the truck took a turn towards Chhibramau and moved off speedily. The truck was followed on by the two Excise Officers, on a scooter until it was overtaken at Chhibramau toll tax barrier where the truck had halted. The driver of the truck, Kripa Shanker (P. W. 9), on being questioned, stated that the truck was carrying tobacco. The driver was asked to produce a permit and he pointed towards the appellant and stated that he had the permit. The appellant, however, failed to show any permit. Therefore, he was asked to get down. In the meantime, the party of Sri A.M. Warse as well as Sri S.P. Bakshi, Deputy Superintendent, Central Excise, and other public servants arrived and surrounded the truck.

The appellant and the truck were searched and a bag, alleged to have been brought by the appellant, was recovered, and three rubber stamps, one purporting

to be of the Deputy Superintendent Incharge, Multiple Range, Central Excise, Farrukhabad, and two others of private individuals, a numbering machine, ink pad, and other articles, including some money, were found in the bag. Among the materials contained in the bag were blank forms of transport permits and one transport permit Form No. 147530 duly filled up purporting to bear the seal of the Deputy Superintendent Incharge, Multiple Range, Central Excise, Farrukhabad, and also the purported signature of this officer. A recovery memo of what was recovered was prepared and two statements, one of the appellant, Rajendra Kumar (Ex. Ka-1) and another of the driver, Kirpa Shanker (P. W. 9) (Ex. Ka-30), were taken. These statements contained a confession of the appellant and the allegations made by Kirpa Shanker (P. W. 9). On 10th of June, 1960, Sri Anand P. W. 1 sent a written report to the Assistant Collector, Central Excise, for necessary action and a case was duly registered at police station, Chhibramau, on 13th of June, 1960, at 8 a.m.

This case was investigated by three Sub-Inspectors of Police, Sri K.N. Chaturvedi (P. W. 14), Sri C.M. Dixit (P. W. 13), and Sri Chaggan Singh (P. W. 12). Sri A.P. Mathur (P. W. 10), Deputy Inspector, Central Excise, appeared in Court and gave evidence that no such permit as the one said to have been shown by the appellant to the driver of the truck was ever issued by him. Sri B. Kumar (P. W. 11) and Sri Panna Lal (P. W. .7) also proved that the documents said to have been relied upon by the appellant to make the driver believe that he had a genuine permit were forged. Sri S.R. Desai (P. W. 3) and Sri P.C. Dass Gupta (P. W. 4) proved that the forms carried by the appellant in the bag were fabricated and not printed at the press of the Government of India. The trial Court relied upon the statements of the witnesses mentioned above and found the case against the appellant established beyond any reasonable doubt.

3. The evidence of recovery was sought to be challenged in this Court by pointing out certain minor contradictions which the trial Court had rightly rejected as insufficient for shaking the credibility of the prosecution case which is supported by quite considerable evidence. The appellant had stated, in the Court of the committing Magistrate, that he had been arrested while sitting in the truck near the toll tax barrier. In the trial Court he tried to wriggle out from this admission by

stating that the toll barrier near which he was arrested was the second toll barrier of Chhibramau and not the first one. The object of this assertion apparently was to falsify the otherwise overwhelming evidence that the appellant was arrested at toll barrier No. 1. Trucks passing through the municipal limits of Chhibramau were made to pay Rs. 5 at barrier No. 1 for which a receipt was issued to them. On the presentation of this receipt at the other end Rs. 4 was to be returned and Re. 1 retained as toll tax.

After the payment of the toll tax at the first barrier and the return of the security at the second barrier were both proved, it was hoped that this would falsify the prosecution case entirely. The person who was alleged to have paid the money at the first barrier and to have obtained a return of Rs. 4 at the second was Bansi (C. W. 1). This allegation was said to be corroborated by the evidence of Bhola Nath (C. W. 2) and Sheo Saran (C. W. 3). The learned Sessions Judge who tried the case came to the conclusion that the employees of the Municipal Board had been won over in order to help the appellant, or, in any case, Bansi (C. W. 1) had managed to secure the receipt for the return of the amount and to have had false entries in the register of the Municipal Board made after the truck had been caught. As the trial Court had expressed an opinion that the entries in the registers of the toll barrier appear to be incorrect without examining the registers, the two Court witnesses were summoned again to give their evidence in this Court, under Section 428, read with Section 540, Cr. P. C., after an application made on behalf of the appellant for this purpose had been allowed.

The evidence given by these two witnesses, Bhola Nath and Sheo Saran, Toll Moharrirs of the two barriers at Chhibramau, shows that they had issued the receipt to Bansi, C. W. 1, and made the relevant entries in the registers of the toll barriers, but, at the same time, their evidence in this Court makes it amply clear that they were not in a position to say what type of truck it was, who its occupants were, or what it carried, or where it was stopped and whether any of its occupants was arrested. It is likely that Bhola Nath, who was the toll moharrir at the first barrier had deliberately showed ignorance of what took place near the barrier, and that Sheo Saran Moharrir at the next barrier, who appears to be quite friendly with Bansi, had given Bansi the receipt for Re. 1 after returning the security without

bothering to ask questions or see the truck itself. If either of the two clerks had seen the truck or was not concealing truth he would have been able to depose something about its occupants. Their evidence on this aspect of the matter shows that they appear to be concealing the truth. It is, however, difficult, on the evidence on the record, to hold that they were not duped by Bansi (C. W. 1).

In any case, Bansi, (C. W. 1) appears, very cleverly, to have obtained all these raise entries at the toll barriers in order to help the appellant. It is, therefore, necessary to issue a notice to Bansi (C. W. 1) under Section 479-A (1) to show cause why a complaint should not be made against him for giving false evidence intentionally and fabricating evidence in order to help the appellant. The evil of perjury is much too rampant in cases depending on oral evidence, and, in order to deal effectively with it, it is desirable for Courts to use the amended provisions of Section 479-A (1) more frequently than it is done.

4. The evidence of recovery of the articles mentioned above from the possession of the appellant was attacked not only on the ground, that the place of arrest is wrongly shown but also on the ground that the Excise Officers were actuated by dishonest motives inasmuch, as a sum of Rs. 1,237.79 nP. was seized by the Superintendent and was only paid back to the appellant after he had made an application on 12th July, 1962, in the Sessions Court. It is difficult to appreciate this argument. The amount which was shown in the recovery memo. was, according to the application made on behalf of the appellant on 12th of July, 1962, deposited in Court. It is evident, from the indorsements on the relevant documents, that the amount was actually deposited in the Excise Department, and, after that, in Court. The case had been handed over to the police for investigation and prosecution on 13th of June, 1960. The Superintendent of Central Excise, who is expected to be a responsible and honest officer, discharged his duties efficiently and did not have anything to do with the investigation of the case after it was sent to the ordinary police. The money was not pocketed, by him but was deposited in the Excise Department.

It may be that the money was seized unnecessarily although even that is doubtful as money sometimes gives valuable clues about the offence committed. It cannot,

however, be said that the mere seizure of the money, together with other articles, indicated that the motive of the Excise Officers was dishonest. Honesty on the part of the citizens as well as the officers of the State is to be zealously safeguarded, and any evidence of dishonesty has to be ruthlessly scrutinised and investigated. Nevertheless, a charge of dishonesty or mala fides ought not to be lightly made against officers performing rather arduous duties, and it cannot, in any case, be lightly accepted by Courts without adequate reasons. A suggestion of dishonesty on the part of Excise Officers in this case was quite unjustifiable. It could only be made for diverting attention from evidence establishing the offence.

5. It was argued on behalf of the State that the confession of the appellant, made at the time of the appellant's arrest, to the Superintendent of Central Excise, which was signed by the appellant, can also be used as evidence. Reliance was placed on *State of Punjab v. Barkat Ram*, AIR 1962 SC 276, where it was held that the term 'police officer,' used in Section 25 of the Act, does not cover Customs' Officer acting under the provisions of the Land Customs Act, 1924, or under the Sea Customs Act, 1878. Their Lordships of the Supreme Court pointed out, in that case, that a Customs' Officer does not perform the Functions of an investigating officer, but has to act judicially in imposing penalties and confiscating properties. That was the ground on which it was held that a Customs' Officer under the aforesaid Act was not a 'police Officer' meant by Section 25 of the Evidence Act.

The reasoning adopted by Their Lordships indicates that an officer performing 'police' functions of investigation and arrest would be a police officer within the meaning of Section 25 of the Evidence Act. These functions are conferred upon the Excise Officers under the provisions of Section 21(ii) of the Indian Central Excises and Salt Act which invests Excise Officers with the powers of Inspectors of Police investigating cases and entrusts them with the duties of such investigating officers acting under the Code of Criminal Procedure. I, therefore, hold that the view taken by the trial Court was quite correct, and this confession was rightly excluded from evidence on the ground that the Superintendent of Central Excise was a 'police officer' for purposes of Section 25 of the Evidence Act. Nevertheless, there is overwhelming evidence in this case to justify the findings arrived at by the trial Court with which I concur.

6. Lastly, it was urged that the sentences awarded are excessive inasmuch as the appellant was only 26 years of age at the time of his trial and must have been about 23 years of age at the time of the commission of the offence and no previous offence has been proved against him. Mr. P.C. Chaturvedi, on behalf of the appellant, has accepted the position that reduction of the concurrent sentences from two years to six months' rigorous imprisonment and an enhancement of the fine from Rs. 500 to Rs. 2,000 will not be an enhancement of the sentence. As the appellant is a young man and deserves to be given an opportunity to reform himself, I. order that the sentence of two years' rigorous imprisonment together with a fine of Rs. 500 may be substituted by a sentence of six months' R. I., running concurrently, and a fine of Rs. 2,000 for each of the two offences against the I. P. C., and, in default of payment of fine, the appellant will undergo further rigorous imprisonment for a period of one year. The conviction under Section 9 of the Central Excises and Salt Act, with a sentence of six months' R. I., running concurrently, is also upheld. Subject to the above-mentioned modifications the appeal is dismissed. The appellant, who is on bail, will surrender and serve out the remaining period of his sentence.

7. A notice shall also issue against Bansilal(C. W. 1) under Section 479-A (1), Cr. P. C. calling upon him to show cause why a complaint should not be made against him for fabricating evidence and giving false evidence.

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