

Shankar Mandal Vs. State

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Court : Jharkhand

Decided On : May-09-2001

Reported in : 2001CriLJ3795

Judge : Deoki Nandan Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409; [Prevention of Corruption Act, 1947](#) - Sections 5(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Cri. Appeal No. 77 of 1995

Appellant : Shankar Mandal

Respondent : State

Advocate for Def. : P.P.N. Roy and Dilip Kumar Prasad, Adv.

Advocate for Pet/Ap. : A.K. Sahani, Adv.

Disposition : Appeal allowed

Judgement :

Deoki Nandan Prasad, J.

1. This appeal is directed against the judgment of conviction and sentence dated 15.9.1995 passed by the learned Special Judge (CBI), Dhanbad in R.C. Case No.

9 of 1981 (D), whereby and whereunder the learned Judge convicted the appellant under Section 409 of the Indian Penal Code and under Section 5(1)(c) of the [Prevention of Corruption Act, 1947](#) and sentenced him to undergo R.I. for four years and three years respectively, but both the sentences are ordered to run concurrently.

2. The case of the prosecution, in brief, as alleged is that in January, 1979 the appellant-Shankar Mandal took charge of Assistant Storekeeper, Rajpura including the diesel and the diesel pump was shown as opening balance in between 1.4.1980 and 16.3.1981. 1317515 litres of diesel was supplied by Indian Oil Corporation to the pump whereas 1255828 litres of diesel was Issued during this period and 112406 litres of diesel should have been balance on 16.8.1981 whereas 4521 litres of diesel was found to be available in the store for which the appellants, Shankar Mandal could not explain and 107885 litres of diesel was mis-appropriated. Accordingly the first information report was lodged. But after investigation, the period from 1.4.1979 to 22.5.981 was shortened between the period from 1.4.1980 to 16.3.1981. The charge-sheet was submitted after investigation.

3. The witnesses were examined in the Court below and some documents were also produced. After hearing both sides, the trial Court convicted and sentenced the appellant in the manner as stated above by the judgment impugned.

4. On being aggrieved and dissatisfied with the judgment, the appellant preferred this appeal claiming therein that the trial Court committed error in convicting the appellant without going into the evidence collected on the record. It is also alleged that the Court below failed to take into consideration that the said diesel pump was handled by several employees and the diesel was supplied by the persons employed there. It is also stated that the witnesses are interested and there is much contradiction in the evidence of PWs. Thus the judgment of conviction and sentence is fit to be set aside.

5. PW 1 claimed to be posted as typist from 1975 to 1981 at Rajpura Colliery. According to him, the appellant Shankar Mandal was Assistant Storekeeper of diesel pump during 1980-81. He admitted in his cross-examination that he had

also worked in the absence of Shankar Mandal and he also used to receive and issue diesel. He proved the entry Ext. 8/3 indicating issuance of diesel in favour of contractor Tajmul Hussain for a period from 15.11.1980 to 13.3.1981. PW 2 Brahmeshwar Ojha also admitted to had worked on the order of Agent. Manager and Assistant Storekeeper for receipt and issuance of diesel. PW 3 was Munsii at Rajpura diesel store during the period 1980-81 and he used to receive and issue diesel on the order of storekeeper. According to him, he was working at the diesel pump on the order of Shankar Mandal because he was Munsii, He further stated that Charan Babu was the storekeeper whereas this appellant Shankar Mandal was the Assistant Storekeeper and he had no knowledge as to who had taken how much diesel at the relevant time. PW 4 clearly deposed in paragraph 6 of this cross-examination that Shankar Mandal, the appellant was incharge of the diesel pump but there was no written order to this effect as he being the agent, had not issued any such order. Admittedly no such written order has been produced to this effect that the appellant, Shankar Mandal was made incharge of the pump. According to him, N.C. Banerjee was also working in the diesel store to receive and issue the diesel. He further stated that Security Officer was also posted outside of the diesel store.

PW 5 stated that he was agent in Rajpura Colliery from 1.6.1978 to March, 1982. According to him, monthly statement of store, receipt, issue and balance of materials were sent to him. He admitted in his cross-examination that he cannot say on which dates diesel used to be received in his store and how much diesel was actually received in hisstore from the diesel pump. He further admitted that there were 4-5 clerks working in the diesel store besides Shankar Mandal but he cannot say their designation. He further claimed in his evidence that he had not started any departmental proceeding for the said shortage of diesel.

PW 6 claimed to be an Assistant Accountant working at Rajpura Colliery in the year 1980-81. He proved some invoice chal-lan. According to him. the entry was made in the cash book on the basis of invoice challan. He cannot say that the diesel was also kept in the drum.

PW 7 claimed to be posted at Indian Oil Corporation Depot, Dhanbad in July, 1981. According to him, diesel used to supply from the said Depot to Rajpura Colliery pump store. However, he admitted in his cross-examination that he has got no knowledge about this case. The appellant was also examined under Section 313 of the Cr PC. According to him, B. Ojha, K.C. Rana, Mr. Khan, R.K. Das, Prahlad Mandal and N.C. Banerjee were also working in the diesel store and they also used to issue and receive diesel during the period in question.

6. DW 1 was working as Civil Clerk in Rajpura Colliery in the year 1980-81. According to him, K.S. Rana and B. Ojha also worked in the diesel store. He further stated that diesel was issued on the order of S.C. Sen Gupta and he used to grant slip for the same. N.C. Banerjee, B.K. Ghosh, K.S. Rana, B. Ojha and K.K. Das used to issue diesel on the basis of the said slip. He further deposed that the capacity of the tank was 12000 to 15000 litres and when it was full of the capacity, the rest of the diesel used to be kept in the drum and there were about 300 drums kept at the diesel pump and some of the drums were having leakage and the leakage used to be closed by putting soap. He also stated that Shankar Mandal used to issue diesel on the basis of the slip.

7. It is true that the appellant-Shankar Mandal was ordered to take charge from T. Charan (Ext. 1) but there is no specific written order to show that Shankar Mandal was sole incharge of the said diesel pump. There is no dispute that several persons were also working at the diesel pump and they used to receive and issue diesel. It has also come in evidence that the capacity of the diesel pump was from 12000 to 15000 litres and the diesel received, after full capacity, used to be kept in the drums.

8. From the office order dated 13.1.1979 (Ext. 1) it appears that Shri Charan was advised to hand over the charge to Shri Shankar Mandal, Assistant Storekeeper but the said order appears to be interpolated as there are cuttings over the name, as earlier the name of B. Ojha was inserted as he was admittedly working in the said diesel pump store. But the name of B. Ojha was erased. PW 1, who was typist clerk in the Rajpura Colliery from 1975 to 1981, gave out detail in respect of the slips Ext. 1 series and those issue slips of diesel as well as receipt slips diesel

was admittedly dealt with by B. Ojha, B.K. Ghosh. Kartar Singh Rana (PW 1). N.C. Banerjee and K.K. Dawn. From going through the issue slips for which the diesel was issued, it is evident that other persons besides the appellant were dealing with the diesel but surprisingly enough other persons, who were also participated actively in dealing with the diesel during the check period, have not been brought to face the consequences though they could have also been held responsible in the same way as to the appellant who was dealing the diesel. S. Dutta, Manager who said to have issued the said order dated 13.1.1997 (Ext. 1) has not been examined by the prosecution. He could have explained the circumstance under which interpolation and cutting were made in the said order. By inserting the designation as 'Assistant Storekeeper' will not be suffice to hold him responsible for shortage of diesel as there is no specific order that he was sole incharge of diesel pump and admittedly several persons are directly indulged in issuing diesel. Moreover, the 'Assistant Storekeeper' has been inserted/written in different handwriting in the office order dated 13.1.1997 (Ext. 1). There is also cutting which smacks much suspicion about the genuineness of this order Ext. 1. Some portions are typed when some portions are written through ink. No reason assigned as to why there was no specific order in respect of the appellant. It may be noted here that PW 4, who was agent at the relevant time, admitted that the departmental proceeding was also initiated and he had deposed in the said departmental proceeding but curiously enough, no enquiry report of the said departmental proceeding has been brought on the record which also makes prosecution case doubtful and suspicious. According to PW 6, he had no knowledge if diesel was also kept in some of the drums during the said period. Learned Judge, while passing the judgment failed to consider that other employees were also issuing diesel during the check period. There is nothing specific that the appellant was ever indulged in selling or black marketing the diesel at any point of time. Evidence has come that there was security at the gate. In view of such discrepancies, it would not be safe to convict the appellant and he deserves benefit of doubt.

In the result. I find that the prosecution has failed to establish the charges against the accused/appellant beyond all reasonable doubts as required under the law and the appellant is entitled for the benefit of doubt.

9. Having regard to the whole facts and circumstances, coupled with the evidence discussed above, there is merit in this appeal which is accordingly allowed. Hence the appellant (Shankar Mandal) is hereby acquitted for the benefit of doubt. The judgment of conviction and sentence passed by the Court below is hereby set aside. The appellant is already on bail, hence he is discharged from the liability of his bail bonds.

10. Appeal allowed.

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