Kuldip Sharma and Another Vs. State

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Court : Delhi

Decided On : Jan-10-2000

Reported in : 2000IIAD(Delhi)101; 2000CriLJ1272; 84(2000)DLT358

Judge : M.S.A. Siddiqui, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 420

Appeal No. : Crl. A. No. 383/77

Appellant : Kuldip Sharma and Another

Respondent : State

Advocate for Pet/Ap. : Mr. Anis Ahmed, Adv

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. This appeal is directed against the judgment of Shri P.L. Singla, 8th Additional Sessions Judge, Delhi convicting the appellants under Section 420 I.P.C. They have been sentenced to rigorous imprisonment for one year and a fine of rupees fifteen thousand, in default rigorous imprisonment for six months.

2. Briefly stated, the prosecution case is that the appellants are the sons of the accused Jagan Nath Sharma (since dead). The appellants were partners of M/s. J.N. Sharma & Sons. The said partnership firm used to manufacture engineering goods including galvanised telephone poles etc. In 1964, the Directorate General of Supplies and Disposals, Government of India invited tenders for supply of 70,000 galvanised steel tubes rivetted (seam) tapered D-8'. The tender submitted by the said firm was accepted and the supply order A.T. No. SHM. 4/7289-N & 7391-N/1/64/JN/1614 dated 2.3.1964 was placed on the firm for supply of stores valued at Rs. 39,27,000/- @ Rs. 56.10 per galvanised steel tubes rivetted (seam) Tapered D-8'. As per terms of the contract the accused firm was entitled to receive 95% payment on proof of dispatch and balance 5% on receipt of stores by the consignee in good condition and accepted by him. On 14.2.1968, Shri R.C. Ghai, Deputy Director General (Administration), Ministry of Works and Housing, Government of India addressed a complaint to Shri P.V. Hingorani, DIG/CBI/SPE/(G.W.11). New Delhi alleging therein that the accused firm had supplied less quantity of stores to the consignees but had obtained 95% payment in respect of quantity in excess of the one actually supplied by quoting fictitious Railway Receipts in the bills and thereby cheated the Government to the tune of Rs. 6,76,803/-. Investigation pursuant thereto culminated in submission of a charge-sheet under Sections 120-B/420 I.P.C. against the accused persons.

3. The appellants abjured their guilt and alleged that their father (deceased J.N. Sharma) was directly in charge of the affairs of the accused firm. They had not adduced any evidence in support of their defense. The learned Additional Sessions Judge, on an assessment of the evidence adduced by the prosecution found the appellants guilty under Section 420 I.P.C. and convicted and sentenced them as indicated above.

4. It is relevant to mention that the accused J.N. Sharma died during the trial. The question is : whether the appellants are guilty under Section 420 I.P.C. For a person to be convicted under Section 420 I.P.C. it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he does so with the intention of causing

wrongful gain to one person or wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. There are two facets of the definition of dishonesty and it is enough to establish the existence of one of them. The law does not require that both should be established. (Tulsi Ram Vs . State of U.P., : AIR 1963 SC666).

5. It is a common ground that the firm M/s. J.N. Sharma & Sons was a partnership firm of which the appellants were also partners. The said firm used to manufacture engineering goods including galvanised Steel tubes etc. Pursuant to the notice inviting tenders issued by the Directorate General of Supplies and Disposals, Government of India for supply of teel tubes, rivetted (seam) tapered D-8', the accused firm submitted its tender, which was accepted. Consequently, the supply order A.T.No. SHM-4/7289-N & 7391-N/1/64/JN/1614 dated 2.3.1964 was placed on the said firm for supply of 70,000 galvanised steels tubes rivetted (Seam) tapered D-8' for Rs. 39,27,000/- @ Rs. 56.10 per galvanised Steel tube. As per term of the contract 95% of the cost of the stores was to be paid to the accused firm on proof of dispatch and balance 5% thereof was to be paid on receipt of stores by the consignee in good condition and accepted by him. The appellant Kashyap Sharma, in his examination under Section 313 Cr. P.C., has admitted his signatures on the bills Ex. 37/B-1 for Rs. 38,092/-, Ex. PW-37/B-2 for Rs. 38092/-, Ex. PW-37/B-11 for Rs. 38053/-, Ex. PW-37/B-13 for Rs. 40,064/-, Ex. PW-37/B-14 for Rs. 40,499/-, Ex. PW-37/B-15 for Rs. 13,590/- and Ex. PW-37/B-16 for Rs. 44,304/-. Similarly, the appellant Kuldip Sharma has also admitted his signature on the bills Ex. PW-37/B-3 for Rs. 38,092/-, Ex.PW-37/B-5 for Rs. 38,053/-, Ex. PW-37/B-6 for Rs. 16,308, Ex. PW-37/B-7 for Rs. 41.260/-, Ex. PW-37/B-9 for Rs. 17,504/-, Ex. PW-37/B-12 for Rs. 34,465/- and Ex. PW-37/B-20. It is also undisputed that 95% cost of the stores was paid to the aforesaid firm on the basis of these bills.

6. In the bill Ex. PW-37/B-1, R.R. No. 044185, dated 18.11.65 has been mentioned as a proof for dispatch of the contracted goods. It has come in the evidence of Jagdish Kumar (PW-4) that the date of R.R. No. 044185 is 16.11.1965 and under

the said RR consignment was sent by M/s. Autobhan Industries to Yeotmal. His evidence finds sufficient confirmation from the original R.R. No. 044185 dated 16.11.1965 (Ex.PW-29/A-5). Gobind Narain Lakhe (PW-18) testified that no store was received under R.R. No. 044185 dated 18.11.65. The bill Ex. PW-37/B-2 mentions the R.R. No. 399478. PW I.R. Anand, Railway Goods Clerk, Faridabad (PW-29) testified that the goods were booked under the R.R. 399478, dated 24.12.65 (Ex. PW-29/F-5) from Faridabad to M/s. Shankar Stores. Wardha and the said goods were booked by M/s. Hindustan Vaccum Glass, Faridabad. On this point, his testimony finds sufficient confirmation from the evidence of Nawal Kishore (PW-38), who had worked as Account Officer in M/s.Hindustan Vaccum Glass, Faridabad from 1963 to 1975. PW Gobind Narain Lakhe (PW-18), who was posted as Assistant Engineer, in charge Telegraph Circle Store epot at Secunderabad deposed that no store was received under the R.R. No. 399478, dated 24.12.65 from the said firm.

7. The bill Ex. PW-37/B-11 mentions RR Nos. 044343 and 044344 dated 28.3.1967. PW I.R. Anand (PW-29) deposed that on 28.3.1967, no booking was done on behalf of M/s. J.N. Sharma & Sons. On this point, his testimony finds sufficient confirmation from the evidence of Sardari Lal Sharma (PW-43), who was the Store-Keeper of the accused firm. As per bill Ex. PW-37/B-11, the stores were consigned to the controller of Telegraph Stores, Bombay under the aforesaid railway receipts. PW V.J. Konde (PW-8) testified that no store was received at Bombay under the aforesaid railway receipts.

8. The bill Ex. PW-37/B-13 mentions railway receipts Nos. 066374 and 066375, dated 7.7.1967. PW I.R. Anand (PW-29) deposed that the original railway receipts (Ex. PW-29/B-5 & Ex. PW-29/C-5) were blank as no booking had been done thereunder. Sardari Lal Sharma (PW-43) testified that on 7.7.1967, no material was booked or dispatched on behalf of the accused firm.

9. The bill Ex. PW-37/B-14 mentions the railway receipts No. 066378 and 066379 dated 8.7.1967. PW I.R. Anand (PW-29) deposed that the railway receipts bearing the aforesaid numbers (Ex. PW-29/D-5 and Ex. PW-29/D-8) were blank as no booking had been done thereunder. PW Sardari Lal Sharma (PW-43) stated in his

evidence that on 8.7.1967, no booking was done on behalf of the accused firm.

10. The bill Ex. PW-37/B-15 mentions the RR No. 554866 dated 8.7.1967. PW I.R. Anand (PW-29) materially corroborated by the store keeper Sardari Lal Sharma (PW-43) testified that on 8.7.1967, no booking was done under the said R.R. on behalf of the accused firm. The said bill pertains to Bombay and PW V.J. Konde (PW-8) deposed that no store was received at the Bombay Office under the aforesaid R.R. The bill (Ex. PW-37/B-16) mentions railway receipts Nos. 044357 and 044358 dated 8.7.1967. PW I.R. Anand (PW-29) materially corroborated by the store keeper Sardari Lal Sharma (PW-43) testified that on 8.7.1967, no booking was done on behalf of the accused firm.

11. The bill (Ex. PW-37/B-3) mentions the R.R. Nos. 544548 and 544549, dated 11.4.1966, the bill (Ex. PW-37/B-5) mentions the R.R. Nos. 3421/6 and 3421/7, dated 28.6.1966, bill (Ex. PW-37/B-6) mentions the R.R. No. 2802, dated 9.3.1967, bill (Ex. PW-37/B-7) mentions the R.R. Nos. 2803 and 2804 dated 9.3.1967, bill (Ex. PW-37/B-9) mentions the R.R. No. 2805 dated 10.3.1967 and the bill (Ex.PW-37/B-12) mentions the R.R. Nos. 066358 and 066359 dated 28.6.1967. It has come in the evidence of I.R. Anand (PW-29) and the Store Keeper Sardari Lal Sharma (PW-43) no goods were dispatched on behalf of the accused firm under the railway receipts mentioned above. It is significant to note that the R.R. No. 066358 (Ex PW-29-W-4), which finds mention in the bill (Ex. PW-37/B-12), was actually issued on 20.9.1967 on behalf of M/s. Hitkari Brothers, Faridabad and the R.R. No. 066359 (Ex. PW-29/X-4) was issued on 20.9.1967 on behalf of M/s. Hindustan Bovery, Farida-bad. These facts have come in the evidence of I.R. Anand (PW-29 and D.S. Ahuja (PW-6).

12. Nothing has been elicited in the cross-examination of the aforesaid witnesses to shake their credit. Their evidence has been believed by the learned Additional Sessions Judge and I am not inclined to differ with him on the said point. Thus, the evidence adduced by the prosecution proves beyond any shadow of doubts that the appellants had obtained payments from the Government of India by sending the aforesaid bills containing numbers of bogus railway receipts representing that the contracted goods had been booked and dispatched under the bogus railway

receipts mentioned in the bills. The false representation made by the appellants in the aforesaid bills regarding dispatch of the contracted goods induced the Government to part with the money to satisfy those claims put forward by the appellants in the form of bills.

13. In the circumstances and for the reasons stated above, there can be no escape from the conclusion that the conviction of the appellants for the offence under Section 420 I.P.C. was well founded.

Coming to the question of sentence, learned counsel for the appellants stating that the offence with which the appellants were charged was committed more than thirty years ago and the appellants have undergone the proceedings for a period of three decades, fervently pleaded for mercy. This Court has sometimes taken into account the long period for which the sentence imposed may have remained dangling over the head of a convict like the sword of Damocles. Moreover, a period of more than three decades is a long time in the course of which the condition of life and the outlook of a man may have changed entirely. This case has taken so long to decide finally due to no fault of the appellants. Consequently, I reduce the sentence of imprisonment upon the appellants under Section 420 I.P.C. to the period already undergone by them, but I maintain the fine of Rs. 15,000/- imposed upon the appellants and in default of payment of fine, they shall undergo a sentence of rigorous imprisonment for six months. Subject to this modification, the appeal is hereby dismissed.