

Babu Lal and Another Vs. the State and Others

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Court : Delhi

Decided On : May-26-1981

Reported in : 1982CriLJ41; 20(1981)DLT354

Judge : M.L. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313; Evidence Act - Sections 24 and 106; Arms Act - Sections 19(1)

Appeal No. : Criminal Revn. No. 33 of 1981 (From order of P.S. Sharma, Addl. Sessions J., Delhi, D/- 30-1-1981)

Appellant : Babu Lal and Another

Respondent : The State and Others

Advocate for Pet/Ap. : R.K. Naseem,; N.K. Parmar,; T.S. Sodhi,;

Judgement :

ORDER

1. H. C. Malik (P.W. 2) U.D.C. of the office of the Chief Wild Life Warden received a telephone call at 3.45 p.m. on October 18, 1978 from unknown person that there is a person Nawab dealing in skins in a house on Nawab Road, Kasab Pura, Delhi. He passed on this information to the Wild Life inspector Param Vir Singh (P.W. 1). Sometimes later in the day, at 5.30 p.m. or about they both reached the premises No. 6488, Nawab Road, Kasab Pura, Delhi, where there a brush factory,

(sic) partners in the factory; he himself and his sons Sohan Pal and Din Dayal. He admitted that six leopard and one leopard cat skins were recovered from the smaller room adjacent to the main door which was in his possession on October 18, 1978. At that time his servant Mangal Sain was present. He did not know how these skins came in his room, and who kept there. The other two accused persons, namely, Sohan pal and Din Dayal also wrote a letter (Ex. PW1/G) to the Wild Life Warden stating that it is true that they are co-partners with their father Babu Lal and stood by his statement. The partnership deed (Ex. PW1/F) dated April 2, 1974 Provides that the partners shall personally attend to the business of the firm, shall carry on the business honestly and diligently and to the greatest common benefit and shall render full and true information of all affairs of the firm to one another. Each partner shall be entitled to operate upon every bank account on behalf of the firm.

2. After inquiry a complaint was lodged by Paramvir Singh against Babu Lal, in Dayal, Sohan Pal and Mangal Sain under section 55 of the Wild Life (Protection) Act, 1972 (the Act) read with Sections 40 and 44 thereof.

3. The accused Babu Lal in his examination under section 313, Cr.P.C. stated on September 29, 1980 that he was not aware of any raid having been conducted in the house which served as godown. He was actually in the hospital on those days and was not attending to any work for the last four years. He admitted that Mangal Sain was their employee but he does not work there. As regards his statement (Ex. PW1/D) he stated that his signatures namely, Sohan Brush Factory is being run (sic). They knocked the door and went inside. There were four rooms in the house. Accused No. 4 Mangal Sain an employee was found present in a room preparing brushes. There was a smaller room near the main gate. It had only one door which opened in the East in the courtyard. It was locked. It was opened by Mangal Sain. There were seven bundles lying there. Upon a search, six uncured skins of leopard and one uncured skin of leopard cat were found in them. They asked Mangal Sain whether he could produce any license or authority for dealing in the salty articles, but he could not. The Inspector prepared a seizure memo (Ex. PW1/A) which was signed by H. C. Malik. He asked the persons present to be witnesses of recovery. But none agreed. Later on, H. C. Malik (PW 2) brought S.I.

Jagbir Singh and two more policemen who also signed the seizure memo. While the seizure memo was being prepared Mangal Sain escaped. There was nobody to receive the copy of the seizure memo. The party returned to the office at 6.15 p.m. Mangal Sain later on sent a letter (Ex. PW1/B) to the Chief Wild Life Warden that the skins were recovered in his presence wrapped in a hold-all. The hold-all was there in the house for the last two days but he did not know that it contained trophies. He was frightened and ran to accused Sohan Pal who had rented the premises and had engaged him for the purpose of preparing brushes. Accused Babu Lal made a statement (Ex. PW-1/D) on April 6, 1979 that he is a tenant of two rooms in house No. 6488. He admitted that he ran a factory of brush manufacturing at house No. 1159, Gali No. 11, Sadar Bazar and at 6488, Nawab Road. There were three were there (sic) but he was not told about its contents. The premises raided were lying vacant. One of its room was used as store. It always remained unlocked and had two doors both opening on the main road and the general public can pass through it.

4. Accused Sohan Pal stated that he was not aware of the raid. He was on business tour in Rajasthan from October 15, 1978. As regards his reply (Ex. PW1/G), he stated that he had no occasion to go through the statement made by his father nor was he shown the same.

5. Din Dayal said that on the date of the alleged raid he was sick. With regard to his letter (Ex. PW1/G) he stated that he had no occasion to go through the statement made by his father because he was not shown the same.

6. Mangal Sain stated that he was an employee of the factory, but working in a room different from the room which was raided by the party. The raiding party had inquired of him whether brushes were prepared there. He knew nothing about the skins. As regards his statement (Ex. PW1/B), he explained that his statement was wrong. He denied that any raid was conducted in his presence. He was called to the office after 2-3 days and was directed to sign some papers.

7. The accused also produced a defense witness Prasadi. He said that during the relevant time Babu Lal was in the T.B. Hospital, Sohan Pal outside the town and Din Dayal was sick. Mangal Sain was working in the godown. He did not see

anything being recovered from the premises.

8. The learned Additional Chief Metropolitan Magistrate, Delhi by his judgment of October 4, 1980 convicted all the four accused persons. He awarded Babu Lal, Sohan Pal and Din Dayal each rigorous imprisonment for three years and a fine of Rs. 2,000/-, in default to simple imprisonment for six months. He sentenced Mangal Sain to rigorous imprisonment for six months and a fine of Rs. 500/- in default, to undergo simple imprisonment of 1 1/2 months.

9. On appeal, the learned Additional Sessions Judge, by his judgment dated January 30, 1981, acquitted Sohan Pal and Din Dayal as he was of the view that their case was not covered by Section 58 of the Act. He held that only Babu Lal and Mangal Sain had active knowledge and control of the skins. He maintained the convictions and sentences of Babu Lal and Mangal Sain except that the sentence awarded to Babu Lal was reduced to one year.

10. Babu Lal and Mangal Sain have filed this revision petition in which issued notices to Sohan Pal and Din Dayal to show cause why their acquittal be not set aside. Since then, I have heard the arguments and considered the matter.

11. There is no doubt that by the statement of the two prosecution witnesses and the letters written by the accused, it is proved that the trophies were recovered from the room in the premises which belonged to Sohan Brush Factory run by the partnership firm. I, therefore, see no ground to disbelieve this part of the prosecution story. It certainly cannot be rejected on the ground that no witness out of the crowd that collected or out of the police officers who signed the seizure memo, was produced.

12. The learned council contend that the recovery is sought to be proved by the statements (Ex. PW1/B, Ex. PW1/D and Ex. PW1/G) which cannot be used against the accused. They are mere admissions of hear-say facts and even if they are treated as confessions, they were hit by Section 24 of the Evidence Act having been made to the persons in authority and cannot be read against the accused. Moreover, the alleged confessions consist of exculpatory and inculpatory parts and if they are to be read in evidence against the accused, then they have to be

read as a whole. The prosecution cannot make use of only the inculpatory portion. Either the whole of them has to be accepted or the whole of them has to be ignored. He relies upon *Hanumant Govind Nargundkar v. State of Madhya Pradesh*, : 1953 CriLJ129 , *Yusufalli Esmail Nag Nagree v. State of Maharashtra*, : 1968 CriLJ103 , and *Sevantilal Karsondas Modi v. State of Maharashtra*, : 1979 CriLJ645 . But it appears that the law has undergone a change in *Nishi Kant Jha v. State of Bihar*, : 1969 CriLJ671 ; *Hira H. Advani v. State of Maharashtra*, : 1971 CriLJ5 and *Bhagwan Singh Rana v. State of Haryana*, : 1976 CriLJ1379 which have made it permissible to believe one part of the confessional statement and disbelieve another if the whole of the confession is tendered in evidence. It is, therefore, too late in the day to urge that the confessional statement cannot be believed in part and disbelieved in part. The accused has to show as was done in *Seventilal Karsondas Modi (supra)* that the statement was caused by inducement, threat or promise given by a person in authority and the accused had reasonable grounds to believe that by making a confession, he would get any advantage or avoid any evil of temporal nature in relation to the proceedings against him. The accused proved nothing of the kind. There is no allegation even. It does not appear to me that any of the requirements of Section 24 exists in this case. There is no doubt that even the confessional part of these statements is admissible in evidence. I, therefore, hold that these statements were rightly taken into account by the trial court.

13. Now, the questions that need resolution are whether the responsibility for the offence is to be fixed by Section 58 of the Act or it is to be considered on individual offence and if so, by whom committed. It is urged that no offence under section 51 of the Act is committed by any of the accused persons because the prosecution has failed to prove that the possession of the accused was a conscious possession. An additional submission was that though the tenancy of the rooms was in the name of Babu Lal, he was not the sole occupant and has been ill for four years, while Mangal Sain was a mere workman and they cannot be held responsible for the presence of the incriminating articles. Reliance was placed upon a Full Bench decision of the Lahore High Court in, *Emperor v. Santa Singh*, AIR 1944 Lah 339 : (1945) 46 Cri LJ 1. It was observed, with reference to the provisions of Section 19(1) of the Arms Act, 1878 and Section 5 of the Explosive

Substances Act, that where the possession or control of fire arm or explosive substance has been made an offence, the words 'possession and control' must mean conscious possession and actual control; there must be means read or guilty knowledge before a person can be convicted of such possession. This was a case in which incriminating articles were recovered from a house. The house was occupied besides its owner by his wife, children and father. The owner was not present at the time when the police visited the village. The question arose whether the master of the house could still be held liable. The learned Judges were of the view that where it is clear from the evidence of recovery that the house-master or head of the family must have been aware of the incriminating articles, then different considerations arise. Other facts may tend to show that he was in possession or control of the articles or that he and others were jointly, in possession or control. But where the evidence does not point to the possession or control of any particular member of a house-hold, the head of the family or house-master is in much the same position as other members of the family. He cannot be convicted in such cases merely because he is the head of the house. It was further observed that the conviction is also not possible with the aid of Section 106 of the Evidence Act because in that case, it would throw the burden upon each accused to establish his innocence once the facts giving rise at best to suspicion have been proved. It appears to me that to bring the law in line with the Lahore observations, Section 35 was added to the Arms Act providing that where any arm or ammunition in respect of which any offence under the Act has been or is being committed or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is a reason to believe that he was aware of the existence of the arms or ammunition in the premises shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone. This section came to be considered by the Supreme Court in *Pabitar Singh v. State of Bihar*, : 1972 CriLJ1172 . It was held that in case of joint occupation or joint control of the premises that essential ingredients of the offence must be established in the light of Section 35. The learned counsel then referred to *Ram Rattan v. State of Punjab*, : 1979 CriLJ791 in which the conviction under section 9(1) of the opium Act was set aside because at the time the recovery was

effected, the accused was not present even in the vicinity of the house, and it was also not proved that he was a tenant in the premises. It was held that there was nothing on record to indicate that opium recovered from the house was in conscious possession of the accused. These cases do show that in order to prove that the accused had the culpable state of mind in cases in which mere possession of an article is an offence, it is necessary to show that there was reason to believe that the accused was aware of the existence of the article. But the present case is governed by Sections 57 and 58 of the Act. Section 57 makes a provision that where it is established that a person is in possession, custody or control of trophy or uncured trophy etc., it shall be presumed, unless the contrary is proved, the burden of proving which shall lie on the accused, that such person is in unlawful possession, custody or control of such trophy or uncured trophy etc. There is no doubt, as I have said above, that the trophy was recovered from the factory premises and at the time of the recovery the entire factory premises and the hold-all which contained the incriminating trophy were in the possession, custody or control of the firm and in physical custody of their workman Mangal Sain. thereforee, a presumption is raised against all of them which they have not been able to rebut.

14. As regards Section 58 of the Act, I have had an occasion to examine a similar provision under the Delhi Development Act, 1957 in Central Bank of India v. Delhi Development Authority, Crl. R. 246/80 decided on May 4, 1981 (reported in : 20(1981)DLT98 , as also the unamended Section 17 of the Prevention of Food Adulteration Act, 1954, in Ram Kumar v. State and M.C.D. (1979) 2 FAC 56. According to these provisions where an offence is committed by a firm, then the firm as well as every person who is in charge of and responsible to the firm for the conduct of the business shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence. Nevertheless if the offence is committed with the consent or connivance or is attributable to any neglect on the part, of any partner, he shall also be deemed to be guilty of that offence. Now, certain things are obvious in this case. Every partner was equally responsible to and in charge of the affairs of the firm as stated in the partnership deed. One of them Sohan Pal has admitted that he had gone out on the business

of the firm. He was thus admittedly in charge of the firm's business. The contention of the learned counsel is that since the firm has not been charged with any offence, the other partners of the firm cannot be prosecuted because the condition precedent for the application of Section 58 of the Act is that the offence, must be committed by the firm but the firm was not even challaned. To my mind, there is a fallacy in this argument. The premises belonged to the firm. The article recovered from the firm shall be deemed to be in possession of the firm. The offence was, therefore, committed by the firm; it does not matter if its main business was brush making. As I have said in *Ram Kumar* (1979) 2 FAC 56 (supra) it is not necessary that the partners of the firm cannot be prosecuted as long as the firm was not prosecuted. The liability is joint and several and as soon as it is found that the offence has been committed by the firm, then not only the firm but every person in charge and responsible for the conduct of its business is liable to prosecution. That the offence has been committed by the firm is not a pre-condition but a circumstance giving rise to a statutory liability on the part of the person in charge of the affairs of the firm.

15. The learned counsel then submitted that it has to be alleged and proved that the accused were in charge of and responsible to the company for the conduct of the business of the company; vide *Madan Lal v. State*, 1972 FAC 461 and *Basant Lal v. M.C.D.* (1979) 1 FAC 1. It is true that it has got to be done by the prosecution. But in this case the accused themselves have by production of the partnership deed shown that all the three partners were equally responsible to and in charge of the conduct of the business of the firm. therefore, unless they show that the offence was committed without their, knowledge or in spite of diligence exercise by them to prevent the commission of the offence, it was difficult for them to escape the liability. They miserably failed to so prove. One, of them, Sohan Pal has admitted that he had gone out for business and the other two were in town lying sick but temporary absence or sickness will not show that they had nothing to do with the affairs of the firm or absolve them from the liability, as was held in *G. L. Gupta v. D. N. Mehta*, : [1971]3SCR748 . It is impossible to believe and hold as is contended by Babu Lal appellant on the one hand and his sons on the other that none of them was in charge of or responsible to the affairs of the firm, and to allow every one of them to escape from punishment. Preservation of wild life is vital not

only for the animals themselves, but also for ecological balance and survival of the human race. The learned Additional Sessions Judge has already shown leniency in the matter of punishment. I see no scope for further reduction in the sentence of or for grant of probation to the appellants.

16. I, therefore, find no substance in any of arguments of the counsel and direct that (i) the revision of Babu Lal and Mangal Sain is dismissed; and (ii) acquittal of Sohan Pal and Din Dayal is set aside and the case in respect of them shall be sent back for their retrial.

17. Revision dismissed.

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