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State Vs. Rawatsingh

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Court : Rajasthan

Decided On : Jul-27-1956

Reported in : AIR1957Raj26; 1957CriLJ103

Judge : Wanchoo, C.J. and; Dave, J.

Acts : Rajasthan Armed Constabulary Act, 1950 - Sections 6 and 7; Code of Criminal Procedure (CrPC) , 1898 - Sections 238; Indian Penal Code (IPC), 1860 - Sections 409

Appeal No. : Criminal Appeal No. 65 of 1954

Appellant : State

Respondent : Rawatsingh

Advocate for Def. : Ugamraj, Adv.

Advocate for Pet/Ap. : Kansingh, Deputy Govt. Adv.

Disposition : Appeal allowed

Judgement :

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Rawatsingh by the Sessions Judge of Jodhpur of offences under Section 6 (e), Rajasthan Armed

Constabulary Act (No. 12 of 1950) (hereinafter called the Act), and Section 409, Penal Code.

2. The facts of the case are not in dispute and these are that the accused Rawat Singh was enrolled in the Rajasthan Armed Constabulary Force in 1951. At the time of enrolment certain articles, which form the kit of a member of the force, were handed over to him. It appears that the accused left his post on 5-5-1953, without leave. The matter was reported to the Company Commander Shri Sanwatsingh, and it was found that certain articles out of the kit were missing.

Thereafter, a constable was sent after the accused, and he was arrested at Ramdeo which is the rail-head for Jaisalmere where the accused was posted at the time. He was brought back to Jaisalmer, when five of the articles out of his kit were found in his possession, namely a blanket, a bush-coat, a water bottle, woolen socks and a jersy. The accused was then handed over to the police, and was prosecuted.

3. The learned Sessions Judge has acquitted the accused of both the offence under Section 6 (e) of the Act as well as under Section 409, I. P. C. Section 6 (e) provides for punishment for deserting the service, and the question that was raised before the learned Sessions Judge was about the meaning of the word 'desertion'. He was of the view that 'desertion' implied abandonment of one's post coupled with the intention not to return at all.

Learned Deputy Government Advocate does not contest this meaning of the word 'desertion'. There can be no doubt that the word 'desertion' does not simply mean leaving the post or mere departure from the post without permission. It means something more, and that something more is the intention never to return to the post, or to go away with the idea of avoiding hazardous duty, or shirking any important service.

It is not the prosecution's case that the accused left with the idea of avoiding any hazardous dulyor shirking any important service. Nor has it been satisfactorily proved that the accused had no intention of returning to duty at all. All that the prosecution has been able to prove in this case is that the accused left his post

without leave. The accused has admitted that. The Sessions Judge was, therefore, right in acquitting the accused of an offence under Section 6 (e) of the Act.

4. It is urged by the learned Deputy Government Advocate that Section 7 (g) of the same Act provides for a minor offence where a member of the Rajasthan Armed Constabulary quits his post guard without leave. It is said in the grounds of appeal that it was brought to the notice of the learned Sessions Judge that even if the accused was not guilty under Section 6 (e), he was guilty under Section 7 (g) of the Act. If that is so, it is a matter of regret that the learned Sessions Judge has said nothing in his judgment with respect to this aspect of the case.

We have, therefore, to examine this ourselves. It is clear that quitting the post without leave is a minor offence as compared to deserting the service. In both desertion and quitting the post without leave, there is the element of going away without the permission of the authorities concerned. But in desertion there is the further element to which we have already referred. This is absent in a case of quitting the post without leave.

It is obvious, therefore, that the offence under Section 7 (g) is a minor offence as compared to the offence under Section 6 (c), and the case was covered by Section 238, Criminal P. C., and it was open to the Sessions Judge to convict the accused of the minor offence even though he was not charged with it.

5. Learned counsel for the accused urges that the accused has been prejudiced by the absence of a charge under Section 7 (g). The prejudice is said to be that if he had been so charged, he would have tried to prove that he left the post with the knowledge of his immediate officer.

Assuming that this is so, it does not, in our opinion, exonerate him. He has admitted categorically in his statements both in the committing Magistrate's Court and in the Sessions Court that he left without leave because there was some illness in the family, and he had applied for leave and had been refused that leave.

In these circumstances, he was clearly guilty under Section 7 (g), and the fact that some immediate superior of his knew of his intention to go away without leave

would not be of any help to him. There is no question, therefore, of any prejudice simply because the minor offence was not specified in the charge. The accused is, in our opinion, clearly guilty on the facts of this case under Section 7 (g) of the Act.

6. We now turn to the case under Section 409, I. P. C. It is not in dispute that the accused had taken away the five items of property with him when he left the place. What we have to see is whether it can be said that he dishonestly misappropriated or converted to his own use this property which had been entrusted to him.

We feel that once it is held that it was not a case of desertion and the accused had not left with the intention never to return, it can hardly be said that merely because he retained these articles for a short time he was away, he misappropriated them or converted them to his own use.

In the alternative, the prosecution would have to show that he dishonestly used the property in violation of any direction of law prescribing the mode in which the trust was to be discharged or of any legal contract express or implied. The prosecution could show that the accused dishonestly used this property in violation of any rule relating to this matter; but no such rule has been proved or relied upon in this case.

All that we find is that Sanwatsingh says that when a person goes on leave, he is not permitted to take his uniform with him. If this is merely a practice, that would not make it a direction of law. If, on the other hand, it is prescribed by any rule framed under Section 15 of the Act, that would be a direction of law, and if the accused disobeyed the rule, he might be guilty of criminal breach of trust. In this case, however, there is no proof of any such rule, and under the circumstances the acquittal of the accused under Section 409 is correct.

7. We, therefore, allow the appeal in part, andconvict the accused under Section 7 (g) of the Act, andsentence him to three months' rigorous imprisonment. The acquittal under Section 409, I. P. C., stands.

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