

State Vs. Jaigovind

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Court : Rajasthan

Decided On : Oct-16-1950

Reported in : AIR1951Raj89

Judge : Nawal Kishore and; Sharma, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 40, 107, 120A and 411

Appeal No. : Cr. Appeal No. 44 of 1950

Appellant : State

Respondent : Jaigovind

Advocate for Def. : C.L. Agarwal, Adv.

Advocate for Pet/Ap. : D.M. Bhandari, Adv.

Disposition : Appeal dismissed

Judgement :

Sharma, J.

1. This is an appeal by the State under Section 417, Cr. P. C., against the acquittal of Jai Govind, accused. He was tried for the abetment of an offence under Section 386 and in the alternative under Section 411, Jaipur Penal Code, but was acquitted by the Ses. J. at Jaipur City. The circumstances which led to his

prosecution are as under: On 19-8-1949, Thakur Saheb Kushal Singhji of Geejgarh, hereinafter to be referred to as the Thakur Sahab, received by post a letter Ex. 15, in a cover, Ex. 16. The letter was in block capitals and read as follows :

'Thakur Kushal Singh,

You are hereby given 10 days' time to collect Rs. 25,000 in used Rs. 10 notes (not serial nos.) bind them in 25 bundles put them in a cardboard box, wrap it securely in paper, tie with strings & seal the knot.

On Monday, 29th August, take the parcel in your car on the Agra Road up to Mile 4, Reach there at 7.15 P.M. Go about 300 feet beyond the mile-mark. Send your driver back on foot to give the parcel to our agent who will be sitting at the mile mark. Our agent must not be spoken with. Then drive on towards Dausa & do not return for two hours.

This is your first & final payment to us. There will be no excuse or escape, If you fail to follow the exact instructions or set a trap for our agent, or have him followed or disclose this communication now or later on, it will result in total destruction of your property & some family members, In addition you will still pay us Rs. 25,000 plus expenses or lose your life. N. I. C.'

2. On receipt of this letter the Thakur Sahab took it to the Home Minister & asked for protection, The Home Minister passed it on to the Inspector-General of Police, Rajasthan, for necessary action, who, in turn, made it over to P. Dwarka Nath, Superintendent of Police, for investigation. On receipt of this letter, P. Dwarka Nath went to the Thakur Sahab, & obtained two as. 10 notes, Exs. 18 & 14, from him. He got them signed by the Thakur Sahab, & thereafter gave them to Maganlal, Circle Inspector, & directed him to get them initialled by the City Mag , Jaipur, & to make 25 packets of pieces of paper cue to the size of Rs. 10 notes, each packet having 100 pieces of paper. The two notes, Exs. 13 & 14, after having been initialled by the City Mag , were placed on the top of two of these packets. The packets were placed in a cardboard box which was wrapped & tied & sealed with the seal of the Thakur Sahab, which P. Dwarkanath had taken for the

purpose. The parcel having been made as per directions in the letter, Ex. 15, was brought back to P. Dwarka Nath who took it to the Thakar Sahab & instructed him to send it with his Kamdar in a big car to his (P. Dwarka Nath's) house at 6.45 P. M. He also instructed Govind Narajan, A.S.I, to reach Mile 4 on Agra Road on his cycle at 7.15 P. M. & to follow any one who started from Mile 4 stone after taking delivery of the parcel, & then to detain him. One party of police was sent 2-3 Miles beyond Mile 4 & another party in charge of Shri Udaisingh, Superintendent C.I.D. was instructed to stop at 2 1/2 on Agra Road about 6 30 p. M. P. Dwarka Nath was himself in charge of the third party, which started in the Geejgarh car, crossed the Mile & stone at the appointed time & stopped about 100 yards beyond it. There the Kamdar, Govind Narayan, gave the parcel to the driver, Hanuman Sahai, of the Police Lines Jaipur, who got down & walking back to Mile 4 stone, gave it to the accused who was waiting there. The accused tied the parcel with string on the luggage carrier of his cycle, Ex. 4, & started towards Jaipur. After a while Govind Narayan, A. S. I., challenged & detained the accused. By that time P. Dwarka Nath came to the spot & a little later Shri Udaisingh also. The accused was searched. The parcel, Ex. 2, wrapped in paper, Ex. 3, was recovered from the carrier of the cycle, Ex. 4. In a bag Ex. 5, were found a torch, Ex. 6, safety razor blade, Ex. 7, & razor, Ex. 8. In his shirt-pocket was found a letter Ex. 9.

3. On information given by the accused he & his cycle were taken by P Dwarka Nath to Mile 5 1/2 on the Ajmer Road There Sukan Ram, Head Constable No. 283, Jaipur, was made to put on the shirt of the accused & ride on his cycle with instructions that if a car came from behind & flashed its lights on & off four or five times, he was to cut the string with which the parcel was tied to the cycle & drop it on the road. A car did pass & turn & re-pass & return, but no signal, which the police were looking for, was flashed. The car was therefore allowed to proceed on without being stopped.

4. The accused was arrested. He informed P. Dwarka Nath of the existence of certain letters & their contents & the place where they were to be found. Maganlal, the Circle Inspector, seized these letters from the room of the accused. These letters, Exs. D1 & D2 were both in block capitals & were initialled 'N. I. C.' Exhibit D2 contained certain flattering remarks about the intelligence of the accused, &

promised him substantial reward if he helped the organisation 'N. I. C.'. At the same time, it held out a threat that he would lose his life if he did not carry out the work faithfully, or spoke concerning it to anybody. Exhibit D1 contained detailed instructions to be followed by the accused on 8-9-1949, & its cover contained a sum of Rs. 110 out of which Rs. 100 represented 1/10th payment for his work & Rs. 10 for necessary expenses. After necessary investigation, the case was challaned in the Ct. of the City Mag., Jaipur, but was later on made over to the First Assistant City Mag. Jaipur, for enquiry. Subsequently the accused was committed to take his trial under Section 386 read with Section 114 Penal Code before the Ct. of Session, whereon alternative charge under Section 411 was also added.

5. The accused did not dispute the facts brought out in the prosecution evidence, but disclaimed any knowledge about the letter, Ex. 15. He pleaded that he had nothing to do with any person or organisation styled 'N.I C.' & that he did according to the directions given in Ex. D1 because he thought that some lover wanted to send a present to the person he loved, & there was no harm in passing on the present to the person for whom it was meant.

6. The learned Ses. J. did not believe that the accused acted in the manner he did under a belief that he was being used as a medium to carry a love-present, but held that there was no evidence either that the accused abetted extortion or received any stolen property knowing or having reason to believe it to be stolen. He therefore acquitted the accused. The State has come in appeal to this Ct.

7. It was argued on behalf of the State by Mr. D. M. Bhandari, the learned Special Govt. Advocate, that the learned Sea. J. was wrong in holding that the accused was not in conspiracy with the person or the organisation 'N I.C.'. It was stressed that when the accused accepted Rs. 110 & proceeded in the manner as directed in the letter, Ex. 15, he engaged with 'N, I. C.' in the conspiracy for extorting money from the Thakur Sahab. At any rate, it was argued that the accused intentionally aided by his act the extortion of money from the Thakur Sahab. Finally it was argued that the act of the accused amounted at least to receiving stolen property knowing or having reason to believe it to be stolen. It was

submitted that under Section 410, Penal Code, the property, the possession where. of has been transferred by extortion, is a stolen property. The two notes of Rs. 10 each were transferred by extortion on account of the threats Held out in the letter, Ex. 15. They were, therefore, stolen property. The accused knew that the parcel which he received contained stolen property or had at least reason to believe that it contained stolen property, as is clear from the letter, Ex. 9, which was in his own hand writing & was recovered from his pocket at the time of his arrest.

8. On behalf of the accused, it was argued by Mr. Agarwal that there is absolutely no evidence on the record to show that the accused was in conspiracy with 'N. I. C.' for extorting money from the Thukur Sahab. Neither the letter, Ex. 15, nor any of the letters, Ex. 9, or Ex. D2 or D3, shows that the accused knew that the 'N. I. C.' was intent upon extorting money from the Thakur Sahab. He further urged that there was also no evidence, whatsoever, that the accused intentionally aided, by any act or illegal omission, the extortion of money from the Thakur Sahab. As regards the argument about receiving stolen property knowing or having reason to believe it to be stolen, he urged that it was an argument in despair. The two notes were neither stolen property, nor did the accused know or have reason to believe that the parcel contained stolen property. The very letter, Ex. 9, on which so much reliance was placed by the prosecution, showed that the accused did not know what the parcel would contain or why the accused was directed to receive it. The word 'thefting' on which great stress was laid by the learned counsel for the state did not show that the accused had reason to believe that the parcel would contain stolen property. At the worst, it showed that the accused might have had some suspicion that the parcel might contain some smuggled or stolen property. But suspicion alone was not sufficient to bring the charge under Section 411, Penal Code, home to the accused.

9. We have considered the arguments of the learned counsel for both parties. So far as the charge of abetting the offence under Section 386 is concerned, we have no difficulty in rejecting it. under Section 107, Penal Code, for an abetment, it is necessary that the accused should do any of the three acts to do a certain thing, (1) instigate any person to do that thing, (2) engage with one or more other person

or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy & in order to the doing of that thing, or (3) intentionally aid by any act or illegal omission, the doing of that thing. There is no evidence, whatsoever, to show that the accused instigated 'N. I. O.' to extort money from the Thakur Sahab. Even the learned counsel for the State has not suggested it. He has, however, tried to bring the case under the second or third clause of Section 107 given above. But there is absolutely no evidence that the accused was in conspiracy with 'N. I. O.' for the purpose of extorting money from the Thakur Sahab. In the entire evidence produced in the case there is nothing to show that the accused sought admission to the secret organisation on whose behalf the letters, Ex. 15 & Exs. D1-D2, were addressed respectively to the Thakur Sahab & the accused. Rather the membership was thrust upon him without obtaining his consent. He was not even told what the parcel mentioned in letter, Ex. D1, was to contain. He was rather given a threat of extinction of his life if he did not carry out the work faithfully or spoke anything concerning it to anybody. He was also given an assurance that the work he would be entrusted with would not interfere with his State duties. True, the accused was made certain payment for the work he was to do, & was promised further remuneration after the work was done. True, also that in his greed he acted according to the instructions contained in letter, Ex. D1, but all the while he was altogether in the dark about the designs of the 'N. I. C.'. He may not have acted under a belief as he suggests that he was simply passing on a present from a lover to the object of his love, but there is entire absence of any evidence to show that he knew that he was being made an instrument for extorting money from the Thakur Sahab. It is, no doubt, very difficult to obtain direct evidence of conspiracy which is generally inferred from certain criminal acts of parties accused, done in pursuance of an apparent criminal purpose in common between them. In order to constitute the offence of abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy & an act, or illegal omission must take place in pursuance of that conspiracy, & in order to the doing of that thing; *Kali Munda v. King-Emperor*, 28 Cal. 797. When parties concert together, & have a common object, the act of one of the parties done in furtherance of the common object & in pursuance of the concerted plan, is the act of the whole: *Amir Khan The Queen v. Ameer Khan*, 17

W. R. (Cr.) 15 (F. B.) In the present case, there is no evidence from which it might be deduced that the accused was receiving the parcel in pursuance of an apparent criminal purpose in common between him & 'N. I. C.' There is also nothing to show that the accused & 'N. I. C.' combined together in the conspiracy. No common object between the accused & 'N. I. C.' can be inferred from the evidence on record, Nor can it be said that the act of the accused was in furtherance of any common object & in pursuance of any concerted plan between him & 'N. I. C.' The argument about abetment by conspiracy therefore fails.

10. Coming to the argument that the accused intentionally abetted 'N. I. C.' by receiving the parcel according to the instructions given in Ex. D1, it is found that the evidence has failed to prove that the accused knew that 'N. I. C.' wanted to extort money from the Thakur Sahab. Intentional aid must be given in the doing of a thing conceived by the principal offender. In the present case the accused did not know that 'N. I. C.' was making him a tool for the purpose of committing the extortion. It cannot, therefore, be said that he intentionally aided 'N. I. C.' in extorting money from the Thakur Sahab. On all fronts, therefore, the case for the prosecution crumbles so far as the charge of abetment of extortion is concerned. Towards the end of his arguments on this charge, the learned Advocate for the State himself realised that he could not press his arguments in this respect with vigour, & therefore he concentrated his principal attention on the alternative charge under Section 411, Penal Code,

11. In the alternative charge the learned counsel for the State argued with great vehemence that there was no escape for the accused from that charge. Under Section 411 an accused must dishonestly receive or retain any stolen property knowing or having reason to believe the same to be stolen. It was argued that the property that is, the two Rs. 10 notes, was a stolen property in as much as its possession was transferred by extortion. It was further argued that the accused dishonestly received it as he wanted to make a wrongful gain to himself by doing so. As regards the third ingredient of the offence under Section 411, that is, receiving the stolen property knowing or having reason to believe the same to be stolen property, it was conceded that the evidence falls short of proving that the accused knew that the property that he was receiving was a stolen property. It

was, however, pressed that he had reasons to believe that he was receiving stolen property. For this reliance was placed on Ex. 9 in which the following words find place towards the end. 'It seems to be thefting which is against State. What will be told to Custom Departments & Police in the way if I will be arrested.'

12. It was urged that from this it was clear that the accused had reason to believe that the parcel would contain stolen property. We are unable to put this interpretation on the contents of this letter. They do not show that the accused had reason to believe that the parcel would contain stolen property. Of course, the accused not knowing what the parcel was to contain, argued to himself as to what its contents might possibly be. For a moment a suspicion crossed his mind whether the parcel had anything to do with some revolutionary work, & so he argued who would help him & his family in case he was arrested, & what would happen to his 18 years service. Again he asked to himself whom he should consult in the matter. Then he expressed a desire that if any friend of his was concerned in the matter, he might better see him & satisfy him. In the end he also suspected that it might be a case of theft or smuggling against the State, & therefore thought to himself what explanation he would give to the Customs or Police Department if he was arrested. All that is contained in the letter only shows that a great struggle was going on in his mind as to what the parcel was going to contain & what he should do if he was intercepted in the way after the receipt of the parcel. He had different suspicions, no doubt, & one of them was that the parcel might contain some stolen or smuggled property. But Section 411 does not apply to a case where the accused suspects the property to be stolen property. He must have reasons to believe when he received the property that it was stolen property. The word 'believe' is a very much stronger word than 'suspect' and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. It is not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. It is therefore not possible on the language of this letter to hold without any reasonable doubt that the accused had reason to believe that the parcel contained stolen property. On this ground alone the charge under Section 411 founders, & therefore there is

no necessity to examine further whether the accused received the parcel dishonestly or whether ten-rupee notes contained therein could be held to be stolen property.

13. There is no doubt that the accused cannot be credited with a standard of morality which is expected of an average citizen. If he had scruples he would not have oared so such for Rs. 100 which he had been already paid or for further remuneration promised in letter, Ex. D1. His plain duty was to approach the Police without any fear & disclose the contents of the letter, ex. D1 & D2. But probably the accused was greedy enough to retain the sum of Rs. 100 which he had already received & to earn more which was promised, or was too timid to bring the matter to the notice of the authorities, having been frightened by the threat in letter Ex. D1, that he would be killed if he disclosed the secret to anybody. Be that what it may, the accused can be punished only for an offence in law & not for any moral turpitude not amounting to an offence.

14. Yet another argument of the learned counsel for the State may be dealt with in a few words. It was argued that having been caught with the parcel immediately after the extortion, the accused should be presumed to be either a thief or the receiver of stolen property knowing it to be stolen. The question of presumption does not arise in this case as the evidence produced in this case shows that he was neither a thief nor did he know that the parcel contained any stolen property.

15. It is a matter of regret that in a case like the present the real offender should go undetected. But only for this reason punishment cannot be inflicted upon a person to whom the offence charged has not been brought home without a reasonable shadow of doubt. The appeal is dismissed.