

Ramsingh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-1978

Reported in : 1978WLN(UC)90

Judge : R.L. Gupta, J.

Appeal No. : S.B. Criminal Revision (Jail) No. 282 of 1977

Appellant : Ramsingh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

R.L. Gupta, J.

1. The petitioner Ram Singh has preferred this revision through Jail. He was convicted by the Chief Judicial Magistrate, Barmer under Section 14 of the Foreigners Act, 1946 and under Rule 3 read with Rule 6 of the Passport (Entry into India) Rules, 1950 He has been sentenced on the first count to undergo rigorous imprisonment for one year and a fine of Rs. 50 in default of the payment of fine to undergo further rigorous imprisonment for 15 days, On the second count has been sentenced to three months rigorous imprisonment. The substantial sentences on both the counts were made to run concurrently. The petitioner preferred an appeal

before the Sessions Judge. Balotra against his aforesaid conviction and sentence. The learned Sessions Judge by his order dated 25 October, 1977 rejected the appeal. Aggrieved by the aforesaid conviction and sentence passed against him, the petitioner has come in revision before this court.

2. The case of the prosecution, briefly stated, is that the petitioner is a Pak National. He came into India in the year 1977 during the Indo-Pak war. Since then he was living in India as a refugee in a refugees camp situated at Bakhasar. His name was recorded in the register of refugees kept for the purpose. His father Muhobbat Singh also resides in some Dhani in the Indian territory near the border. Subsequently the name of the petitioner was struck off from the register on 21-11-1972. The prosecution thus, wanted to show that the petitioner had left India somewhere about 21.11.72. It was further alleged that in the night between 1.11.73 and 2.11.73 an ambush was laid by the personnel of the Border Security Force at the border near pillar No. 916 and 917. The party consisted of Prem Singh PW. 2, Sukha Ram PW. 3 and others. At about 6.30. am Prem Singh PW. 2 noticed three persons entering into the Indian territory, riding on the back of two horses. When these persons were about 200 yards inside the Indian territory, Prem Singh accosted them and asked Sukha Ram and others to take position. The petitioner, who is said to be sitting along with other companion on one horse, got down and ran. He was chased and caught, the others who are said to be Bhagwana and Kumala, ran away on horses. Later on 3.11.73, Kumata was also a nested Kumala and Ram Singh petitioner, were challarud and tried by the Chief Judicial Magistrate as aforesaid. The petitioner pleaded not guilty. He had admitted that at the time of Indo-Pak war in 1971, he came to India as a refugee. Since then, he resides in India and had never gone to Pakistan during this time. He has been falsely implicated as he could not comply with the demand of Prem Singh for supplying him ghee.

3. I have heard the learned Public Prosecutor and Perused the record of the case.

4. It is an admitted fact that the petitioner is a Pak-Nitional. He was residing, in refugee camp near Bakhasar. The prosecution to prove this fact that the petitioner

left India on or about 21.11.72. In fact, there is no evidence worth the name to prove this fact that the petitioner left India on or about prosecution produced Sohan Singh PW5, Revenue Inspector for the purpose, but he was posted at this camp from 23.6.73 i.e. much after 21.11.72. When the name of the petitioner is said to have been struck off the register. This witness, therefore, has no personal knowledge of the fact. It is not there that he was a member of the General Checking Party who might have found the petitioner absent from the camp at the time any checking made on or about 21.11.72. The concerned authorities who made the checking and ordered the name of the petitioner to be struck off the register, have not been produced. The concerned register containing the entry has also not been produced in the court. The contention of the petitioner in his statement before the court under Section 313 Cr.P.C., was that he never left for Pakistan after he had come to India in 1971. The prosecution has, therefore, failed to establish that the petitioner left India in November, 1972.

5. It is further to be seen, whether on 2nd of November 1973 the petitioner was found crossing the border from Pakistan to India. To prove this fact the prosecution has examined Prem Singh PW 2 and Sukha Ram PW 3. Prem Singh has deposed that he saw three persons riding on two horses entering into India territory. When they were about 200 yards within Indian territory, they were accosted. The petitioner, who was on horse along with his other companion got down from the horse, and began to run on foot. He was chased and caught. The other two escaped riding on the horses. One of the two who ran away is said to be Kumala, who was tried along with the petitioner but the learned Magistrate acquitted him giving him the benefit of doubt. He has observed that it was doubtful whether Kumala was also with the petitioner at the time, the petitioner is said to have gone to Pakistan and come back to India. Sukh Ram PW3 has deposed that it was Prem Singh who first saw the intruders entering into the Indian territory. When the intruders were within 200 meters in the Indian territory, he asked this witness and others to take position. Prem Singh has also deposed that when the intruders were first seen, they were 200 Kadam in the Indian territory. He has however further deposed that he saw intruders coming from Pakistan. This witness has at one place deposed that he saw intruders at the first time when they were 200 yards inside the Indian territory and at other place he deposed that he saw

them coming from Pakistan. Sukh Ram PW 3 has deposed that the intruders were first seen by Prem Singh, when they were 200 yards inside the Indian territory. In view of such contradictory statements it, doth whether the petitioner entered into Indian territory from Pakistan at the time. It also seems some what unnatural that the petitioner who was on the horse back along with his companion, would have got down & tried to run on foot, while others were allowed to make good their escape. Kumala was said to be one of the associates of the petitioner at that time on the horse back but the Learned Magistrate did not believe this fact and acquitted Kamala. Thus this part of the prosecution case has not been believed by the learned Magistrate. It cannot, therefore definitely be said that the petitioner crossed the Pakistan border and entered in the Indian territory on 2.11.73. The petitioner has come to India as back as in 1971 and his father is also living in a Dhani near the border. It cannot therefore, be said that the petitioner left India and came back on 2.11.73 as alleged by the prosecution. The petitioner is also entitled to the benefit of doubt. It has been observed by their Lordships of the Supreme Court in *Aner Raja Khimu v. State of Saurashtra* : 1956 CriLJ426 that there are two important factors in every. criminal trial which weigh heavily in favour of an accused person. Firstly the accused is entitled to the benefit of every reasonable doubt, and from this it follows that when the accused offers a reasonable explanation of his conduct, then even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false. In the circumstances of the present case there is a probability that the version of the; petitioner might be true. Thus looking to the facts and circumstances of the present case the petitioner is entitled to the benefit of doubt.

6. In the result, the revision petition is allowed. The convictions and sentences of the petitioner under Section 14 of the Foreigners, Act 1946 and Rule 31 read with Rule 6 of the Passport (Entry into India) Rules 19.0 are set aside. He is acquitted of the above offences. He is in jail and set at liberty forthwith if not required in any other case.