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State of Rajasthan Vs. Krishna Dev and 3 ors.

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Court : Rajasthan

Decided On : Jan-11-1980

Reported in : 1980WLN17

Judge : P.D. Kudal and; Mahendra Bhushan, JJ.

Appeal No. : D.B. Criminal Appeal Nos. 769 and 535 of 1972

Appellant : State of Rajasthan

Respondent : Krishna Dev and 3 ors.

Disposition : Appeal dismissed

Judgement :

P.D. Kudal, J.

1. These two appeals are directed against the judgment of the learned Special Judge, Alwar dated 5th August, 1972.

2. Kirshna Dev, Radhey Shyam and Baldev Singh were tried for the offerees punishable under Sections 120B, 409 and 330, I.P.C. and Section 5(1)(d) of the Prevention of Corruption Act. Kirshna Dev and Baldev Singh, were acquitted of the charges framed against them Radhey Shyam was convicted for an offence under Section 409, I.P.C., and was sentenced to rigorous imprisonment for a period of six months and a fine of Rs. 500/- and in default of payment of fine to suffer further

rigorous imprisonment for three months.

3. The State feeling aggrieved against the judgment, of the learned Special Judge, Alwar has filed D.B. Criminal Appeal No. 769 of 1972.

4. Radhey Shyam feeling aggrieved against his conviction under Section 409, I.P.C. has filed S.B.Cr. Appeal No. 535 of 1972. As both these appeals arise out of the same judgment, they are being disposed of by this single judgment.

5. Arguments were heard in both these appeals on 21.12.1979, and the judgment was reserved On 7/1/1980 the learned Counsel for the accused-respondent Kirshna Dev moved an application that he has received information that the accused respondent Krishna Dev has expired. He prayed for 15 days time to ascertain the information received by him Both these appeals were, therefore, listed before the Bench for further orders on 9/1/1980. The learned Counsel for the accused-respondent Krishna Dev moved another application duly accompanied by a post card wherein if was mentioned that the accused-respondent Krishna Dev expired on 27/12/1979.

6. Under the provision of Section 394(1), Cr. P.C. the appeal against Krishna Dev abated as it was an appeal against an order of acquittal. In the proceedings dated 9.1.1980, a mention was made to this effect.

7. Now, the State appeal is restricted only against the accused-respondent Baldev Singh and Radhey Shyam.

8. The prosecution case, in brief, is that one Dana son of Chhitar Meo of village Lapala was required in a case under Section 366, I.P.C. in First Information Report No. 37 of 1965 by the police in Rajgarh. An arrest warrant was issued against Dana. While taking Dana into custody the accused respondent Krishna Dev, who was the SHO the Head Const. Radhey Shyam and constable Baldev took a cycle, currency notes worth Rs. 200/-, one teeth ejector, three buttons and safely pin and one piece of join cloth, and one bag from him, but did out show all these articles in his arrest memo. The prosecution case is that these police officials retained the cycle, currency notes and other articles in their personal custody, & wanted to

draw wrongful pecuniary advantage after hatching a conspiracy between them. It is further said that on 29.6.1965, the SHO Krishna Dev caused beating to Dana for the purpose of recovering illegal gratification of Rs. 200/ from him. As a result of the beating the condition of Dana became serious, and he was admitted in the hospital. Dr. Walia of the Male Dispensary, Rajgrah examined Dana, and finding his condition serious informed the Dy. S.P. On receiving the information from Dr. Waila, the Dy. S.P. came to the hospital, & with the permission of Dr. Walia recorded the statement of Dana on 1-7-1965, which is Ex. P/1 in the case. Dana informed the Dy. S.P. in detail about the misappropriation of the articles by the SHO, the Head Constable and the constable in the police station as well as causing injuries to him by the SHO for exhortation of illegal gratification from him. The Dy. S.P. registered a case against the accused persons and recovered the cycle and the currency notes worth Rs. 200/ from the possession of the Head Constable Radhey Shyam. He also recovered the other articles from his possession which were alleged to have been misappropriated by him.

9. The prosecution produced 20 witnesses in support of their case. The statements of the accused were recorded under Section 342, Cr. P.C. (old). The accused produced three witnesses in defence.

10. PW/16 Dr. Kuljeet Singh Walia examined Dana and found the following injuries on his body when he was brought by the police for treatment in the Dispensary at Rajgarh.

1. Blue contusion 2'x 1' on back head

2. Blue contusion 3'x 1' across the central part of the back chest

3. Blue contusion 10'x 1 across the left said of the back

4. Contusion 4x 1' on the right glutial region

5. Contusion 4: x 1' below injury No. 4

6. Contusion4 x 1' below injury No. 5

7. Contusion 4 x19 below injury No. 6

8. Contusion 4x 1' on the left glutial region

9. Contusion 4'x 1/2' below injury No. 8

10. Contusion 4 1/2 'x 1' below injury No. 2

11. Contusion 3x1' below injury No. 10

12. Blue contusion 4'x 1 1/2' on the back of right thigh

13. Blue contusion 4'x 1 1/2' on the back of left thigh 14 Contusion 2' x 1' on the back of third right finger

15. Contusion 3' x 1 1/2' on the cuter aspect of right arm

16. Contusion 2'x1' on the left said of the neck

17. Contusion 3'x1' on the right injuinal region

11. Dana PW 1 stated that on 25-6-1965, the SHO, Head Constable, and the constable came to his village and stayed there. While returning from the village, the SHO called Dana to the Police Station through one Laxman constable Dana went to the Police Station on Cycle with Laxman constable. He had taken Rs. 200/ from Hira to be paid to one Harnarain Singh to whom he owed a sum of Rs. 150/ on account of purchase of clothes & Rs. 50/-to Nand Lal for repairs of his cycle. Dana was detained in the Police Station on 26th, 27th and 28th June, 1965. The SHO then called him in the evening of 28th June, 1965. The currency notes of Rs. 200/- which were with him were taken from him along with other articles. A memo was prepared by the SHO and Dana was asked to sign it. Dana refused to sign the memo as it did not mention the recovery of the cycle and the currency notes worth Rs. 200/-. On the next day, i.e. on 29th June, 1965 Dana was taken to Magistrate at Alwar. In the way, Dana told the constables that he would report the matter to the Magistrate. The constables who were with him requested him not to complaint to the Magistrate Dana accordingly did not make a complaint to the Magistrate, It appears that the SHO Krishna Dev got infuriated and summoned Dana in the night intervening 29th June and 30th June, and gave him a severe beating, as is evident from the injury report. The SHO wanted to extort a further sum of Rs. 200/- from

Dana The arrest memo does not disclose any injury on the person of Dana at the time of his arrest. All these injuries which are detailed in the arrest memo were inflicted on Dana while he was in police custody. As the allegations of causing bodily injuries are only against the SHO Krishna Dev and as he has expired, the appeal against the order of his acquittal stands abated Under these circumstances, this court is not in a position to give any judicial verdict on the question of causing these bodily injuries to Dana while, he was in police custody. Nonetheless, we are constrained to observe that custodian of law and order should not resort to third degree methods for satisfying their lust and greed for money. We feel, it is a fit case in which the State Government should deal with the matter on the administrative side and issue necessary instructions so that the recurrences of such incident are avoided.

12. The learned Special Judge has held that there is absolutely no case against Baldev Singh constable. The only allegation against the accused respondent Baldev Singh is that he had signed the recovery memo. There are no allegations against him for causing any bodily injury to Dana, or misappropriating any of the articles which were recovered from the person of Dana at the time of his arrest. We are in agreement with the findings recorded by the learned Special Judge and, as such the State Appeal filed against Baldev Singh is dismissed.

13. The State has also filed the appeal against the accused Radhey Shyam. So far as the allegations of causing bodily injuries to Dana are concerned, Radhey Shyam was not present at the time when the SHO Krishna Dev beat Dana. The prosecution has not led any satisfactory evidence to bring the guilt home to the accused under Section 120B of Section 330, I.P.C. or under Section 5(1)(d) of the Prevention of Corruption Act. The acquittal registered by the learned Special Judge for the offences under these sections, therefore, does not call for any interference. The State appeal against Radhey Shyam is accordingly dismissed so far as the offence under Sections 120B and 330, I.P.C. and Section 5(1)(d) of the Prevention of Corruption Act is concerned.

14. Radhey Shyam has been convicted under Section 409, I.P.C. He has filed an appeal against his conviction. The learned Special Judge has registered a finding

that the articles i.e. cycle, currency notes, and articles 2 to 5 were taken into possession by the Head Constable Radhey Shyam If may be, as has been pleaded by Radhey Shyam, that he had intention to return them to the wife of Dana, or to anybody else on his behalf. But the truth which stares in the face remains that these articles were not returned by the Head Constable Radhey Shyam. On the contrary, during the course of investigation, Radhey Shyam denied to have recovered cycle, currency notes, worth Rs. 200/- and other articles from the possession of Dana. As a matter of fact, he even denied that he did not take into possession any articles belonging to Dana. There is ample evidence on record which conclusively proves that the cycle, currency notes & other articles were recovered from the possession of Radhey Shyam and that he had misappropriated all these articles.

15. Having given sour most anxious consideration to the evidence on record, we have no hesitation in holding that the accused-appellant Radhey Shyam took all the articles belonging to Dana in his possession and misappropriated the same Radhey Shyam was working as a Head Constable at the time of the arrest of Dana. The search of the articles which were with Dana was taken It is a matter of great concern that police official to whom statutory powers of arrest and investigation have been conferred by the Criminal Procedure Code should have stopped so low as to have converted the articles belonging to an accused person to his personal use. If the police officers while discharging their official duties behave in this manner, then the confidence of the public in general would be shaken. As a matter of fact, the learned Special Judge has erred in the side of leniency in awarding the sentence of six months' rigorous imprisonment to the accused-appellant Radhey Shyam. As the matter is as old as the year 1965, we do not feel inclined to enhance the sentence after the lapse of almost 14 years. There is absolutely no merit in the appeal filed by Radhey Shyam. The appeal is accordingly dismissed.

16. The accused-appellant Radhey Shyam is on bail. He is directed to surrender to his bail bonds. The learned Sessions Judge, Alwar shall take necessary steps to get the accused-appellant Radhey Shyam arrested to undergo the sentence awarded to him.

17. The Addl. Registrar attached to this Court is hereby directed to send a copy of this judgment to the Chief Secretary of the State of Rajasthan for necessary action.

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