

State of Rajasthan Vs. Ramchander

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Court : Rajasthan

Decided On : Feb-01-1974

Reported in : 1974WLN(UC)293

Judge : V.P. Tyagi, J.

Appeal No. : S. B. Criminal Appeal No. 66 of 1971

Appellant : State of Rajasthan

Respondent : Ramchander

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, J.

1. This is State appeal challenging the judgment of the Special Judicial Railway Magistrate, Kota, dated 17th of September, 1970, acquitting respondent Ram Chander of the offence Under Section 381 of the Indian Penal Code.

2. Ram Chander was caught red-handed by P.W. 1 Prem Singh, P.W. 2 Naruila and P.W. 6 Laxmi Narain, members of the Railway Preventive Force from pilfering sugar from wagnr no NR 16219 which was standing in the yard of Kota Station on 25th of April, 1968. According to the statement of Prem Singh (P.W. 1), accused Ram Chander was taking out sugar with the aid of his fingers from the hole of the

said wagon. He was seen pilfering the sugar from the wagon by Narulla (P.W. 2) and Laxmi Narain (P.W. 6) who were on duty and were examining the goods train in which wagon NR 16219 was attached. Prem Singh further states that he had seen one 'cheni' (chisel) and one hammer with accused Ram Chander but this part of the story is (sic) corroborated by Narulla (P.W. 2) and Laxmi Narain (P.W. 6). The 'thela' in which the pilfered sugar was put by the accused was seized after taking the accused to the Police Station, vide seizure memo Ex. P. 1. The 'thela' which contained the sugar has been correctly identified by Prem Singh, Narulla and Laxmi Narain at the trial as Ex. A-1.

3. Ram Chander denied the charge and produced D.W. 1 Ved Prakash, D.W. 2 Hemumal and D.W. 3 Babulal as his defence witnesses to show that when Ram Chander was being taken to the Railway Police Station, no 'thella' of sugar was in his hand and, therefore, they all prevailed upon the members of the Railway Preventive Force, namely, Prem Singh, Narulla and Laxmi Narain to release him.

4. The learned trial Judge, however, did not place reliance on the version given by the defence witnesses, but he acquitted the accused respondent on the ground that the prosecution has failed to establish as to who was the consignor of the sugar and from which bag from wagon No. 16219 the sugar was pilfered by the accused. On these grounds, the learned Magistrate did not think it proper to convict the accused and, therefore, acquitted him. It is against this judgment that the State has filed appeal before this Court.

5. Mr. Surolia appearing on behalf of the respondent at the very outset expressed his inability to support the Judgment of the trial court on the ground on which the order of acquittal was passed by the learned Magistrate, but he urged that the acquittal cannot be converted into conviction because of the glaring infirmities which are found on the very face of the prosecution evidence and the infirmities pointed out by Mr. Surolia are (1) that Prem Singh speaks a positive lie when he states that Ram Chander was having with him a 'cheni' (chisel) and one 'hathori' (hammer) learned Counsel for the respondent argues that P.W. Narulla and P.W. 6 Laxmi Narain do not support Prem Singh with this aspect of the prosecution case that the hole was made in the wagon with the help of the hammer and the

chisel found to be in possession of Ramchander as deposed by Prem Singh (P.W. 1) It may be mentioned here that even Prem Singh does not say that the hole was created in the wagon through which the sugar was pilfered by the accused respondent by Ram Chander himself. In order to prove the theft of the sugar from wagon NR 16219 it is not necessary to prove that the author of the hole was Ram Chander himself. If Ram Chander used that hole which may have been created by some other person to take out sugar from the wagon, then he cannot escape his liability for committing theft from the wagon.

4. It is next contended by Mr. Surolia that the prosecution has failed to prove at the trial that the 'thella' (Ex. A-1) contained that very sugar which was pilfered by the accused from wagon No. 16219 on 25th of April, 1968. He goes to this extent to say that the prosecution has failed to prove that 'thella' Ex. A-1 contained any sugar at the time when it was exhibited in the court. He argues that the evidence of defence witnesses gets support to this fact that at the time when Ram Chander was being taken to the police station, under the custody of Prem Singh, Narulla and Laxmi Narain, he had no sugar with him.

5. This argument is negated by the fact that at the time when the 'thella' was seized at the police station and the seizure memo Ex. P. 1 was prepared, it was found to have contained 9Kgs. of sugar which was weighed in the presence of the motbir witnesses. Therefore, the story given by D.W. 1 Ved Prakash D.W. 2 Hemumal and P.W. 3 Babulal, who are all railway employees and who are out to save their co-employee, namely, Ram Chander, are speaking a lie. It is true that at the time when 'thella' Ex. A-1 was identified by the prosecution witnesses Prem Singh, Narulla and Laxmi Narain, they did not say in so many words that the 'thella' still contains 9Kgs. of sugar. 'Thella' with its contents was treated as one entity by these witnesses and therefore, they did not care to mention the contents of the 'thella' at the time when it was identified by them. In such circumstances, I do not find any force in the argument advanced by learned Counsel for the respondent that the prosecution has failed to prove that sugar was actually pilfered from the wagon No. 16219.

8. The reasons given by the learned trial Magistrate for acquitting the accused-respondent are not supported by Mr. Surolia, & rightly so because in a case of this nature it is not at all necessary to prove as to who was the consignor of sugar & what was the weight of each bag put in the wagon at the time it was handed over to the Ray. authorities. It cannot be said as to from which bag the sugar was pilfered and, therefore, even if the weight of each bag was given by the prosecution at the place where the consignment was accepted by the rail way, it could not have established that the sugar pilfered by the accused respondent was from a particular bag.

9. For the reasons mentioned above, the order of the trial court can not be sustained. It is, therefore, set aside. Accused Ram Chander is convicted Under Section 381 Indian Penal Code and is sentenced to one year's rigorous imprisonment, Ram Chander is not present in Court. Direction be issued to the District Magistrate. Kuta to get him arrested and sent to jail to serve out the sentence awarded to him. The appeal is accordingly accepted.

10. learned Counsel for the accused-respondent prays for the grant of leave to appeal to the Supreme Court. It is not a fit case which can be certified for grant of leave to appeal. The leave is, therefore, refused.