

**Lallu and ors. Vs. the State**

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**Court :** Rajasthan

**Decided On :** Sep-30-1975

**Reported in :** 1975WLN(UC)395

**Judge :** M.L. Jain, J.

**Appeal No. :** S.B. Cr. Appeal No. 315 of 197(sic)

**Appellant :** Lallu and ors.

**Respondent :** The State

**Disposition :** Appeal allowed

**Judgement :**

**M.L. Jain, J.**

1. This is an appeal against the judgment of the learned Additional Sessions Judge No. 2. Sriganaganagar dated May 8, 1971, by which he convicted and sentenced the appellants as follows:

1. under Section 395 of the Indian Penal Code, to one month rigorous imprisonment and to a fine of Rs. 500/. in default where of to further rigorous imprisonment for one month;

2. under Section 353 of the Indian Penal Code, to further rigorous imprisonment for 15 days. Both the sentences were directed to run concurrently. I have heard arguments and perused the record.

2. Briefly stated, the prosecution case was that when any movement of food grains within ten miles of the border of Rajasthan was prohibited, four person, namely, Panjabsingh, Harnamsingh Magarsingh & Meghasingh were found, on 25-1-67 by Patwari Hanumandas PW. 2 carrying, gram in four carts within the prohibited area without proper permission. He informed the Tehsildar Bhaironsingh Paowar PW. 9 who accompanied by Assistant Sub Inspector Suraj Prakash PW. 7 of the police station Sadulsahar and two constables Tehkaran PW. 10 and Pratapsingh PW. 8 reached to the spot and was able to intercept the carts at some distance from village Chamarkhera. The Tehsildar took these four carts loaded with gram in his possession and prepared recovery memos Ex. P-15 to Ex. P-18. He then directed the two constables to take these carts to the police station Sadulshahar, while he himself proceeded to intercept some more carts which were alleged to be moving towards the State of Punjab. When the carts so seized by the Tehsildar, had reached the bridge near Chamarkaran at about 9.30 p.m. along with the two constables, accused numbering eight to ten came over and threatened the police constables with untoward consequence if they carried the carts to the police station. The accused with show of force and threat took away the carts out of their possession to village Chamarkhera. The police constables finding themselves helpless in the matter went to police station and are said to have lodged the first information report Ex. P.1 in which they even gave the names of seven persons out of the total of ten. After investigation and challan by the police, the learned Munsif Magistrate, Hanumangarh, committed ten persons for trial to the court of Sessions under Sections 395 and 353 of the Indian Penal Code. The learned Additional Sessions Judge, who tried the case, appears to have acquitted (without expert easily saying so) five of the accused persons and convicted the five appellants in the manner aforementioned. Aggrieved by their convictions and sentence, the appellants have preferred this appeal.

3. The learned Counsel for the appellants assailed the convictions, firstly, on the ground that the seizure of the gram by the Tehsildar was without any authority. He

contended that the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, was amended on May 17, 1965, vide the Government of India, Ministry of Food and Agriculture, Department of Food notification No. GSR 742 by which, it was provided that nothing contained in the said Order shall apply to the transport of Foodgrains within the district of Sriganganagar. The learned Counsel for the State had no answer to this arguments. I am therefore constrained to uphold the contention that the seizure of the carts of gram from the possession of Panjabsingh and others was not just-fled as there was no ban on the movement on foodgrains on 25-1-67 the alleged day of offence. Learned Counsel for the State however drew my attention to the fact that the cartmen, namely, Panjabsingh, Magarsingh, Harnamsingh and Mehngasingh were convicted by the Additional District Magistrate and sentenced to a fine of Rs. 500/- each for violation of the aforesaid Order under Section 7 of the Essential Commodities Act, 1955, vide Ex. P-12. This fact is also borne out by statements of the prosecution witnesses but that judgment (Ex. P-12) cannot operate so as to make the seizure of the food grains which was otherwise unlawful, legal, in view of the fact that the said restriction on movement of foodgrains did not apply to the district of Sriganganagar where the offence in said to have taken place.

4. Learned Counsel for the appellant then referred me to *Re Chitravelu Thevar and Ors.* AIR 1941 Mad 763 *Gobaria v. State* 1964 RLW 617 and *Mithukhan v. State of Rajasthan* which go to show that where the seizures are illegal, the accused cannot be convicted under Section 395 or Section 353 or both of the Indian Penal Code for taking away, even by show, force the property which in fact and in law belong to them and did not pass into the lawful custody of the Tehsildar and for that matter to the police. On the contrary, they could make avoid claim to right of private defence of property.

5. Learned Counsel for the appellants then assailed the case of the prosecution on merits as well. He made the following submissions in this respect:

1. It has been held by the learned Additional Sessions Judge that the first information report was a post-investigation document and was also delayed affair. Pratapsingh PW. 8 deposed that the first information report was lodged after the

Deputy Superintendent of Police had arrived at the police station.

2. Learned Additional Sessions Judge held that at the time of the offence, the faces of the accused were muffled and the identification in court made by the two police constables, namely, Tejkar and Pratapsingh when they were not acquainted with the accused beforehand. Learned Additional Sessions Judge however, based his findings upon the statement of Harnamsingh PW. 1 who deposed that accused Lallu and Bhaghwana hired the carts through Panjabsingh and accused Manphool, Rupia and Ramswarup loaded the carts. To the same effect were the statements of Magarsingh PW. 3 and Maghasingh PW. 4. Learned Additional Judge was of the view that these three persons had simple opportunity to observe and (sic) the five appellants. They have also deposed that they were also accompanying the carts and that these persons took away the carts by force from the possession of the two police constables to Chamarkhera. There is an apparent contradiction in the finding of the learned Additional Sessions Judge in as much as that while these witnesses said that these five persons were accompanying the carts when they were intercepted. The prosecution case has all along been that all the ten accused came when foodgrains were being carried to Sadulshahar. It cannot therefore be said with any amount of definiteness that the appellants along with some other persons had carried away the carts by force.

6. Learned Counsel for the State could make no effective answer to these two arguments on which the findings of fact arrived at by the learned Additional Sessions Judge were challenged by the learned Counsel for the appellants.

7. Looking into the record, I find that the evidence against the appellants is not of a convincing nature. The very fact that the first information report was lodged with delay and after investigation, completely knocks the bottom down of the prosecution case. It inevitably leads to the conclusion that the whole case was managed and cooked up against the appellants. This is also in evidence that the accused were kept 'Baparda' but no attempt at test identification was made except in the case of one accused Jogindrasingh which was also not believed by the learned Sessions Judge. One person Ramnarain was even alleged to be armed with a fire weapon and even stood guard while his associate carried away the

carts but the evidence against him too was disbelieved by the learned lower court. The prosecution has thus failed to bring the guilt home to the accused.

8. I, therefore, find that the judgement of the learned Additional Sessions Judge cannot be sustained both on facts and law and consequently, I accept this appeal, set aside the convictions & sentences under appeals. Fine, if paid, shall be refunded. The appellants need not Surrender to their bail bonds which are hereby cancelled.

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