

State of Rajasthan Vs. Govind Singh

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Court : Rajasthan

Decided On : Oct-03-1979

Reported in : 1979WLN(UC)396

Judge : M.L. Shrimal and; K.S. Sidhu, JJ.

Appeal No. : D.B. Criminal Appeal No. 340 of 1972

Appellant : State of Rajasthan

Respondent : Govind Singh

Judgement :

M.L. Shrimal, J.

1. This State appeal is directed against the judgment of learned Sessions Judge, Alwar dated 18th December, 1971, whereby he accented the appeal filed by accused-respondent Govind Singh & acquitted him of the Charge punishable under Section 409 I.P.C.

2. The facts giving rise to this appeal are that between July 10, 1965 to July 24, 65 a piece of land known as ' Thadi' in village Dagdaga was auctioned in presence of the members of the Panchayat including the accused respondent, who was Up Sarpanch of the Panchayat at the relevant time. PW Chunna offered the highest bid of Rs. 505/- as the bid was knocked down in his favour An amount of Rs. 505/-

was paid by Chunna to accused Govind Singh Up Sarpanch in the evening in presence of PWs Nanda, Brij Mohan and Birda. After 6 or 7 days of the payment, receipt Ex. P/1 was given by the accused to PW 6 Chunna. PW 6 Bhonrey La) was elected Sarpanch of the Panchayat in the year 1966 During the period of his Sarpanchship on enquiry he came to know that Chunna has not deposited the auction amount and as such a notice was given him. In response to it Chunna submitted two documents, namely, Ex.P/1 receipt alleged to have been signed by accused Govind Singh and Narain Singh and Ex P/3 an application for issuance of a Patta in his favour. The audit party raised objections and ultimately the Block Development Officer lodged a report at the Police Station, Rajgarh under Section 409 IPC against the accused-respondent as well as Narain Singh A challan was filed against both the persons under Section 409 IPC. Learned Magistrate placing reliance on the prosecution case convicted the accused-respondent under Section 409 IPC and sentenced him to one year's rigorous imprisonment and a fine of Rs. 200/-. However, the other accused Narain Singh was acquitted of the charge framed against him.

3. The convicted accused went up in appeal learned & the Sessions Judge accepted the appeal & set aside the conviction & sentence awarded to him as already mentioned above.

4. Dissatisfied with the judgment of the appellate court the State Government sought leave to appeal and hence this appeal.

5. We carefully perused the record of the case and have heard learned Public Prosecutor on behalf of the State as well as learned Counsel appearing on behalf of the respondent.

6. The prosecution has examined Nandu, Ram Dayal, Birda, Mauzi Ram, Chunna, Kanhaiya Lal, Kalyan, Bhonra, Brij Mohan, Ram Kishan and Phooli to prove that the auction of the 'Thadi' did take place in the month of July, 1965 under the supervision of the accused-respondent; and other Panchas All of them have made consistent statements on the point that auction of the 'Thadi' did take place and the highest bid was offered by Chunna for Rs. 505/- The statements of these witnesses find intrinsic corroboration from Ex-P/6, which is a resolution of the

Panchayat dated July 10, 1965 authorising the auction of the land in dispute. PW 14 Bhagwan Sahai who signed the resolution as Sarpanch has stated that Ex P/6 relates to the auction of the land known as 'Thadi' He further stated in cross-examination that Bholaram Clerk wrote Ex.P/6 in his presence and the erasures in the resolution were made thereafter. A careful reading of the statements of PW 14 Bhagwan Sahai read with the statement of PW 6 Bhonrey Lal shows that erasures in Ex P/6 must have been made by a person who was interested in concealing the fact of the auction. Admittedly accused took the charge of Sarpanch after the passing of vote of no confidence against PW 14 Bhagwan Sahai on July 24, 1965. in the facts and circumstances of the case it will be reasonable to hold that the erasures in Ex-P/6 must have been made by accused Govind Singh or by some one at his instance.

7. Thus learned Sessions Judge has committed an error apparent on record in holding that the evidence regarding the auction of land in dispute was not sufficient.

8. As regards payment of Rs. 505/- by Chunna to the accused, Chunna's statement is categorical on this point. He stands corroborated by PWs Nandu, Birda and Brij Mohan. Chunna's statement further finds support from Ex.P/1, which is alleged to have been given by the accused to Chunna a few days after the payment of the auction amount. Inspite of lengthy cross-examination, nothing has appeared in the statement of Chunna on the basis of which the veracity of his statement can be doubted. Chunna appears to be a witness of sterling worth.

9. Learned Sessions Judge has laid too much emphasis on the fact that signatures of the accused-respondent on Ex.P/1 were not proved beyond reasonable doubt. The question for consideration before him was whether 'he amount of Rs. 505/- was paid by Chunna to the accused-respondent or not. The receipt Ex.P/1 was not written in presence of Chunna and as such even if It is held that signatures of Govind Singh have not been proved on Ex P/I, then also it would not any way detract from the fact that Chunna had paid an amount of Rs. 505/- to the accused as the sale amount of the land auctioned In his favour.

10. PW 22 Dharam Chand, who audited the accounts stated that the auction amount of Rs. 505/- was not credited anywhere in the Panchayat accounts. The accused in his statement recorded under Section 342, Cr PC has also not taken the plea that he has deposited the amount. His statement is to the effect that neither the auction took place, nor the amount was paid to him.

11. The net result of the above discussion is that we reverse the findings of facts arrived at by the first appellate court and hold the accused-respondent guilty of the offence punishable under Section 409 IPC

12. Now remains the question of sentence. The occurrence is of the year 1965 and we are in the year 1979. Thus a period of 14 years has elapsed in between the commission of the offence and hearing of this appeal. The accused respondent has already undergone a sentence of 9 days rigorous imprisonment and as such it would not be in the interest of justice to send him back to jail after so long a time. Instead of imprisonment we feel that it would be in the interest of justice to impose a fine of Rs. 1500/-. In default of payment of fine, he shall further undergo three months rigorous imprisonment. In case the fine is recovered an amount of Rs. 1000/- will be paid as compensation to the Panchayat concerned. Three months time is allowed to the accused-respondent to deposit the fine imposed by this Court. A copy of the operative portion of his judgment be sent to the concerned Panchayat.