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State Vs. Sharif

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Court : Rajasthan

Decided On : Mar-27-2001

Reported in : 2001CriLJ3261; 2002WLC(Raj)UC160

Judge : Sunil Kumar Garg, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; Passport Rules (1950), Rules 3 and 6

Appeal No. : Crl. Appeal No. 345 of 1995

Appellant : State

Respondent : Sharif

Advocate for Def. : G.M. Khan, Adv.

Advocate for Pet/Ap. : R. Purohit, P.P.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the State of Rajasthan against the Judgment and order dated 17-11-94 passed by the learned Civil Judge (Junior Division)-cum-Judicial Magistrate, 1st Class, Jaisalmer in Criminal Case No. 291/93 by which the

learned Magistrate acquitted by accused-respondent Sharif of the offence under Rule 3/6 of the Passport (Entry into India) Rules, 1950 (hereinafter referred to as the Rules of 1950).

2. This appeal arises in the following circumstances :

i) The case of the prosecution is that on 13-9-89 P.W.. 1 Bhagwan Singh while he was on patrolling duty at Gunjangarh Indo-Pak Border, at about 3 p.m. near Pillar Nos. 750 and 758/1 accused-respondent Sharif crossed the above pillars and came to India. He was caught red-handed by P.W.I Bhagwan Singh and his party and thus he illegally entered the Indian territory and he was not having a valid Passport. Thus, he committed offence under Rule 3/6 of the Rules of 1950.

3. After usual investigation, challan was filed in the Court. The learned Magistrate read over the contents of offences under Rule 3/6 of the Rules of 1950 on 25-6-90 to the accused-respondent Sharif who denied the same and claimed trial.

4. During trial, as many as three witnesses were produced on behalf of the prosecution and statement of accused was recorded under Section 313, Cr.P.C., but he did not choose to lead any defence.

5. After conclusion of the trial, the learned Magistrate acquitted the respondent Sharif of the offence under Rule 3/6 of the Rules of 1950 inter alia holding

i) that P.W. 1 Bhagwan Singh admits in his cross-examination that he saw the accused-respondent Bhagwan Singh entering into India from a distance of one km. and this part of his statement is unnatural one and, therefore, no reliance can be placed on the statement of P.W. 1 Bhagwan Singh.

ii) that there is no evidence on the part of prosecution to prove the fact that the accused entered the Indian Territory without Passport and therefore, he acquitted the accused-respondent from the above charge.

6. Aggrieved from the said Judgment dated 17-11-94 this State appeal has been filed and it has been argued on behalf of the State :

i) that the learned Magistrate has erred in not believing the statement of prosecution witnesses namely P.W.I Bhagwan Singh, P.W.2 Hathi Singh and P.W.3 Kojral Singh. Thus, there is ample evidence to connect the accused with the charge levelled against him.

7. On the other hand, learned Counsel for the accused-respondent Sharif has submitted that the learned trial Magistrate has given cogent reasons in acquitting the accused-respondent Sharif and it does not call for interference by this Court.

8. In my opinion, the Judgment of the learned trial Magistrate dated 17-11-94 by which he acquitted the accused-respondent Sharif of offence under Rule 3/6 of the Rules of 1950 is based on correct appreciation of evidence and does not require interference by this Court in this appeal.

9. P.W. 1 Bhagwan Singh, the main witness of the prosecution has admitted that he saw the accused Sharif from a distance of 1 km. and this is unnatural one and further he has stated that there was no fencing of wire between the pillars. This being the position it cannot be held that the accused entered the Indian territory without Passport.

10. P.W.3 Kojraj Singh has also admitted in his cross-examination that at that place there were sand dunes and also huts and accused was coming through pillars. When there was no fencing, it cannot be held that the accused intentionally entered the Indian Territory.

For the reasons mentioned above, I see no reason to dissent from the findings arrived at by the learned trial Magistrate by which the accused-respondent Sharif was acquitted of the offence under Rule 3/6 of the Rules of 1950. Hence, this appeal is liable to be dismissed.

Accordingly, the present appeal is dismissed after confirming the Judgment and order dated 17-11-94 passed by learned Civil Judge (Junior Division)-cum-Judicial Magistrate, 1st Class, Jaisalmer in Criminal Case No. 291/93.

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