Sudhdeo Jha Utpal vs The State Of Bihar on 4 December, 1956

Equivalent citations: AIR1957SC466, 1957(0)BLJR191, 1957CRILJ583, AIR 1957 SUPREME COURT 466, 1957 BLJR 191

JUDGMENT

Govinda Menon, J.

1. This is an appeal by special leave against the revisional judgment of the High Court of Patna, by which the conviction of the appellant of offences Under Section 420 and 193, Penal Code had been confirmed and a sentence of two years' rigorous imprisonment passed on him Under Section 120-B, read with Section 420, Penal Code, by the trial Court and confirmed in appeal, had been transposed for the offence Under Section 420, Penal Code. The sentence Under Section 193, Penal Code was also confirmed but was directed to run concurrently with the other sentence. The circumstances relating to the above appeal may be shortly stated as follows: -

> One Ramjiwan Himat Singka, who was the Director and Managing Agent of the Express Auto Service, Ltd., was prosecuted, along with the appellant, for an offence Under Section 120-B, read with Section 420, Penal Code, before the First Class Magistrate of Patna, who convicted both of them of that offence, which conviction having been confirmed in appeal by the Third Additional Sessions Judge of Patna, was made the subject of a revision before the High Court of Patna which acquitted both the appellant and Ramjiwan Himat Singka of the offence of conspiracy. As stated already with regard to the appellant, there were convictions Under Sections 420 and 193, Penal Code, which were confirmed and the sentence passed on him for the offence of conspiracy was transposed for the offence of cheating.

2. The Express Auto Service, Ltd., is a private Limited Company, owning a large number of motor buses and trucks, plying between the important towns of the State of Bihar, with its Headquarters at Dumka. The appellant, as the General Manager of the Company, is alleged to have entered into a conspiracy with the Director and Manager for the purpose of cheating the Government by procuring petrol-coupons during the years 1947.1948, when petrol rationing was in operation in the State of Bihar. The modus operandi attributed to the accused persons was that in the application for coupons for petrol a number of trucks and buses which were not in a road-worthy condition and for which taxes had not been paid, were included as being a running condition and on that misrepresentation the rationing authorities were induced to part with petrol coupons which they would not have done if they were apprised of the real state of circumstances. So far as the present appeal is concerned, the charge is restricted to nine vehicles, which were not in existence or not in a road-worthy condition at the time the applications (EXS. P. 15 and 16) had been filed by the appellant. Four out of these buses, mentioned in EX. 15, namely, B.K.J. 307, B. R. L. 554, B. R. L.

581 and 560, and five trucks out of those mentioned in EX. 16, namely, B. R. J. 475, B. R. 3. 476, B. R. L. 535, B. R. L. 547 and B. R. L. 550 were either not in existence, or not in a road-worthy condition at the time EXS. P. 15 and 16 were filed on 05.02.1948 before the petrol rationing authority. In column NO. 3 of EXS. 15 and 16 it has been stated that the tax due on these vehicles had been paid up to 31.03.1948. On the strength of the certificate contained in them, namely, that the contents of the applications were correct and that no other application for ordinary coupons in respect of the vehicles mentioned underneath as State carriages, had been made, the petrol rationing authority directed the issue of specific quantity of units of petrol by issuing the requisite coupons. Though there was some dispute as regards the non-existence of the nine vehicles above mentioned, during the course of the appeal before the High Court, it was no longer challenged that the statements in Exs. 15 and 16 to the effect that the tax had been paid in respect of these nine vehicles were, wrong and also that the implied assertion with respect to the three of these vehicles, namely B, R. L. 547, B. R. L. 550, and B. R. J. 554, that they were in a road worthy condition, was also wrong. The trial Court and the Court of appeal which were the ultimate Courts of fact, came to adverse findings against the appellant on those points and the same was not upset by the High Court in revision. We, therefore, take it that the statements in Exs. 15 and 16 to the effect that the tax in respect of these vehicles had been paid and that three at least of them were in a road-worthy condition are false representations.

3. What was argued before the High Court was that the appellant being the General Manager signed EXS. 15 and 16 which were not, in fact, filled in by him or on his directions following the usual practice of depending upon the office staff who made the necessary entries and put the documents before him for signatures. It is alleged that the company being a fairly big one, paying about RS. 40,000 as tax with respect to the vehicles, the General Manager could not be expected to know the accurate details of what had happened but would have to depend upon his office staff for the correctness of the statements contained in the applications. In short, the contention that has been put forward is that the appellant consciously did not make a false representation but in accordance with the practice obtaining in his office signed the documents placed before him by the subordinate staff as a matter of routine. In such circumstances it is argued that no culpability should be attached to the action of the appellant because he has not done anything with a criminal intent. It is not shown that he acted fraudulently or dishonestly as defined in Sections 24 and 25, Penal Code.

4. The learned Judges of the High Court did not accept this argument for the reason that at least with regard to B. R. L. 550, which is a truck mentioned in the application Ex. 16, the tax-token had been surrendered on 1st December 1947 which would mean that when EX. 16 were made on 5th February 1948, the vehicle had neither a certificate of fitness, nor was in a road-worthy condition but it was shown as such in the application. Similarly with regard to vehicle No. B. R. L. 547, another truck mentioned in Ex. 16 and B. R. L. 554 which is a bus mentioned in EX. 15, intimation had been sent from the Express Auto Service, Ltd., to the Registration Authority to the effect that bus NO. 554 had been dismantled. There is also EX. 10, dated 07.02.1948 signed by the appellant to the South Bihar Transport Department at Patna, wherein it is stated that tax token and the insurance certificate of fitness had been seen by the authority to whom that letter had been addressed. From these documents it was sought to be argued that the appellant knew that the statements contained in EXS. 15 and 16 were false.

5. The learned Advocate General of Bihar, who appeared in support of the conviction, invited the attention of the Court to various findings contained in the judgments of the trial Court, Court of appeal, as also the High Court to the effect that the appellant willfully made those representations, but those findings were arrived at along with the conclusion that the appellant and Ramjiwan Himat Singka were a party to the conspiracy and most of the documents on which reliance was placed by the lower Courts related to the proof of the conspiracy. We do not think the fact that in various portions of the judgments of the trial Court and the Court of appeal it is stated that the appellant knew about the falsity of the contents of EXS. 15 and 16, would improve the situation any further, so far as the prosecution is concerned when once the prosecution for the conspiracy has been held to be unsubstantiated. The learned Judges of the High Court were of the view that the inclusion of the three vehicles in EXS. 15 and 16 could not have been by an oversight but the fact remains that we do not find any discussion regarding the pro-bability or otherwise of the appellant's plea that he simply signed EXS. 15 and 16 on the faith of the regularity of the acts done in his office.

6. It is nowhere proved that the appellant has in any way benefited by getting the petrol coupons, nor is it suggested that he utilized them in the black market or otherwise in order to get a profit. In the absence of any evidence on that point, it is difficult to conclude that especially when the conspiracy is not proved that the appellant would have knowingly or willfully made a false representation in EXS. 15 and 16 to the effect that taxes had been paid in respect of all the vehicles mentioned therein, or that they were in a road-worthy condition. We are not satisfied that there was any fraudulent representation which had the effect of inducing the Petrol Rationing Authority to part with the coupons which it would not have otherwise done in this case.

7. The proper method of approaching questions of this kind is the one enunciated by the Court of Criminal Appeal in England in the case reported as R. v. Isaac Schama and Jacob Abramovitch, (1914) 11 cr A R. 45 (A), where The Lord Chief Justice delivering the judgment of the Court of Criminal Appeal, held that in the case of a person prosecuted for possession of recently stolen property, the burden of proof is never shifted to the accused and that if a reasonable explanation is given by the accused, the Jury will have to take that into consideration and if the Jury thinks that the explanation may reasonably be true, though they are not convinced about the truth, they should acquit the accused. This decision has been followed in India in the case Daud Shaikh v. King-Emperor, 40 cal w N 159 (B). Applying the principles enunciated there to the present case, we have to ascertain the exact situation. There is no reason to doubt that the explanation offered by the appellant for his having put his signature in EXS. 15 and 16 is a reasonable one. It is conceded that the Express Auto Service, Ltd., is a big concern with a large fleet of motor buses and trucks, paying a large sum of money as tax every year. It has got a number of branches in various towns in the State of Bihar. It also employs a large number of servants and presumably must have different departments dealing with different branches. The appellant as the General Manager cannot in the very nature of things be expected to know the minute details of all the business that would have been going on in various places. He cannot be expected to know the exact conditions of each of the buses or the trucks, nor can he be expected to be conversant with the fact as to whether taxes have been paid, regularly and properly of all these vehicles. Though in one place in the judgment of the learned Sessions Judge it is seen that the appellant took delivery of the petrol coupons, no evidence justifying that conclusion has been brought to the notice of the Court by the counsel on either side.

Considering the magnitude of the business of the Company, we cannot reasonably, expect the appellant to go personally to the Petrol Rationing Authority and take the coupons himself. In the ordinary course of things after he has signed the applications, they would be dispatched to the authorities and presented there by a clerk or other persons whose duty it is to do so. Had the question of conspiracy been proved, the case against the appellant might have been stronger but that having been found against the prosecution, on the remaining evidence can the appellant be imputed with any knowledge of the falsity of the allegations made in EXS. 15 and 16? The explanation offered by him, though he has not been able to prove it conclusively, is a reasonable one. Taking into consideration the fact of the ordinary run of official business in concerns like the one in which the appellant is the General Manager, we are inclined to think that the prosecution has not been able to prove that the appellant appended his signature to Exs. 15 or 16, knowing or having reason to believe that the contents contained therein were false. It is the duty of the prosecution to prove affirmatively that the appellant knew that the representations made are false and in the absence of circumstances from which it can be gathered that any such knowledge can be imputed to the appellant, we feel that this is a case in which the benefit of reasonable doubt should be given to the appellant. If the Court is not satisfied that the appellant affixed his signature, knowing or having reason to believe that the statements contained in EXS. 15 and 16 are false, then he has not committed an offence Under Section 420, Penal Code in which case he is entitled to the benefit of doubt which is given to him. If the conviction Under Section 420, Penal Code cannot be maintained, then the certificate given that the statements are true, cannot also be made the subject of a charge, and the appellant cannot be convicted Under Section 193, Penal Code.

8. Having regard to the view we take of the case, as stated above, it is unnecessary to deal with the other submissions of Mr. Sethi.

9. The appeal is, therefore, allowed and the appellant's conviction and sentence are set aside.