Kunjilal and Another

Vs

The State of Madhya Pradesh

Criminal Appeal No. 73 of 1953

(S. R. Dass, N. H. Bhagwati, Ghulam Hasan JJ)

08.10.1954

JUDGMENT

GHULAM HASAN J. -

This appeal under article 136 of the Constitution is filed against an order of the High Court of Judicature at Nagpur, passed in revision under the following circumstances.

The two appellants, Kunjilal and Deopal, who are father and son, the latter being aged 17, were prosecuted under section 392 and section 332, Indian Penal Code, in the Court of the Magistrate, Sagar. They were sentenced under the former to 1 year's rigorous imprisonment and under the latter to a fine of Rs. 500 each. Their convictions were upheld on appeal but Kunjilal's sentence was reduced to six months R.I. and Rs. 350 fine, while Deopal was bound over under section 562 of the Code of Criminal Procedure and the sentence of imprisonment was set aside. His fine was reduced under section 332, Indian Penal Code, to Rs. 250. They carried the matter further in revision to High Court but it was dismissed.

It appears that the export of certain essential supplies such as rice and ghee was prohibited from Madhya Pradesh to another State and any person contravening the prohibition was guilty of an offence under section 7 of the Essential Supplies (Temporary Powers) Act, 1964. Three bullock carts belonging to the appellants and carrying bags of rice and tins of ghee were crossing the river Dhasan on the Madhya Pradesh and Uttar Pradesh border on 1st March, 1949. Head Constable Abdul Samad on receiving information reached the spot, seized the prohibited goods and brought the carts back to Shahgarh in Madhya Pradesh. When they reached the jungle near Shahgarh the two appellants are alleged to have beaten the Head Constable and taken away the property seized to the house of Paltu Bania at Bagrohi. They were accordingly charged under sections 332 and 392, Indian Penal Code, for voluntarily causing hurt to a public servant in the discharge of his duty as such public servant and also for robbing him of the goods seized by him. The appellants denied the offence. They pleaded that the goods were not being exported to Uttar Pradesh but to a place called Baraitha and that they did not beat the Head Constable. The Magistrate who tried the appellants found that both the offences were proved against the appellants. He accepted the prosecution evidence both on the point of beating as well as on the point of exporting the contraband goods. The medical evidence supported the prosecution case. The appellants were accordingly convicted and sentenced as stated above.

The learned Additional Sessions Judge, Sagar, while agreeing with the findings of the Magistrate further found that the story that the carts were being taken to Baraitha which is in Madhya Pradesh was false as the route to Baraitha did not pass through the Dhasan river but lay in quite a different

direction. He, however, held that the carts were caught at the other bank of the river Dhasan after they had crossed the Madhya Pradesh border but the seizure was nevertheless legal. This finding was sought to be made capital of in revision and it was contended that the seizure took place beyond the border of the State of Madhya Pradesh and mass therefore illegal. Upon the question whether the carts were within the limits of Madhya Pradesh State when they were actually apprehended there was evidence which was accepted that the carts were seized when they were in the mid-stream and the cart-men requested the Head Constable to let them take the carts on the other side of the river so that they may have their meals. This was allowed and after they had finished their meals, the carts were brought back. Upon this evidence it was held that the carts were captured before they had crossed the Uttar Pradesh border and the seizure was in the circumstances legal and proper. The convictions were maintained but the sentences were reduced as already stated.

In a Special Leave to Appeal under article 136, it is not open to the appellants to re-agitate questions of fact and ask the Court to disturb the findings of fact arrived at by the Courts below. Those findings must therefore be accepted as binding. It was urged that there was absence of mens rea which it is necessary to establish under section 392. It is contended that the appellants honestly believed that they were taking the goods to a place within the State of Madhya Pradesh when they were caught in the mid-stream. This conclusion is, however, clearly negatived by the finding that the route which the appellants had chosen was not the route which led to Baraitha or any other place within Madhya Pradesh State but actually led to Uttar Pradesh.

It was also contended that the appellants were already prosecuted for an offence under section 7 of the Essential Supplies (Temporary Powers) Act, 1946, for exporting the contraband goods and although they were convicted by the Magistrate they were acquitted on appeal by the Additional Sessions Judge, Sagar, on October 31, 1952. It is argued upon the strength of this judgment which was admittedly not brought to the notice of the High Court that under section 403(1) of the Code of Criminal Procedure, the appellants who had once been tried for the offence and acquitted could not be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against them might have been made under section 236 or for which they might have been convicted under-section 237. Neither section 236 which deals with a case where there is a doubt as to which offence has been committed nor section 237 which entitles the Court to convict a person of an offence which he is shown to have committed although he was not charged with it, applies. Sub-section (2) of section 403 in our opinion furnishes a complete answer to the contention raised on behalf of the appellants. That sub-section reads :

> "403(2). - A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)."

The appellants were not tried again for the same offence as contemplated under section 403(1) but for a distinct offence as contemplated by sub-section (2). It is true that in order to sustain the charge under sections 332 and 392, Indian Penal Code, the Court had to consider whether the seizure was legal and was made by a public servant in the discharge of his duty but once that was found against the appellants the further question to be determined was as to whether they committed the offence of robbing the Head Constable of the goods lawfully seized and whether they voluntarily caused hurt to him while he was acting in the discharge of his duties as a public servant. Upon both these points the finding of the Courts below is concurrent. We hold that there is no substance in this contention. We accordingly dismiss the appeal.

Appeal dismissed.

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