SUPREME COURT OF INDIA

G. D. Sharma

Vs.

State of U.P.

Crl.A.Nos.188 and 198 of 1957

(S. J. Imam, J. L. Kapur, A. K. Sarkar and K. N. Wanchoo, JJ.)

01.09.1959

JUDGEMENT

IMAM, J.:

1. These two appeals have been heard together as the question for consideration is the same in both of them. In Cri. Appeal No. 188 of 1957 the appellant is G. D. Sharma who was Supervisor of the Central Excise Department. In Criminal Appeal No. 198 of 1957 the appellant is R. N. Tyagi who was also a Supervisor in the Central Excise Department. They were both posted at Aliganj in the District of Etah in the State of Uttar Pradesh. These two appellants were tried separately and one Om Prakash was a co-accused with them respectively in each of the cases. Om Prakash was the proprietor of the firm M/s. Torhi Lal Om Prakash which carries on business in tobacco at Aliganj.

2. According to the prosecution, tobacco is an excisable article and licences are issued by the Central Excise Department to certain dealers in tobacco. Dealers in tobacco can enter into transactions only up to the quantity stated in their licences. If they sell or transport a larger quantity they have to obtain special transport permits on which they have to pay excise duty. In October, 1950 it was discovered that on account of a conspiracy between the appellants and Om Prakash the Government was being defrauded of large sums of money as there was evasion to pay the necessary excise duty by the issuing of fictitious transport permits by the appellants.

3. A general outline, without mentioning details, of the method adopted by the appellants and Om Prakash to evade the payment of excise duty may be now stated. In the case in which the appellant Sharma and Om Prakash were accused, the alleged forged transport permit is Ext. P-4 dated the 20th of August, 1950. In the case in which the appellant Tyagi and Om Prakash were accused the transport permit is also Ext. P-4 dated the 12th of May, 1950. The former transport permit showed that tobacco had been received by Om Prakash from a tobacco dealer by the name of Harbans Lal and a number of sale notes were recorded in it. Harbans Lal was not a dealer of tobacco. He lived with Om Prakash and could not and did not issue any sale note. In the latter transport permit Om Prakash is said to have received tobacco from one Ram Sarup. In this permit also false entries of sale notes were recorded. According to Ram Sarup, he had never applied for such a transport permit and certainly had not supplied the tobacco. On the same date transport permits were issued to Om Prakash for the sale and transport of his tobacco to other persons. In those permits it was mentioned that the excise duty had been paid on permits No. 670953 dated 20-8-1950 and No. 670832 dated 12-5-1950 issued to Harbans Lal and Ram Sarup respectively. As the result of the issue of fictitious transport permits in the name of Harbans Lal and Ram Sarup, Om Prakash was able to transport a

large quantity of tobacco to other persons without paying the requisite excise duty on the tobacco covered by those transport permits and to that extent the Government had been deprived of the excise duty payable on the tobacco transported.

4. The Additional Sessions Judge of Etah convicted the appellant Sharma under S. 467 and sentenced him to 3 years' rigorous imprisonment and a fine of Rs. 200, in default, to suffer further rigorous imprisonment for six months. Om Prakash was convicted under S. 467/471 of the Indian Penal Code and sentenced to 3 years' rigorous imprisonment and a fine of Rs. 500, in default, to suffer further rigorous imprisonment for nine months. The appellant Tyagi was convicted by the same Judge under S. 467 of the, Indian Penal Code and sentenced to 3 years' rigorous imprisonment and a fine of Rs. 200, in default, to undergo further rigorous imprisonment for six months. His co-accused Om Prakash was convicted under S. 467/471, I. P. C., and sentenced to 3 years' rigorous imprisonment and a fine of Rs. 500, in default, to undergo further rigorous imprisonment for nine months. The Additional Sessions Judge directed the sentence of imprisonment passed on Om Prakash in the two cases to run concurrently. The appellants and Om Prakash appealed to the High Court of Allahabad. In all, four appeals were filed in the High Court. Criminal Appeals Nos. 1181 and 1205 of 1952 were with respect to the appellant Tyagi and Om Prakash and Criminal Appeals Nos. 1206 and 1207 of 1952 were with respect to the appellant Sharma and Om Prakash. The High Court set aside the conviction and sentence of the appellants and Om Prakash and directed their retrial. The learned Judge of the High Court directed that at the retrial a charge in the alternative under S. 467 of the Indian Penal Code and S. 477-A of the Indian Penal Code should be framed against Sharma and Tyagi and a charge of abetment in the alternative of offences under S. 467 and S. 477-A should be framed against Om Prakash.

5. The High Court was of the opinion that the acquittal of the accused under S. 120-B, I. P. C., was correct in the absence of a proper sanction. It was, however, pointed out by the High Court that the additional Sessions Judge had ignored the provisions of S. 109 of the Indian Penal Code. If the trial Court was satisfied that there had been concert between the appellants and Om Prakash a charge for the abetment of the offences alleged to have been committed by Sharma and Tyagi should have been framed against Om Prakash.

6. The High Court at one stage was of the opinion that the fictitious permits in question did not come within the definition of a false document under S. 464 of the Indian Penal Code. Later on, the learned Judge of the High Court expressed himself as follows :

"............and I have not been able to make up my mind whether the forged permit in this case can be described a false document or not. In my opinion the fictitious entries made by Tyagi, if proved, will amount to falsification of accounts within the meaning of S. 477A, I. P. C. I am, however, not confident about my opinion. I could have referred the matter to a Divisional Bench of this Court, but as I have to remand the case of Om Prakash, I am sending back the case of Tyagi also. It would have been not desirable to split up the two cases. No doubt I could have utilized the provisions of Ss. 236 and 237 of the Code of Criminal Procedure to alter the conviction of Tyagi, if on a consideration of the evidence I had been satisfied that his guilt is proved. In such a case Tyagi would not have been prejudiced because only the label of the offence would have changed and there was no question of giving prominence to a different set of facts."

Although in a separate order in Criminal Appeals Nos. 1206 and 1207 presented by Sharma and Om Prakash the learned Judge has not expressed himself in these words, we take it that he intended to do so because he states that the facts of the case in those appeals were exactly similar to the facts of the

case in Criminal Appeals Nos. 1181 and 1205 of 1952.

7. It was urged before us in these appeals by special leave that the High Court erred in directing a retrial. Since the learned Judge could not make up his mind whether any offence under Ss. 467 and 477-A had been committed, he should have set aside the conviction of the appellant as it had not been established that any offence had been committed. The learned Counsel for the appellants further pointed out that the incidents for which the appellants were put on trial took place in May and August, 1950 and the complaint was not filed till 1951. In the meantime, the appellants had been suspended. There were prolonged hearings before the Magistrate before commitment, and in the Court of Session. The appellants had suffered sufficiently and there was no occasion for the appellants to be retried. It was further pointed out that the learned Judge had observed,

"No doubt I could have utilized the provisions of sections 236 and 237 of the Code of Criminal Procedure to alter the conviction of Tyagi, if, on a consideration of the evidence, I had been satisfied that his guilt is proved."

This clearly showed that the learned Judge was not satisfied that the appellants had been proved to his satisfaction to be guilty of the offence under Ss. 467 and 477-A of the Indian Penal Code.

8. As to the last submission it was pointed out on behalf of the State that the learned Judge had expressly stated more than once in the judgment that he was expressing no opinion on the merits of the evidence in the case and the expression used by him merely showed that if he had examined the evidence and had been satisfied on such examination that the accused were guilty he could have utilized the provisions of Ss. 236 and 237 of the Code of Criminal Procedure. The reason why he did not make use of those provisions was that the case of the appellants could not be separated from the case of Om Prakash. In our opinion, the contention on behalf of the State is valid and it cannot be said that the learned Judge was of the opinion, on the evidence, that the guilt of the appellants had not been proved.

9. As for the learned Judge having doubts whether the permits in question were false documents and his lack of confidence in his opinion that the fictitious entries made by the appellants in them would amount to falsification of accounts within the meaning of S. 477-A is concerned, we are of the opinion that the learned Judge did not intend to mean that no offence under S. 477-A had been committed. A perusal of his judgment shows quite obviously that he intended that the appellants must be retried in order to determined whether this offence had been committed by them. Whatever may be said on the question whether there had been falsification of accounts in the permits in question, the provisions of S. 477-A also contain the following words:

"........ or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

The charge framed under S. 467 of the Indian Penal Code at the trial mentioned about making entries of false or imaginary sale notes and other false entries in the transport permits in question with intent to defraud the Government of its revenues. It seems to us that even if there should be some doubt as to whether the permits in question amounted to falsification of accounts there was a case to be tried on the question whether the entries made therein were false and thereby the latter part of S. 477-A was contravened.

10. It is true that the incidents out of which the prosecution arose took place as far back as the months of May and August, 1950 and it is a matter for serious comment that a criminal proceeding against any accused person should have been pending of so long. We do not think it right in this case to interfere on that ground alone. The offences which the appellants and Om Prakash are alleged to have committed are of a serious kind and it is necessary that a court of law should decide whether they are guilty of those offences.

11. It seems to us, however, that instead of ordering a retrial the High Court should have itself disposed of the appeals. As pointed out by the learned Judge there was no question of giving prominence to a different set of facts. The provisions of Ss. 236 and 237 are clear enough to enable a court to convict an accused person even of an offence with which he had not been charged if the court is of the opinion that the provisions of S. 236 apply, that is to say, if a single act is or a series of acts are of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, then the accused can be charged with having committed all or any of such offences, and any number of such charges can be tried at once; or he may be charged in the alternative with having committed some one of the said offences and by virtue of the provisions of S. 237 the accused although charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of S. 236, can be convicted of the offence which he is shown to have committed, although he was not charged with it. In our opinion, therefore, the High Court erred in ordering a retrial of the appellants and should have decided, on the evidence before it, whether any offence had been committed by the appellants. We accordingly allow by the appeals, set aside the orders of the High Court directing the retrial of the appellants and remand the case to it for rehearing of the appeals filed by the appellants. The High Court is requested to dispose of their appeals as early as possible and any undue delay in the disposal of the appeals may be avoided.

Appeals allowed.

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