

SUPREME COURT OF INDIA

Baidyanath Prasad Srivastava

Vs.

State of Bihar

Crl.A.No.47 of 1966

(V. Ramaswami, G. K. Mitter and C. A. Vaidialingam, JJ.)

30.04.1968

JUDGEMENT

VAIDIALINGAM, J.:

1. On behalf of the sixth-accused, the appellant herein, in this appeal, by special leave, Mr. B. P Singh, learned counsel, challenges the order of the Patna High Court, dated September 6, 1965, setting aside the order of acquittal, passed by the Second Additional Sessions Judge, Muzaffarpur, and convicting him for an offence, under Section 467, read with Section 109, I. P. C., and passing a sentence of three months' rigorous imprisonment.

2. For the relief and rehabilitation, of people who had suffered, in 1954, by the heavy floods in Sitamarhi Sub-Division, the Government of Bihar was granting loans to needy and suitable persons, under the Agriculturist's Loan Act, 1884. The appellant was a Mukhtear, practising at Sitamarhi. There were certain formalities, to be gone through, in the matter of obtaining the loans, under that Act. One of the requirements was that an applicant had to put his signature, on an agreement from and, that he should be identified, by a lawyer, who should also attest his signature. Several officers,

connected with this Loan Department, including the Mukhtears practising at Sitamarhi, one of whom was the appellant, were alleged to have entered into a conspiracy, between November, 19, 1955 and December 22, 1955, to cheat the Government, by inducing it to grant loans, in the names of two fictitious persons, and, in pursuance of that conspiracy, two applications, for loans in the names of two fictitious persons, Durga Singh and Hari Shankar Singh, were filed before the Sub-Divisional Officer, Sitamarhi. According to the prosecution, the appellant and another Mukhtear, Devendra Prasad, had certified, in the loan applications of Durga Singh and Hari Shankar Singh, that they knew those parties and that they had signed, in their presence. The amounts were drawn in the usual course, from the treasury, by the said two persons; and, ultimately, it came to light that the two persons were fictitious persons, got up by the several accused. The appellant admitted having attested in the loan applications of the two individuals concerned but he stated that he did so, on the assurance of one Sheojee Prasad Karpardaj. It may be stated that this Sheojee Prasad Karpardaj was also charge-sheeted, but he has been discharged, even by the committal Court.

3. The learned Sessions Judge found on the evidence, that Durga Singh and Hari Shankar Singh were fictitious person and a fraud was committed, on the Sub-Divisional Officer, Sitamarhi, and the Sub-treasury, as a result of which the Government sustained a loss of Rs. 1,000. The learned Sessions Judge accepted the appellant's plea that he had made the endorsement on the assurance of Sheojee Prasad Karpardaj and, in view of the fact that another Mukhtear, Devendra Prasad had also attested the loan applications, and (sic) acquitted him. This Devendra Prasad had also been charged, for the same offence. While admitting, having attested the signatures of the applicants for the loan, Devendra Prasad had set up a plea that he did so, on the assurance, given by one Rudradeo Singh. This explanation has been accepted, by the trial Court and Devendra Prasad was acquitted. But, when the State appeal, against acquittal, was pending in the High Court Devendra Prasad died. But, we have to refer to certain observations, made by the High Court, regarding this Devendra Prasad which have, more or less, formed the grounds, for setting aside the order of acquittal of the appellant also. The High Court on appeal, by the State Government, has set aside the order of acquittal of the appellant. Two reasons, so far as we could see, have been given, by the High Court, for interfering with the order of acquittal, viz., (i) that though the appellant raised a defence that he attested the loan applications, on the representation and assurance of Sheojee Prasad Karpardaj, no evidence has been let in, by the appellant, to support this defence; and (ii) Devendra Prasad, with whose case the appellant's also was closely connected, had raised a plea that he attested the loan applications, on the assurance and representation of Rudradeo Singh and that Devendra Prasad has not examined himself as a witness, under Section 342A. Cr. P. C., nor did he adduce any other evidence, in support of his claim. It is really, on these grounds, that the appellant has been convicted for the offence under Section 467 read with Section 109. I. P. C., and sentenced to undergo rigorous imprisonment for a period of three months.

4. We are satisfied that the order of the High Court cannot be sustained. Regarding the first point, mentioned above, the High Court has really thrown the burden of proof on the appellant, instead of finding out whether the prosecution has proved its case and whether the order of acquittal is erroneous. Regarding the second point the High Court has really committed a breach of the proviso to Sections 342A, when it has commented upon the non-examination of Devendra Prasad, that he has not examined himself, as a defence witness. Under Clause (b), of the proviso to Section 342A, Cr. P. C., it is specifically provided that the failure of an accused to give evidence, shall not be made

the subject of any comment, by any of the parties, or the Court, or give rise to any presumption against himself, or any person charged, together with him, at the same time. The High Court has stated that the case of the appellant is closely connected with that of Devendra Prasad. In fact, the appellant had pleaded that he had attested the signatures of the applicants, for the loans, because Devendra Prasad, another Mukhtear, had attested the same and also on the assurance of one Sheojee Prasad Karpardaj. Devendra Prasad had taken a plea that he had attested the signatures of the applicants on the assurance of one Rudradeo Singh, a class-mate of his. It is in considering this plea that the High Court has commented upon the failure of Devendra Prasad to give evidence under S. 342A, and the High Court has also taken the view that the same reasons will apply to the appellant's defence also. That is, the failure of the appellant, to give evidence, has been commented upon, by the High Court, and it has also drawn a presumption, against him, both of which are illegal, under Clause (b) of the proviso to Section 342-A, Cr. P. C.

5. In view of this serious infirmity, in the judgment of the High Court, the order, under attack, is set aside and the order of the Second Additional Sessions Judge, Muzaffarpur, acquitting the appellant, will stand restored. In the result, the appeal is allowed.

Appeal allowed