Ram Jas

Vs

State of U. P.

Criminal Appeal No. 113 of 1967

(V. Bhargava, I. D. Dua JJ)

11.09.1970

JUDGMENT

BHARGAVA, J. -

1. The appellant, Ram Jas, was tried along with four others, Madan Lal, Inder Singh, Badri Nath and Ram Nath, on charges under Section 120-B of the Indian Penal Code and Sections 420/511, 467, 468 and 471, read with Section 120-B of the Indian Penal Code. He was convicted for offences under these sections and was awarded a cumulative sentence of three years rigorous imprisonment and a fine of Rs. 3,000/- in default, two years rigorous imprisonment. He went in appeal before the High Court Allahabad. The High Court came to the view that the appellant had at least committed an offence punishable under Section 419, read with Section 109, I.P.C., even if the other charges, for which he had been convicted, may not be established. On this view, and relying on the power of the Court to convert his conviction to appropriate sections of the Indian Penal Code, the High Court substituted the conviction of the appellant under Section 419, read with Section 109, I.P.C., for the conviction recorded by the Trial Court, and reduced his sentence to two years rigorous imprisonment, while maintaining the fine of Rs. 3,000/- The appellant has now come up in appeal to this Court against this judgment of the High Court by special leave.

2. Before dealing with the correctness of the conviction recorded by the High Court, we may take notice of the fact that the High Court, in its judgment, did not examine the evidence be relating to the offences for which the appellant had been convicted by the Trial Court and has not recorded any findings on the facts which, according to the prosecution, constituted the commission of those offences. It is not necessary to reproduce the ingredients of all the offences with which the appellant was charged. It is sufficient to mention three charges which re relevant to the question whether the conviction recorded by the High Court is justified. One of the charges was under Section 468, read with Section 120-B, I.P.C., in respect of forgery of three affidavits of Govind Ram, two dated 7th February, 1959 and one dated 16th February, 1959, committed with the intention of using the affidavits for the purpose of cheating. The second charge under Section 420, read with Section 120-B, I.P.C., related to cheating two persons, Madan Lal and Chunni Lal, by dishonestly inducing them to deliver certain sums of money so as to get their debts adjusted against the claim of Govind Ram who was a refugee form Pakistan and the third charge under Section 420/511, read with Section 120-B, I.P.C., was of attempting to cheat the office of the District Relief and Rehabilitation-cum-Settlement Officer, Saharanpur, by dishonestly inducing the office to adjust the debits of Madan Lal and Chunni Lal against the claim of Govind Ram and of using the forged affidavits in that connection. The Trial Court convicted the appellant for all these charges, and the appeal in the High Court was against that conviction. The High Court, on appeal, however, convicted the appellant for the offence punishable under Section 419, read with Section 109, I.P.C., on the finding that the

appellant had at least abetted the execution of one false affidavit of Govind Ram and that person was wrongly identified by the appellant before the Oath Commissioner and, as such, the appellant was held guilty of abetting the offence of cheating by personation constituting the offence punishable under Section 419, read with Section 109, I.P.C.

3. In recording this finding and conviction, the High Court lost sight of the fact that no such charge was framed against the appellant in the Trial Court. As we have indicated above, the persons, who were cheated or attempted to be cheated, referred to in the charges framed against the appellant, were Madan Lal, Chunni Lal, or the office of the Relief and Rehabilitation-cum-Settlement Officer, Saharanpur. There was no charge at all relating to any cheating or attempting to cheat the Oath Commissioner. In fact, the case was never brought to Court with the intention of obtaining conviction of the appellant for any offence of cheating in respect of the Oath Commissioner. Not only was there no charge in their respect, but, in addition, the appellant, when questioned under Section 342 of the Code of Criminal Procedure after the prosecution evidence had been recorded, was not asked to explain evidence relating to such a charge of cheating the Oath Commissioner. No doubt, there was mention of commission of forgery of affidavits; but the mention of the Commission of that offence could not possibly lead the appellant to infer that he was liable to be convicted for abetting the offence of cheating the Oath Commissioner. Further, in recording this conviction, the High Court did not even care to examine in detail whether all the ingredients of the offence had been established by the prosecution evidence. The only finding of fact was that the appellant, who was known to the Oath Commissioner, wrongly identified some other person as Govind Ram and got the affidavit attested by the Oath Commissioner as if it was being sworn by Govind Ram. This Act of wrong identification committed by the appellant cannot amount to the offence of cheating by personation. Cheating is defined in Section 415, I.P.C., which is as follows :

> "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which Act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

The ingredients required to constitute the offence of cheating are -

> (i) there should be fraudulent or dishonest inducement of a person by deceiving him;
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> (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
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> (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
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> (iii) in cases covered by (ii) (b), the Act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

4. In the present case, the finding of fact recorded only show that the oath Commissioner was induced to attest the affidavit by the deception practised by the appellant in wrongly identifying a person as Govind Ram when he was in fact not Govind Ram. That Act done by the Oath

Commissioner of attesting the affidavit could not, however, possibly cause any damage or harm to the oath Commissioner in body, mind, reputation or property. The Oath Commissioner was obviously not induced to deliver any property to anybody by this wrong identification, nor was he induced to consent that any person should retain any property. Thus, the facts found did not constitute the offence of cheating at all. The conviction for an offence under Section 419, substantively or with the aid of Section 109, I.P.C., could only have been justified if the facts proved constituted all the ingredients of the offence of cheating. In recording the conviction, the High Court neglected to see whether all those ingredients were proved. On the fact of its, though the Oath Commissioner was induced to attest the affidavit by wrong identification made by the appellant, there was no likelihood of any damage or harm to him in body, mind, reputation or property, so that the Oath Commissioner was never cheated. Clearly, therefore, the High Court fell into an error in recording the conviction of the appellant for the offence under Section 419, read with Section 109, I.P.C. and substituting that conviction in place of the conviction for offences for which he had been punished by the Trial Court.

5. We may, in this connection, take note of another error committed by the High Court, though it is not material to the result of this appeal. The High Court upheld the sentence of fine of Rs. 3,000/- awarded by the Trial Court to the appellant. The Trial Court had directed that, in default of payment of fine, the appellant was to undergo two years' rigorous imprisonment. The High Court made no order with regard to imprisonment in default; but by upholding the fine awarded by the Trial Court, the High Court impliedly also affirmed the imprisonment to be undergone in default of payment of fine. In affirming this sentence of imprisonment in default of payment of fine, the High Court failed to notice that the sentence of imprisonment in default became illegal when the conviction was altered to one under Section 419, read with Section 109, I.P.C. Under that section, the maximum sentence of imprisonment that can be awarded is three years and, consequently, under Section 65, I.P.C., the maximum term of imprisonment in default of payment of fine that could be prescribed was nine months, being one-fourth of three years. In approving the sentence of two years' imprisonment in default of payment of fine, the High Court, thus, made an order which was clearly illegal and in contravention of Section 65. I.P.C. The Trial Court had, of course, committed no error in awarding the sentence of two years rigorous imprisonment in default of payment of fine, because that Court had recorded conviction for five different offences, each punishable with imprisonment for seven years and the fine of Rs. 3,000/- was a part of the cumulative sentence for commission of those five offences. We have only pointed out that this error occurred, because the High Court adopted the extraordinary course of convicting the appellant for an offence with which he had never been charged, for which he had never been tried, and without examining whether the ingredients of that offence were established and what was the maximum punishment the could be awarded for it. In adopting this course, the High Court, as we have indicated earlier, failed to record a clear finding whether the offences, for which the appellant had been convicted by the Trial Court, were proved or not.

6. In these circumstances, the appeal is allowed, the conviction under Section 419, read with Section 109 of the Indian Penal Code is set aside. The case will now go back to the High Court for re-hearing the appeal and giving a decision on the appeal in respect of the offences for which the appellant was convicted by the Trial Court. The appellant will continue on existing bail till the High Court orders otherwise.

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