

Sathi Prasad

Vs

State of Uttar Pradesh

Criminal Appeal No. 123 of 1969

(A. N. Grover, A. N. Ray JJ)

15.03.1972

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment, dated January 16, 1969, of the High Court at Allahabad.

2. The High Court upheld the order and judgment of the Assistant Sessions Judge, Faizabad convicting the appellant and sentencing him to 5 years rigorous imprisonment under Section 394 of the Indian Penal Code, 3 years rigorous imprisonment under Section 404 of the Indian Penal Code, and 3 years rigorous imprisonment under Section 218 of the Indian Penal Code. The sentences were to run concurrently.

3. The appellant was head constable at the police out-post Baghanala under the police station Chhaoni in the District of Basti, Uttar Pradesh. On April 10, 1965, which was Ram Naumi day a large number of persons had come to Ayodhya to have a dip in the holy river Saryu and a Darshan of the temples. There was a large crowd on the bridge over the river. The bridge gave way. Many persons were drowned. Bachchan Lal Srivastava, an Advocate and his brother Triloki Nath Srivastava, an Overseer and Bachchan Lal Srivastava's clerk, Judge Kishore and two other Advocates Shri. Shanker Singh, P.W. 1, and Shri. Jagdamba Prasad Singh, P.W. 6, were pilgrims to the river Saryu on that day. The Srivastava brothers and the clerk were drowned. Their dead bodies could not be recovered. A search party met the Deputy Inspector General of Police and the Commissioner of Division on April 12, 1965. They gave information to the search party that some dead bodies were seen near Vikram Jot village. The party went to Vikram Jot. They made enquiries at the place. A person gave information that the dead body of a stout person wearing white bush-shirt and a pair of steel colour terylene trousers had been found near Sahjaura Pathak village and a wrist watch, a gold ring and some money had been recovered from the body by certain boatmen but the same had been taken away from the boatmen by some one in the police.

4. The search party with the chowkidar and the person who gave information proceeded to village Sahjaura Pathak. There the party met the Mallahs who were the boatmen. They were Munnu Lal Mallah, P.W. 8, and Daya Ram Mallah, P.W. 9, and Jassi Mallah. The party was headed by Shri. Shanker Singh, Advocate P.W. 1, and along with him was his client Shri. Ram, P.W. 12, who was Up-Pradhan of the village. The party was taken by the three Mallahas on a boat across the river. Daya Ram, P.W. 12, showed the dead body which had been reduced to bones by vultures. A belt, an underwear and a pair of trousers were still on the body. Shri Shanker Singh, P.W. 1, and his companions recognised from the teeth of the body to be that of Bachchan Lal Srivastava. The party

carried the dead body to village Sahjaura Pathak.

5. The party thereafter went to the police out-post Baghanala along with Daya Ram, P.W. 9. Daya Ram, P.W. 9, was one of the Mallahs. The party went inside the police out-post Baghanala and met the appellant. Shri Shanker Singh enquired from the appellant if any dead body had been recovered that day from the river from which Daya Ram had removed a wrist watch, a gold ring and Rs. 17.75 all of which soon after, had been taken away by the appellant from Daya Ram, after beating and threatening him and whether the appellant had further directed that the facts should not be disclosed and the dead body should be thrown into the current of the river. The appellant denied the story. Thereupon Shri Shanker Singh, P.W. 1, called Daya Ram who narrated the facts including the version that the appellant had threatened that the facts should not be disclosed to anyone that the dead body should be thrown into the current of the river. The appellant replied that Daya Ram was telling a lie.

6. At the instance of Shanker Singh the general diary of the Baghanala police out-post relating to April 12, 1965, was shown. The diary showed that the police left the out-post at 6.40 a.m. on April 12, 1965, in search of dead bodies and the police party returned to the out-post at 6.10 p.m. with the narration that no dead body was recovered on that day.

7. Shanker Singh thereafter told the appellant that he would go to the higher authorities for action. Constable Kidar Nath who was co-accused with the appellant thereupon took the appellant aside and advised him to hand over the wrist watch, gold ring and cash to Shanker Singh. The appellant went to his house and brought the wrist watch, and the gold ring and made over the same to P.W. 6, Shri. Jagdamba Singh confessing before the party in terms of Daya Ram's version and said that he had spent the cash.

8. Shanker Singh and his party took possession of the wrist watch and the gold ring and went to police station Chhaoni. P.W. 2, Shri. Bhriгу Narain Dwivedi, an Advocate who was with Shanker Singh in the party wrote out the report and lodged the same. The articles recovered from the dead body were deposited by the complainant with the Station Officer.

9. The defence of the appellant was that he took the wrist watch, the gold ring and the cash from Daya Ram on coming to know that the latter had recovered the same from the dead body and the appellant kept the same with himself having sent information to the Station Officer of police station Chhaoni through constable Ram Bihari Singh attached to Chhaoni Police Station.

10. The crucial question is the intention with which the appellant took the wrist watch, the gold ring and the cash. Counsel on behalf of the appellant submitted that the intention of the appellant was not dishonest because P.W. 10, Ram Chandra and P.W. 11, Kishore had both stated when examined under Section 164 of the Criminal Procedure Code that Daya Ram had made over the articles to the appellant voluntarily and without being beaten and Daya Ram was slapped after he had given the articles. At the trial both those witnesses however said that the appellant gave slap to Daya Ram and got the articles from the latter. There was also the evidence of P.W. 8, Munnu Mallah and P.W. 9, Daya Ram himself that the articles were given after the appellant had slapped Daya Ram. The High Court rightly considered the discrepancy between the statement under Section 164 of the Criminal Procedure Code and the oral evidence of those two witnesses to be explained by describing the statements under Section 164 of the Criminal Procedure Code to be "guided statements".

11. An important feature of the evidence is that the appellant denied having taken anything from

Daya Ram and yet the articles were handed over by the appellant only after the search party had come out of the police out-post. The general diary or the duty register of the Baghanala police out-post to which the appellant was attached does not mention that the Mallahs had found a dead body in village Sahjaura Pathak nor is there any entry in that diary that the Mallahs had taken out a wrist watch, a gold ring and some cash from the dead body and that the appellant had taken the same from one of the Mallahs. If it were the real intention of the appellant to deposit the articles it would be natural for him to record the same in the general diary.

12. Counsel on behalf of the appellant placed emphasis on the general diary of the Chhaoni Police Station. The entry was made by D.W. 5, Pradumna Misra on April 12, 1965, at about 9.40 p.m. on the return of constable Ram Bihari Singh to that police station. It is recorded there that the appellant took from Daya Ram one ring, one wrist watch and Rs. 17.75 which Daya Ram had taken from a dead body. It is also recorded there that the appellant stated he would deposit the same the following day at the police station. Constable Ram Bihari Singh was examined as D.W. 1, but he was not examined in support of the correctness of the entry of the facts. The appellant reached his out-post Baghanala at 6.10 p.m. Chhaoni Police Station was six miles from that police out-post. It is in this background that the trial court as well as the High Court correctly doubted the genuineness of the entry in the general diary at Chhaoni Police Station.

13. The High Court upheld the conviction and sentences passed by the Sessions Court. The High Court correctly held that the offence under Section 394 of the Indian Penal Code was established on the evidence. The Sessions Court as well as the High Court accepted the evidence of the prosecution witnesses that the articles were not given voluntarily by Daya Ram to the appellant.

14. The High Court also correctly held that the offence under Section 404 of the Indian Penal Code was made out because the appellant kept the articles with himself for his own purpose.

15. As to offence under Section 218 of the Indian Penal Code the High Court held that the appellant failed to record the recovery of the property and the underlying motive of the appellant was to save the property for his own use. Counsel on behalf of the appellant submitted that under Regulation 58 of the U. P. Police Regulations the head constable of an out-post has no duty to maintain a general diary, what he maintains is a duty register and further that under U. P. Police Regulation 294 it is the Officer-in-Charge of the Police Station who can maintain a general diary and under his supervision it has to be written by the head constable of the Police Station as required by Regulation 55. It was, therefore, said that there would be no offence under Section 218 of the Indian Penal Code. This point was not canvassed at the trial court or in the High Court. This requires elucidation of facts. Both in the trial court and in the High Court the case proceeded on the basis that the appellant as a public servant was charged with the preparation of record or other writing and he committed offence within the meaning of Section 218 of the Indian Penal Code.

16. For the foregoing reasons the appeal fails and is dismissed. The appellant will surrender to his bail and serve out the sentence.

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