Thakur Jainarain Singh

Vs

The State of Madhya Pradesh

Criminal Appeal No. 22 of 1970

(H. R. Khanna, A. Alagiriswami JJ)

14.08.1973

JUDGMENT

KHANNA, J. :-

1. This is an appeal by special leave by Thakur Jainarain Singh against the judgment of the Madhya Pradesh High Court affirming on revision the conviction of the appellant under Section 34(a) of the Madhya Pradesh Excise Act and the sentence of rigorous imprisonment for a period of 18 months and a fine of rupees one thousand or in default rigorous imprisonment for a further period of six months.

2. Wali Mohd. Akram and Wazir Singh were also tried along with the appellant. Wali Mohd. pleaded guilty and was accordingly convicted. The other two accused were also convicted along with the appellant by the trial Court but we are not concerned with them.

3. The prosecution case is that on February 5, 1967, Sub-Inspector Nigam (P. W. 12) was present in front of Ranjit Saw Mill in Khandwa in connection with the collision of a car and a truck. The Sub-Inspector then saw Ambassador Car No. UPL 6069 coming from the direction of Dhan Mandi. On suspicion the Sub-Inspector stopped the car. The car was being driven by Akram accused, while Wali Mohd. and Wazir Singh were sitting on the back seat. On the query of the Sub-Inspector, Akram disclosed that he had no driving licence. The Sub-Inspector then went near the car and felt the smell of Ganja. The car was thereupon searched and Ganja weighing 4 1/2 maunds was recovered therefrom. The recovered Ganja was put into sealed parcels. The car in question as well as Akram, Wali Mohd. and Wazir Singh were taken to the police station. A case was thereafter registered at the instance of Sub-Inspector Nigam.

4. Car No. UPL 6069 had been registered at Varanasi and belonged to the appellant who is the proprietor of a hotel in Varanasi cantonment.

5. On February 8, 1967 the appellant made a report to the police at Varanasi that he had sent his Car No. UPL 6069 with his driver Akram to Sasaram in Bihar, in connection with election work on February 4, 1967. The car was stated not to have reached Sasaram not to have returned. According to the appellant, he suspected that his driver had run away with the car. The appellant accordingly prayed for taking necessary action for the search of the car.

6. The appellant, it is further stated, went from varanasi to Khandwa and met Akram and Wali Mohd, accused in jail on February 26, 1967 in the presence of an American student Danny (P. W. 11), who was also an inmate of Khandwa Jail having been arrested in a case under Section 14 of the

Foreigners Act. The appellant also deposited a sum of Rs. 50.00 for expenses of Wali Mohd. with the jail authorities.

7. At the trial Wali Mohd. pleaded guilty and stated that he had induced Akram accused to take the car to Bombay. Wali Mohd. also added that the Ganja in question belonged to him. The plea of Wazir Singh was that he had got into the car at Indore when he saw the car passing that way. According to Akram accused, the appellant had sent the car to Sasaram for election work. He then met Wali Mohd. who induced Akram to take something as a result of which Akram became unconscious. When Akram regained consciousness, he found that Wali Mohd. had been driving the car. The appellant, in the course of his statement under Section 342 of the Code of Criminal Procedure, stated that he had given the car in question to his driver Akram on February 4, 1967, for being taken to Sasaram for election work. When the appellant received information that the car had not reached Sasaram, he made a report to the police. The appellant denied having met Wali Mohd. and Akram in Khandwa jail on February 26, 1967 and about his having then deposited Rs. 50.00 with the jail authorities for the expenses of Wali Mohd.

8. The High Court in maintaining the conviction of the appellant relied upon the fact that the car in which Ganja was being taken belonged to the appellant and that the appellant had met Akram and Wali Mohd. in Khandwa jail on February 26, 1967, on which date the appellant also deposited Rs. 50.00 with the jail authorities for the expenses of Wali Mohd. The version of the appellant that he had sent his car to Sasaram was not accepted.

9. We have heard Mr. Nurudding on behalf of the appellant and Mr. Ram Panjwani on behalf of the State and are of the opinion that the case against the accused-appellant has not been proved beyond reasonable doubt. It is no doubt true that the car in which the contraband Ganja was being carried belonged to the appellant, but that fact would not show that it was the appellant who was responsible for sending the Ganja in the car. The appellant admittedly was not present in the car at the time the Ganja was recovered from the car. Besides the driver, there were to other occupants of the car and, according to one of them, namely, Wali Mohd. the Ganja in (sic) belonged to him. The appellant has stated that he had deputed his driver Akram on February 4, 1967, to take the car to Sasaram at a distance of 70 miles from Varanasi for election work. The High Court rejected this version of the appellant on the ground that as the car did not reach Sasaram, the appellant should have lodged a report on February 5, 1967, with the police. The fact that no such report was lodged with the police by the appellant till February 8, 1967, shows, according to the High Court, the complicity of the appellant. In this respect we find that there is nothing on the record to indicate that the appellant should have come to know on February 5, 1967, that the car had not reached Sasaram if, in fact, he had sent that car to that place. There is nothing improbable in the appellant having learnt on February 8, 1967, that his car had not reached Sasaram and about his having made a report to the police on that day.

10. Much has been made of the fact by Mr. Ram Panjwani that the name of the person at Sasaram to whom the appellant had sent his car was not} entioned in report P. W. 17 which the appellant made to the police on February 8, 1967. This fact, in our opinion, is not very material. The fact that the car had been sent to sasaram for election work was mentioned in the report. The name of the person at Sasaram to whom the car was stated to have been sent by the appellant was mentioned in Ex. P-14 which was a report sent by Varanasi police on February 11, 1967 to Khandwa. According to that report, the name of the person at Sasaram was Jamuna Pradesh Singh and he was the elder brother of the son-in-law of the appellant. The report which was made on February 8, 1967 by the appellant to the police, in our opinion, lends support to the version of the appellant that the car had been taken

to Khandwa by the appellant's driver without the knowledge and consent of the appellant.

11. The other circumstance relied upon by the prosecution to prove the complicity of the appellant is the fact that he met Akram and Wali Mohd. accused in Khandwa jail on February 26, 1967 and deposited Rs. 50.00 with the jail authorities for the expenses of Wali Mohd. This circumstance, no doubt, creates a suspicion against the appellant, but it is not enough to prove the charge against the appellant. The appellant might as well have come to Khandwa to meet the driver and other occupants of the car to enquire about the circumstances in which Ganja was being taken by them in the car. The appellant might further have deposited Rs. 50.00 with the jail authorities for the expenses of Wali Mohd. for a variety of reasons and not necessarily because of his (the appellant's) complicity in the transport of Ganja.

12. In order to sustain the conviction of an accused on circumstantial evidence, it is necessary that such circumstantial evidence should be of a conclusive character and should be consistent only with the hypothesis of the guilt of the accused. The same cannot, in our opinion, be said of the evidence against the appellant. Although, as mentioned above, there is a suspicion against the appellant regarding his complicity in the transport of Ganja, the facts brought on the record are not sufficient to bring the charge home to the appellant beyond all reasonable doubt. The appellant must inevitably have the benefit of that doubt. We accordingly accept the appeal, set aside the conviction of the appellant and acquit him.

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