

Ramaniklal Gokaldas and Others

Vs

The State of Gujarat

Criminal Appeal No. 90 of 1971

(Y. V. Chandrachud R. S. Sarkaria, P. N. Bhagwati JJ)

06.08.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Gujarat confirming the conviction and sentence recorded against the appellant by the Additional Sessions Judge, Ahmedabad for offences under Sections 419, 420 and 471 of the Indian Penal Code.
2. The conviction is based solely on the identification of the appellant by two witnesses, namely, Jayatilal Vyas and Karsan Lad. The evidence of both these witnesses has been accepted by the learned Sessions Judge as well as the High Court and on the basis of this evidence, the learned Sessions Judge and the High Court have arrived at concurrent findings of fact resulting in the conviction of the appellant. The veracity and credibility of the evidence of these two witnesses is assailed before us on behalf of the appellant, but we do not see any reason to interfere with the appreciation of this evidence by the learned Sessions Judge and the High Court.
3. It is a wholesome rule evolved by this Court, which has been consistently followed, that in a criminal case, while hearing an appeal by special leave, this Court should not ordinarily embark upon a reappraisal of the evidence, when both the Sessions Court and the High Court have agreed in their appreciation of the evidence and arrived at concurrent findings of fact. It must be remembered that this Court is not a regular court of appeal which an accused may approach as of right in criminal cases. It is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice. Mere errors in appreciation of the evidence are not enough to attract this invigilatory jurisdiction. Or else, this Court would be converted into a regular court of appeal where every judgment of the High Court in a criminal case would be liable to be scrutinised for its correctness. That is not the function of this Court.
4. Here, both the witnesses Jayatilal Vyas and Karsan Lad were believed by the Sessions Court and the High Court. We have carefully gone through the evidence of Jayatilal Vyas and we do not find any such infirmity in it as would warrant interference by us. The only material circumstances deposed to by Jayatilal Vyas was that when he went to Karsan Lad, who was the wardkeeper in the construction ward, for issue of hacksaw blades at about 11.30 a.m. on June 10, 1966, he saw the appellant seated by the side of Karsan Lad. On seeing him, the appellant asked what was the purpose of his visit to which he replied stating that he had come to obtain hacksaw blades. He then enquired of the appellant as to why he was there, to which the reply was that "as there was shortage

of staff, he was deputed for work", by the Executive Engineer. There is nothing unnatural about this incident. Jayatilal Vyas and the appellant both worked as tally clerks in the office of the Executive Engineer (Construction) at Ahmedabad for about eighteen months and merely because they worked in two different departments of the same office, it cannot be said that Jayatilal Vyas could not have known the appellant. Jayatilal Vyas was at the relevant time working as a pricing clerk in the office of the Executive Engineer (Construction) at Abu Road and it is indeed difficult to see why, if a false witness had to be suborned, the railway or the police authorities should have picked out a clerk from Abu Road for the purpose of implicating the appellant. If Jayatilal Vyas did not in fact come down to Ahmedabad and go to the construction ward for the purpose of issue of hacksaw blades, the railway and the police authorities would not have dared to call him as a witness to give this evidence, because he could have been easily falsified by the production of records from the office of the Executive Engineer (Construction) at Abu Road as also from the records of the Railway General Stores and construction ward at Ahmedabad. Moreover, there is no reason suggested why Jayatilal Vyas should have been all too ready to give evidence falsely implicating the appellant. It may also be noted that on June 14, 1966, Jayatilal Vyas was summoned from Abu Road to Ahmedabad and on the same day, he gave his statement to the Sub-Inspector of the Railway Protection Force where he narrated the identical story which he has given in his evidence. It is also a little difficult to understand why anyone should have chosen to falsely palm off this incident on the appellant. Why fob it on the appellant and no one else? The evidence given by Jayatilal Vyas is perfectly natural and the appellant has failed to show any cogent reason why we should disbelieve this witness, when both the Sessions Court as well as the High Court have accepted him as a truthful witness and relied on his testimony.

5. It is true that as far as the other witness Karsan Lad is concerned, there is one infirmity in his evidence. Karsan Lad stated that on June 10, 1966 at about 9.45 a.m. the appellant came to him with three documents, namely, two material schedules marked 'A' and 'B' and the letter of authority marked 'C' for obtaining delivery of galvanized iron sheets. The appellant did not disclose his real name but gave the fictitious name of V. N. Makwana of the office of the Executive Engineer, Ahmedabad. Karsan Lad inspected these three documents and showed them to S. K. Parekh, Deputy Storekeeper, who stated that the galvanized iron sheets might be delivered, if available. Karsan Lad then checked up the stock register and since the galvanized iron sheets were available, he made an endorsement on the material schedule marked 'A' and returned the three documents to the appellant and asked him to go to the ledger section for stock marking. The appellant returned ten minutes later with the three documents containing remarks from the ledger section. Karsan Lad thereafter sent the three documents to one B. S. Darji to prepare an issue note and he himself went to the storeroom for the purpose of getting the galvanized iron sheets ready for delivery. He asked the appellant as to how he proposed to remove the galvanized iron sheets, to which the appellant replied stating that he was expecting his truck. It appears that truck No. GTO 3100 had already been arranged by the appellant and was standing near the godown. After fifteen or twenty minutes the appellant informed Karsan Lad that his truck had arrived. The appellant brought the truck to the storeroom with six labourers and at that time he was accompanied by one other person, who according to Karsan Lad, was accused No. 2. Then one hundred galvanized iron sheets were loaded in the truck and Karsan Lad asked the appellant to sign the issue note and the gatepass, as that was a necessary formality required to be completed before the truck could be permitted to leave the store, the object being to ensure that the signature of the person taking delivery tallied with the signature of the person authorised to take delivery as set out in the letter of authority. The appellant did not sign the issue note and the gatepass and stated that he would first like to verify the quantity of galvanized iron sheets placed in the truck before he signed these two documents. The appellant went out of the

office on this pretext and failed to return. Accused No. 2 at this time was sitting in the office and Karsan Lad, therefore, after waiting for sometime, asked accused No. 2 to find out what had happened to the appellant and thereupon accused No. 2 also left the office, never to return. Since neither the appellant nor accused No. 2 came back to sign the issue note and the gatepass and to take delivery of the galvanized iron sheets, Karsan Lad brought this fact to the notice of S. K. Parekh and under the instructions of the latter, Karsan Lad got the galvanised iron sheets unloaded from the truck and placed them back in the storeroom and the truck was then allowed to go under a gatepass. Karsan Lad stated that on that day he did not suspect any foul play because he had seen "the person who had introduced himself as V. N. Makwana talking to Mr. Vyas who had come from Abu Road", and he had, therefore, taken him to be a railway employee. It was only later that he came to know that the three documents marked 'A', 'B' and 'C' were forged. He asserted that the person who first came to him with the disputed documents was accused No. 1, that is the appellant, while the person who joined him later was accused No. 2 before the Court.

6. Now, it seems that in the statement which Karsan Lad gave to the investigating officer on June 29, 1966, he stated :

I hold that the said Makwana to go to the ledger section to verify the stock position. At that time, near my table the person who had come with Makwana, whose name I do not know - was there and Vyas, the Material Chaser, from Abu Road was talking with him. Makwana had gone to the ledger section and his companion kept sitting there.

This extract from the police statement of Karsan Lad would show that on June 29, 1966 when he gave his police statement, his case was that Jayatilal Vyas had a talk with the person who had come subsequently and at that time, the person who had come earlier and introduced himself as V. N. Makwana had gone to the Ledger Section to verify the stock position. Now, if this were true, it would mean that it was accused No. 2 who came earlier under the pretended name of V. N. Makwana and presented the three forged documents and took a leading part in the operation and the appellant came into the picture only later, for one thing is certain that the person with whom Jayatilal Vyas had a talk was the appellant. But according to the evidence given by Karsan Lad in court, it was the appellant who came earlier and introduced himself in the fictitious name of V. N. Makwana and the person who came later was accused No. 2. There is thus clearly a contradiction between the police statement of Karsan Lad and the evidence given by him in court. Both the learned Sessions Judge and the High Court applied their mind to this contradiction and took the view, on a consideration of the totality of the circumstances, that what was stated by Karsan Lad before the police was a mistake and the evidence given by him in court represented what really happened. It is quite possible that if were hearing the first appeal against the conviction of the appellant, we might have taken a different view. We might have found it difficult to explain away the contradiction by merely dubbing the earlier police statement of Karsan Lad as mistaken. But, as we said earlier, it is not our practice to reappraise the evidence. We are not a regular court of appeal. When both the learned Sessions Judge as well as the High Court have, on an appreciation of the evidence, accepted the testimony of Karsan Lad, despite the contradiction with the earlier police statement, we would be transgressing the limits which we have imposed on the exercise of our jurisdiction as a matter of self-discipline, if we interfere with the appreciation of evidence by the learned Sessions Judge and the

High Court and hold that by reason of the contradiction, we cannot accept the testimony of Karsan Lad. We are satisfied, on a conspectus of all the circumstances of the case, that no grave or manifest failure of justice has been occasioned as a result of the learned Sessions Judge and the High Court concurrently accepting the testimony of Karsan Lad and basing the conviction of the appellant upon it. There is no doubt, having regard to the evidence of Jayatilal Vyas, that the appellant was in the office of construction ward at about 11.30 a.m. on June 10, 1966 when he had no reason to be there unless he wanted some material to be issued to him and he was not innocent of what was being done by his associate but was an active participant in the operation of obtaining delivery of galvanized iron sheets by means of the three forged documents marked 'A', 'B' and 'C'. We do not see any cogent reason to interfere with the appreciation of the evidence of Karsan Lad by the learned Sessions Judge and the High Court.

7. The appeal, therefore, fails and is dismissed.

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