

Bhagwan Singh

Vs

The State of Rajasthan

Criminal Appeal No. 114 of 1971

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

14.08.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave is directed against an order passed by the High Court of Rajasthan confirming the conviction and sentence recorded against the appellant by the Special Judge, Bharatpur, under Section 165-A of the Indian Penal Code.
2. The incident giving rise to the prosecution against the appellant took place within an area in the State of Rajasthan lying within a 10 mile belt along the border of the State adjoining the State of Uttar Pradesh. There was at the material time, in force, Rajasthan Foodgrains (Restrictions on Border Movements) Order, 1959 which imposed a ban on transport of foodgrains to any place within the area of this 10 mile belt from any place outside that area except under and in accordance with a permit issued by the State Government or by any officer authorised by that Government in this behalf. This order was issued under Section 3 of the Essential Commodities Act, 1955, and any contravention of this provision was punishable under Section 7 of that Act. The prosecution case was that on the night between November 13 and 14, 1966, Head Constable Ram Singh and four other police constables, viz., Kishan Singh, Fateh Singh, Hira Lal and Sunder Singh, all attached to police station Sewar, were on patrolling duty in the area of the 10 mile belt with a view to preventing smuggling of grains from Rajasthan to Uttar Pradesh. They were at a place about 5 or 6 furlongs away from the border on the way leading from village Bilothi in Rajasthan to village Nagla Khoobi in Uttar Pradesh when at about 5 a.m. in the morning of November 14, 1966 they noticed that a cart driven by two buffalos was coming from the side of Bilothi and proceeding in the direction of Nagla Khoobi. The cart was loaded with six bags of gram weighing about 14 to 15 maunds. One Ram Raj was driving the cart while the appellant was sitting in the cart on the bags of gram. Head Constable Ram Singh and his companions stopped the cart and checked it and on finding that it carried six bags of gram, Head Constable Ram Singh asked the appellant to produce the permit for transport but the appellant could not produce any such permit. The appellant entreated Head Constable Ram Singh to let him go and offered to pay him a bribe of Rs. 40 or Rs. 50. Head Constable Ram Singh refused to accept the bribe whereupon the appellant took out a bundle of currency notes of Rs. 510 from the 'antan' of his dhoti and offered them to Head Constable Ram Singh as bribe. Head Constable Ram Singh declined to accept the bribe offered by the appellant and seized the currency notes of Rs. 510 under a seizure memo Ext. P-1 in the presence of the other four police constables. He also seized the six bags of gram found on the cart under a seizure memo Ex. P-2 and arrested the appellant as well as Ram Raj who was driving the cart. He then prepared a report Ex. P-4 and sent it to the police station Sewar with police constable Hira Lal. The six bags of gram which were seized under a seizure memo Ex. P-2 were then taken to the police station and

weighed there and their weight was noted down under a memo Ex. P-3. Head Constable Ram Singh also lodged a first information report Ex. P-5 at the police station in which he showed himself as the informant or complainant and the appellant and Ram Raj were shown to have committed an offence under Section 161 of the I.P.C. for offering Rs. 510 as bribe to him. Head Constable Ram Singh thereafter investigated the case, but it appears that sometime in the beginning of April 1967 it came to his notice that he was not authorised to do so and he thereupon forwarded the papers to the Deputy Superintendent of Police on April 4, 1967. The Deputy Superintendent of Police then reinvestigated the case and ultimately filed the chargesheet against the appellant and Ram Raj under Section 165A of the Indian Penal Code in the Court of the Special Judge, Bharatpur.

3. The common defence of the appellant and Ram Raj was that the appellant had a valid permit dated October 28, 1966 for transporting 20 quintals of gram by road from Bharatpur to Santrook for seed purposes within 15 days from the date of issue of the permit and armed with this permit he had started on November 11, 1966 in a cart with six bags of gram from Dhromiu for going to Santrook which was the village where he lived and worked. However, when he reached Suthra his cart broke down and he had, therefore, to take the cart of Ram Raj on hire and in that cart he started from Suthra at about 6 or 7 p.m. on November 13, 1966. Ram Raj was driving the cart and he was sitting in the cart on the bags of gram. When the appellant and Ram Raj had proceeded about 3 or 4 furlongs on the way to Santrook, Head Constable Ram Singh and his companions stopped them and checked the cart. The appellant showed the permit to Head Constable Ram Singh but the latter ignored it saying that it had no value and asked the appellant to settle their 'hisab kitab', i.e. to pay them some money by way of bribe. The appellant refused to pay any bribe. Head Constable Ram Singh and his companions thereupon arrested the appellant and Ram Raj and snatched away from the appellant a bundle of currency notes of Rs. 510 which was found on his person on taking search. Two persons by the name of Ramji Lal and Om Prakash had arrived on the scene by that time and they witnessed this incident. Two other persons of Bilothi who were going to Bharatpur also happened to come there and they too saw this incident. The appellant and Ram Raj were then taken to the police station and according to them, all the memos Exhibits P-1 to P-4 were prepared at the police station. The appellant and Ram Raj submitted that in the circumstances, they had not committed any offence under Section 165A of the Indian Penal Code.

4. The prosecution examined Head Constable Ram Singh and the other four police constables who deposed substantially in favour of the prosecution case against the appellant and Ram Raj. Significantly, no independent witness was examined on behalf of the prosecution. The appellant and Ram Raj put forward their defence in the statements given by them under Section 342 of the Code of Criminal Procedure and sought to substantiate their defence by leading the evidence of two witnesses, viz., Mahmood and Ramji Lal. Mahmood proved the permit Ex. D-1 which was issued in favour of the appellant on October 28, 1966 while Ramji Lal in his evidence supported the defence version of the appellant and Ram Raj. The learned Special Judge accepted the evidence led on behalf of the prosecution and almost ignoring the evidence of Ramji Lal who had deposed in favour of the appellant and Ram Raj, held that the case of the prosecution against the appellant was proved beyond reasonable doubt and the appellant was guilty of an offence under Section 165A of the Indian Penal Code. The learned Special Judge accordingly convicted the appellant under Section 165A and sentenced him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 100 or in default of payment of fine, to suffer further imprisonment for 15 days. Ram Raj was, however, more fortunate, as the learned Special Judge took the view that there was no evidence to show that he had taken any part in the offer of bribe to Head Constable Ram Singh and he was accordingly acquitted by the learned Special Judge. The appellant being aggrieved by the order of conviction and sentence passed against him, preferred an appeal to the High Court of Rajasthan. The

High Court, however, agreed with the view taken by the Special Judge and dismissed the appeal. Hence, the present appeal with special leave obtained from this Court.

5. Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial Court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.

6. Then again, it may be noted that the entire case of the prosecution rests solely on the testimony of Head Constable Ram Singh and four other police constables. There is not a single independent witness to depose to the offer of bribe by the appellant. The bundle of currency notes of Rs. 510 was, according to the prosecution, seized by Head Constable Ram Singh under a seizure memo Ex. P-1 but the only persons who signed as panch witnesses to this seizure were Head Constable Ram Singh and his subordinate police constables. Head Constable Ram Singh did not make any effort to get independent respectable witnesses in whose presence the seizure could be made. The time when the seizure was made was, according to the prosecution, a little after 5 a.m. in the morning. Head Constable Ram Singh could have easily sent one of the four police constables accompanying him to a nearby village in order to get some independent respectable witnesses. If, for any reason that was not possible, he could have taken the appellant and Ram Raj together with the cart to the police station and there, made a seizure memo in the presence of independent respectable panch witnesses. In fact, according to the statement made by the appellant in his examination under Section 342 of the Code of Criminal Procedure, Ramji Lal, Om Prakash and two other persons of village Bilothi were present when the incident took place and any two of them could have been asked to witness the seizure memo. The prosecution case, of course, was that none of these four persons happened to be there at the time of the incident, but at least, so far as two persons by the name of Lallu Ram and Kamal Singh are concerned, there is no doubt that they arrived on the scene and witnessed the incident. The judgment of the Court of the Sub-Divisional Magistrate, Bharatpur, acquitting the appellant of the offence under Section 7 read with Section 3 of the Essential Commodities Act, 1955 in connection with transport of the aforesaid six bags of gram, shows that in that case, the prosecution examined Lallu Ram and Kamal Singh as witnesses who were present at the time of the arrest of the appellant. Then, it is inexplicable as to why seizure memo was not prepared in the presence of Lallu Ram and Kamal Singh and their signatures were not obtained on the seizure memo. They were important respectable witnesses wholly unconnected with the appellant and if the bundle of currency notes of Rs. 510 was seized in the manner alleged by the prosecution, they could have furnished the most credible piece of evidence. Moreover, it may be noticed that the seizure

memo in connection with the bundle of currency notes of Rs. 510 does not state the circumstances in which it came to be seized. There is no reference to the conversation which is supposed to have taken place between the appellant and Head Constable Ram Singh in connection with the offer of bribe. The whole episode seems to be shrouded in secrecy and there is nothing but the evidence of police constables to support it. How can such an episode be believed ? Can it be said to be free from reasonable doubt ?

7. There is also inherent improbability in the story of offer of bribe by the appellant to Head Constable Ram Singh. In the first place, the appellant had a permit dated October 28, 1966, Ex. D-1, for transport of 20 quintals of gram from Bharatpur to Santrook. This permit was valid for a period of 15 days from the date of issue i.e., from October 28, 1966. It expired on the night of November 12, 1966 and was, therefore, not valid on the night between November 13 and 14, 1966 when the cart was intercepted by Head Constable Ram Singh and his companions, but the difference was only of one day. Is it possible in these circumstances that the appellant would not be carrying the permit with him or that when Head Constable Ram Singh asked him to produce the permit, he would not do so ? Is it not more probable that on being asked by Head Constable Ram Singh, the appellant must have produced the permit ? The permit clearly covered the transport of the six bags of gram carried by the appellant in the cart. The transport was only a day too late and it is quite possible that the appellant might have bona fide thought that the transport was within time and covered by the permit. The appellant would certainly have the permit with him and there is no reason why he should not have produced it when demanded by Head Constable Ram Singh. The prosecution case was that the permit was produced by the appellant two days later i.e. on November 16, 1966, but that does not appear to be correct. If the permit was produced by the appellant on November 16, 1966, why was it not taken charge of by Head Constable Ram Singh under a panchnama or memo ? That would be the natural course for a police officer to follow when an important document which bears on the offence alleged to have been committed by an accused is produced before him. But, here we not find any panchnama or memo relating to the production of the permit by the appellant on November 16, 1966 and taking charge of such permit by Head Constable Ram Singh. That makes the version of the appellant very probable that the permit was produced by him when he was challenged by Head Constable Ram Singh at the time when the cart was intercepted. It is also difficult to believe that when Head Constable Ram Singh refused to accept the bribe of Rs. 40 or Rs. 50, the appellant should have immediately taken out the entire bundle of currency notes of Rs. 510 which was with him and offered it by way of bribe to Head Constable Ram Singh. It is a little unusual that even though Head Constable Ram Singh refused to accept any bribe, the appellant should have persisted in giving him bribe and then also, not just raised the amount of bribe from Rs. 40 or Rs. 50 to Rs. 100 or Rs. 200, but taken out the entire bundle of currency notes with him and offered it to Head Constable Ram Singh. The entire story sounds unnatural and we would hesitate considerably before founding a conviction upon it.

8. It appears that the trial Court and the High Court failed to notice the above circumstances which throw considerable doubt on the prosecution case against the appellant. We are not at all satisfied that the evidence led on behalf of the prosecution excludes reasonable doubt in regard to the guilt of the appellant. Since the prosecution case against the appellant cannot be said to be free from reasonable doubt, we must acquit the appellant of the offence charged against him.

9. We, accordingly, allow the appeal, set aside the conviction and sentence recorded against the appellant and acquit the appellant of the offence under Section 165A of the Indian Penal Code.

</html