

Prabhu Lal

Vs

State of Rajasthan

Criminal Appeal No. 127 of 1971

(P.N. Bhagwati, R.S. Sarkaria JJ)

26.09.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, by special leave, is directed against an order passed by the High Court of Rajasthan reversing the acquittal of the appellant by the Sub-Divisional Magistrate, Chittorgarh.
2. The prosecution case against the appellant, as unfolded in the evidence of the witnesses of the prosecution, was as follows : The appellant was connected with the firm of M/s. Dhanalal Shankarlal of Jaura and acting on behalf of that firm, he applied on June 7, 1965 to the Collector Chittorgarh for a permit to transport sixty bags of rice from Kanera to Chittorgarh. Kanera is in the State of the Rajasthan near its border with the State of Madhya Pradesh and Chittorgarh is also in the State of Rajasthan, but for going from Kanera to Chittorgarh one has to pass through the territory of the State of Madhya Pradesh for a few miles. The application for a permit had to be made because it appears that there was a prohibition against transport of foodgrains from one part of Rajasthan to another. The Collector, Chittorgarh granted the application and issued a permit to M/s. Dhanalal Shankarlal on June 8, 1965 to transport sixty bags of rice from Kanera to Chittorgarh by rail/road with fifteen days from the date of the permit. The permit was marked in evidence as Ex. P-2 and it had three counterparts which were received in evidence as Exs. P-6, P-14 and P-15. It appears that at some stage the permit Ex. P-2 was tampered with fraudulently and dishonestly and instead of 'rice', the word 'wheat' was substituted in it so as to make it appear as if it was a permit for transporting sixty bags of wheat from Kanera to Chittorgarh. The date of the permit Ex. P-2 was also altered from "8.6.65" to 18.6.65". It does not appear from the evidence as to who made these fraudulent and dishonest alterations in the permit Ex. P-2. But on the strength of this forged permit Ex. P-2, the appellant loaded sixty bags of wheat and set out in a truck bearing No. MPE 6466 from Kanera on June 25, 1965 early in the morning. The truck, which was being driven by one Khaju Khan reached Eklingpura checkpost at about 5 a.m. and there a check was made by two police constables, namely, Ram Singh and Nazeer Khan. The relevant entries were made in the register maintained at the checkpost showing that sixty bags of wheat were being carried in the truck from Kanera to Chittorgarh and the appellant as well as Khaju Khan signed those entries. Since the permit Ex. P-2 was in the name of M/s. Dhanalal Shankarlal, the appellant signed the entry in the register as "Shankarlal". The truck thereafter proceeded from Eklingpura checkpost, but instead of going to Jalyan Pipli checkpost and from there to Nambahera and then to Chittorgarh, the truck went to Kesarpura, a village in the State of Madhya Pradesh not far from the Eklingpura checkpost, and sixty bags of what carried in the truck were unloaded in Kesarpura. When the truck passed through Eklingpura checkpost, Jodhkaran, who was the Head Constable incharge of the checkpost, was not present, but on his return he saw the entries in the register in respect of the transport of sixty bags of

wheat and after some days when he happened to go to Nambahera, he learnt on enquiry that the truck carrying sixty bags of what did not pass through Nambahera and had consequently not gone to Chittorgarh. He, therefore, sent a letter giving this information to the police station Kanera and on the matter being further pursued, it came to light that the truck had unloaded sixty bags of wheat at Kesarpura. That was in contravention of clause (3) of the Inter-State Wheat and Wheat Product (Movement Control) Order, 1964 (hereinafter referred to as the Wheat Movement Order) made by the Central Government in exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955. The police, therefore, investigated the case and after investigation was completed, the police filed a charge-sheet against the appellant and Khaju Khan for an offence under Section 3 read with Section 7 of the Essential Commodities Act, 1955.

3. We are not concerned in this appeal with the case against Khaju Khan, as he was acquitted by the Sub-Divisional Magistrate, Chittorgarh and his acquittal was upheld by the High Court in appeal. It is the appellant who is before us and so far as he is concerned, his defence was that he had nothing to do with the transport of sixty bags of wheat from Kanera to Kesarpura and he was not in the truck which carried these goods. He pleaded an alibi stating that on that day he in his capacity as Sarpanch of Jaura Panchayat attended a meeting of that panchayat from 8 a.m. to 5 p.m. and contended that he was falsely involved in the offence.

4. The learned Sub-Divisional Magistrate found discrepancies in the prosecution evidence against the appellant, particularly in regard to the time when the truck carrying sixty bags of wheat was checked at Eklingpura checkpost and these discrepancies, according to the learned Sub-Divisional Magistrate, seriously affected the credibility of the prosecution evidence and rendered it weak and infirm. So are as the plea of alibi put forward by the appellant was concerned, the learned Sub-Divisional Magistrate took the view that it was sufficiently established from the evidence led on behalf of the defence and it showed that the appellant could not have had anything to do with the transport of sixty bags of wheat from Kanera to Kesarpura. The learned Sub-Divisional Magistrate, in this view, held that the prosecution had failed to establish the offence charged against the appellant and he accordingly acquitted the appellant.

5. The State preferred an appeal against the order of acquittal to the High Court of Rajasthan. The High Court critically analysed the evidence on record and held that the evidence established beyond reasonable doubt that the appellant was closely connected with the firm of M/s. Dhanamal Shankarlal and it was he who transported sixty bags of wheat from Kanera to Kesarpura in the truck driven by Khaju Khan. The defence evidence in regard to alibi was also examined by the High Court and on an appraisal of this evidence, the High Court came to the conclusion that all that this evidence established was that at about 11 a.m. in the morning of June 25, 1965 the appellant was present at the meeting of Jaura Panchayat, but that did not necessarily exclude the participation by the appellant in the transportation of sixty bags of wheat from Kanera to Kesarpura because it was quite possible that after unloading sixty bags of wheat at Kesarpura, the appellant could have gone to Jaura in order to attend the meeting of the panchayat and reach there before 9 a.m. The High Court accordingly set aside the acquittal of the appellant and convicted him of the offence under Section 3 read with Section 7 of the Essential Commodities Act, 1955 for breach of clause (3) of the Wheat Movement Order and sentenced him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 500 or in default to undergo rigorous imprisonment for a further period of one month. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

6. Now it is clear from Exs. P-6, P-14 and P-15, which are the counterparts of the permit Ex. P-2,

that the permit Ex. P-2 was dated June 8, 1965 and it was issued for the transport of sixty bags of rice and not sixty bags of wheat. That is also amply proved from the evidence of A. R. Niazi, District Supply Officer and Harakh Lal, Accountant in the District Supply Officer. It must, therefore, be taken to be established beyond doubt that the permit Ex. P-2 was fraudulently and dishonestly tampered with after it was issued and the figures "18.6.65" was substituted for "8.6.65" and the word 'gehun' was substituted for 'rice' so as to make it appear that the permit Ex. P-2 was issued on June 18, 1965 for transporting sixty bags of wheat. It does not appear from the record as to who was responsible for this dishonest and fraudulent alteration nor were there any charge against the appellant in respect of the same and we need not, therefore, pursue this line of enquiry.

7. The appellant contended that he was not in any way connected with the firm of M/s. Dhanalal Shankarlal, nor had he anything to do with the loading and transporting of sixty bags of wheat from Kanera to Kesarpura. But this contention is completely negated by the evidence led on behalf of the prosecution. There is the evidence of Madan Lal which clearly show that the appellant was connected with the firm of M/s. Dhanalal Shankarlal and that he played an active role in obtaining the permit Ex. P-2. Madan Lal stated in his evidence that he wrote an application for a permit for transport of foodgrain from Kanera to Chittorgarh on behalf of the firm of M/s. Dhanalal Shankarlal at the instance of the appellant and the application was signed by the appellant in his presence for and on behalf of the firm of M/s. Dhanalal Shankarlal. The application for permit, which is Ex. P-5, also bears the signature of the appellant on behalf of the firm of M/s. Dhanalal Shankarlal. This part of the evidence of Madan Lal was not challenged on behalf of the appellant in cross-examination and it must be accepted as correct. Kanhaiya Lal, who was at the material time employed by the firm of M/s. Dhanalal Shankarlal, also deposed that the appellant worked with Shankarlal. It is, therefore, clear that the appellant was connected with the firm of M/s. Dhanalal Shankarlal and he was instrumental in obtaining the permit Ex. P-2.

8. Then there is evidence to show that sixty bags of wheat were loaded in the truck at Kanera at the instance of the appellant. Mohammed, who was the coolie accompanying the truck, stated in his evidence that the appellant had fixed up in advance for loading the truck at Kanera and unloading it at Kesarpura. He said that the truck carrying the appellant, himself and Chhote Khan another coolie reached Kanera at about 5 a.m. or 5.30 a.m. : it was stopped in front of a house and the appellant summoned the man who was incharge of the house and then sixty bags of wheat were loaded in the truck at the instance of the appellant : thereafter the truck proceeded in its journey to Kesarpura and on the way stopped at Eklingpura checkpost for the purpose of checking : after the checking was completed, the truck left Eklingpura checkpost at about 6 a.m. and proceeded to Kesarpura where it unloaded sixth bags of wheat in a field near the school. He added in cross-examination that it was the appellant who got the truck unloaded near the Kesarpura school. The same story was repeated by Chhote Khan who also gave evidence on behalf of the prosecution. This evidence given by Mohammed and Chhote Khan was accepted by the High Court and we are unable to say that the High Court was wrong in doing so. There is no reason why Mohammed and Chhote Khan should have given false evidence against the appellant. The only criticism which was levelled on behalf of the appellant against the evidence of Mohammed and Chhote Khan was that both of them stated that while proceeding to Kesarpura from Eklingpura checkpost, they did not come across any checkpost of the State of Madhya Pradesh on the route and this, according to the appellant, showed that they were not telling the truth when they said that the truck proceeded to Kesarpura. We do not think any argument can be built on such a flimsy foundation. It is possible that both these witnesses being illiterate and uneducated coolies, might have forgotten that they passed through a checkpost of the State of Madhya Pradesh on way to Kesarpura or it is quite likely that the might have given this answer because they thought that the question which was being asked to them was in reference to a

checkpost other than the one opposite Eklingpura checkpost. We cannot be persuaded to disbelieve the evidence of these two witnesses merely on the basis of this rather inconsequential infirmity. The evidence of these two witnesses clearly shows that the appellant was responsible for loading of sixty bags of wheat on the truck at Kanera, he was in the truck which carried the goods from Kanera to Kesarpura and it was he who unloaded the goods at Kesarpura.

9. We have also the evidence of Nazeer Khan, who was the constable in-charge of Eklingpura checkpost on June 25, 1965. He stated in his evidence that the truck driven by Khaju Khan passed through Eklingpura checkpost on June 25, 1965 and at that time, when it was checked, the appellant gave to him the permit Ex. P-2 on which an endorsement was made by the appellant in his own hand and signature on its back was made by him, though he signed as Shankarlal. He also produced the register Ex. P-1 which contained entries signed by Khaju Khan and the appellant. An identification parade was held by the police after the arrest of the appellant and in this identification parade, Nazeer Khan correctly identified the appellant. This evidence also establishes that the appellant was in the truck transporting sixty bags of wheat when it was checked at Eklingpura checkpost.

10. The aforesaid evidence is, in our opinion, sufficient to establish beyond reasonable doubt that the appellant transported sixty bags of wheat from Kanera to Kesarpura on June 25, 1965 claiming to do so on the basis of the permit Ex. P-2. The appellant, however, pleaded an alibi and contended that on that day he presided over a meeting of Jaura Gram Panchayat from 8 a.m. to 5 p.m. in his capacity as sarpanch of the panchayat. To establish this alibi the appellant led the evidence of three witnesses, namely, Badri Lal, Mohan Lal and Gopal Lal. The evidence of Badri Lal was totally useless as he did not say that the appellant was present at the meeting of Jaura Panchayat from 8 a.m. to 5 p.m. on June 25, 1965. He merely produced the mutation register showing entries in regard to 13 mutation cases decided at the meeting of the panchayat. He did not even know who was the patwari on that day. Mohan Lal deposed that he was the Secretary of Gram Panchayat, Jaura and produced the minute book of the meeting of the panchayat and stated that he was present at the meeting of the panchayat held on June 25, 1965, but in cross-examination, he was unable even to give the names of the persons who were present at that meeting, nor could he remember when the meeting concerned on that day. The evidence of this witness also, therefore, does not help to establish the alibi of the appellant. Gopal Lal, who was the patwari in-charge of Jaura Circle at the relevant date, was a little more specific than the other two witnesses. He stated that he attended the meeting of Jaura Panchayat on that day and he reached the place of the meeting at 11 a.m. He added that when he reached there, he found that the appellant was present at the meeting and was presiding over the meeting. This evidence would seem to suggest that the appellant was present at the meeting of Jaura Panchayat at 11 a.m. on June 25, 1965, but we do not think it is possible to accept this evidence at its face value. Gopal Lal confessed in cross-examination that this meeting of the Jaura Panchayat held on June 25, 1965 was the only meeting which he attended and that he did not even visit Jaura before or after the date of the meeting. It is indeed strange that he should have been conveniently present only at this crucial meeting. He could not even say who were the other members present at the meeting apart from the appellant. He admitted that Shanker Lal and not the appellant was the sarpanch of Jaura Panchayat and ordinarily it is the sarpanch who decides the mutation cases. He could not explain where Shanker Lal was on that day or how the appellant happened to preside over the meeting of the panchayat or why the mutation cases were all placed before the panchayat for decision. It is interesting to notice - and this was admitted by Gopal Lal - that his circle was Jaura, but if this be so, it is difficult to understand his earlier statement that he did not go to Jaura before or after the date of this meeting. He also admitted that he did not remember any facts in regard to what happened on June 25, 1965 and that whatever evidence he had given was

after perusing the register. It will, therefore, be seen that the evidence of Gopal Lal is thoroughly unconvincing and no reliance can be placed upon it. We cannot, in the circumstances, hold that plea of alibi established by the appellant.

11. We are, therefore, of the view that the High Court was right in setting aside the acquittal of the appellant and convicting him of the offence under Section 3 read with Section 7 of the Essential Commodities Act, 1955 for transporting sixty bags of wheat from Kanera to Kesarpura in breach of clause (3) of the Wheat Movement Order.

12. The appeal must, therefore, be dismissed. The appellant will surrender to his bail.

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