

Rampal

Vs

State of U. P.

Criminal Appeal No. 394 of 1974

(V. D. Tulzapurkar, O. Chinnappa Reddy JJ)

29.09.1978

JUDGMENT

TULZAPURKAR, J. -

1. The appellant Rampal along with one Kanti Prasad, since acquitted by the High Court, was charged with being a party to a criminal conspiracy (Section 120-B IPC) to get one Vikram (PW 7) (involved in Crime No. 41 of Hastinapur police station under Section 379 IPC) released illegally from the lawful custody of the police on June 7, 1968 and was further charged with having actually got the said Vikram released unlawfully from the lawful custody on that day in the court of the Judicial Magistrate, Mowana at Meerut in furtherance of the conspiracy and thereby having committed an offence punishable under Section 221 of the Indian Penal Code. The Sessions Judge convicted the appellant as also Kanti Prasad under both the counts and sentenced each one to suffer rigorous imprisonment for 4 years under each count respectively. Kanti Prasad was also found guilty of an offence punishable under Section 466 IPC and was sentenced to rigorous imprisonment for two years. In appeals that were preferred by both, Kanti Prasad was acquitted outright by the High Court while the appellant's conviction and sentence under Section 120-B IPC was quashed but his conviction under Section 221 IPC was confirmed but the sentence was reduced to two years' rigorous imprisonment. The appellant is challenging this conviction and sentence under Section 221 in this appeal by special leave granted on November 5, 1974.

2. The facts giving rise to the prosecution of the appellant may briefly police station for an alleged offence under Section 379 IPC was produced by constable Mohd. Shabbir (PW 6) before Shri A. N. Kapoor, Judicial Magistrate, Mowana (PW 3) on June 7, 1968 for obtaining a remand for 14 days. The appellant Rampal (a member of the Constabulary Police) was the Court Moharrir of that Court. He prepared remand warrant (Ex. 11) and Shri Kapoor (PW 3) remanded Vikram to police custody for 14 days i.e. from June 7, 1968 to June 20, 1968 both days inclusive. One Lachhman (PW 8), the brother of Vikram, who had accompanied Vikram from the police station to the court, approached Advocate Sharma (PW 2) to move an application for bail for Vikram but since Advocate Sharma was in a hurry to go to Muzaffarnagar for some other case, he advised Lachhman to engage another counsel. Lachhman (PW 8) then approached Advocate Pahwa (PW 5) who prepared the bail application in duplicate (Exs. Ka-20 and Ka-21) and presented the original application Ex. Ka-20 to Shri Kapoor, who passed the following order (Ex Ka-16) : "Inform A.P.P., who is to argue and report. Put up for orders on June 8, 1968". In other words, bail was not granted and the remand order remained in operation with the result that Vikram should have been sent to custody. Lachhman (PW 8) approached Pahwa (PW 5), and asked him whether he would have any objection if bail was obtained for Vikram that very day through another counsel and Pahwa told him that the bail order would be passed on the next day but he (Lachhman) was at liberty to engage another counsel if his

purpose would be achieved that very day. Lachhman then approached Advocate Mahesh Kumar Tyagi (PW 10), who wrote out a fresh bail application for Vikram and also prepared two surety bonds (Ex Ka-12 and Ex. Ka-13) and two affidavits (Exs. Ka-14 and Ka-15) on behalf of two sureties Dal Singh and Satya Pal Singh; the surety bonds Exs. Ka-12 and Ka-13 were prepared by filling in printed forms on which the signatures of the sureties were obtained and the two affidavits were also sworn by the two sureties; thereupon he made his endorsements on these papers (Exs. Ka-12 to Ka-15) that those two persons were known to him personally and that they were reliable up to the amount specified in the documents. Armed with these papers and the bail application he went to the court room of Shri Kapoor (PW 3) and handed over Exs. Ka-12 to Ka-15 to Kanti Prasad (the acquitted accused) who was working as the Criminal Ahalmad of the Court and asked him to keep the papers ready as he was going to move the bail application. Kanti Prasad in anticipation verified the documents given to him and fixed the seal of the Court after making the endorsement "Provisionally accepted. Verify from Tahsil" and also scribed the particulars pertaining to the names of the persons identifying him as also the endorsement of acceptance on behalf of the Magistrate and after keeping some space blank for the Magistrate's signature he put the date "7-6-68" on these papers. Advocate Tyagi (PW 10) moved the bail application before the Magistrate who returned the application to him saying that a bail application before the Magistrate who returned the application to him saying that a bail application for Vikram had been moved earlier before him which had been adjourned to the next day and that he (Tyagi) could approach him on June 8, 1968 to argue the matter and that the bail order would be passed on that day. Advocate Tyagi (PW 10) then went to Kanti Prasad and demanded the return of Exs. Ka-12 to Ka-15 but Kanti Prasad refused to return those papers on the ground that he had verified those papers and made endorsements and affixed courts seals thereon but stated that he would use these very papers the next day when the bail order would be passed. Notwithstanding all this admittedly Vikram was not sent to jail custody but was actually released on that day itself at the direction of the appellant - a fact vouched by Mohd, Shabbir (PW 6), Vikram (PW 7) and Lachhman (PW 8). However, as scheduled, Advocate Tyagi (PW 10) appeared in the Court again on June 8, 1968 and on that day after hearing the parties Shri Kapoor (PW 3) passed an order (Ex. Ka-27) granting bail to Vikram, whereafter the bail paper Exs. Ka-12 to Ka-15 were put up by Kanti Prasad before Shri Kapoor and his signatures were obtained regarding provisional acceptance of the surety bonds and the sworn affidavits, Non-sending of Vikram to jail custody and his actual release on June 7, 1968, however, came to light three days later when bail for some other co-accused in crime No. 41 was sought by Advocate Sharma (PW 2) on June 11, 1968 and the Magistrate directed the matter to be heard on the following day and Advocate Sharma complained to the Magistrate that bail had been granted to Vikram on the very day on which the application had been moved, whereupon Shri Kapoor (PW 3) asked Shri Sharma to approach him after lunch interval and when Shri Sharma did so entreating the Magistrate to grant bail on the same day Shri Kapoor granted bail at about 4.00 p.m. on June 11, 1968. The President of the District Bar Association made an oral complaint to the District Judge on June 21, 1968 about all these facts whereupon an inquiry was ordered an on receipt of the report of Shri Mahey, the A.D.M. (PW 1) the necessary investigation was undertaken and the appellant along with Kanti Prasad was charge-sheeted and later on committed to the Sessions Court for trial of offences as stated above.

3. The defence of Kanti Prasad was that it was his duty to keep the papers and records with him but it was not his responsibility to prepare the remand papers nor to issue the release directions to the police escorts qua the suspects produced in court, which were the duties of the Court Moharrir. He admitted that in anticipation and at the instance of Advocate Tyagi, he verified the surety bonds and affidavits (Exs. Ka-12 to Ka-15) but refused to part with those papers and retained them with him when bail was refused and produced those very papers before the Magistrate on June 8, 1968 after

the bail order had been passed and after correcting the date June 7, to June 8, he obtained the Magistrate's signatures thereon. He specifically denied that he had any hand in the actual release of Vikram on June 7 as that was not part of his official duty. The appellant admitted that Vikram was produced in custody on June 7, that the Court gave remand to him till June 20, that he entered the remand order on the order-sheet but did not enter that order in the remand register but he claimed that the jail warrant was given by him to the police escort Mohd. Shabbir. As regards the actual release of Vikram on June 7, his statement during the course of the earlier inquiry conducted by Shri Mahey, A.D.M. (Judicial) was that Kanti Prasad told him at about 3.30 p.m. on June 7 that the Court had granted bail to Vikram and Vikram should be released and on this information he asked the constable to obtain a personal bond from Vikram and to release him and that after Kanti Prasad had obtained the signature of Vikram on the personal bond he directed Vikram's release. Before the Committing Magistrate his case was that the Court itself ordered the release on June 7 and Vikram was released in obedience to that order in the Court itself. In the Sessions Court he improved his version and stated that the order of release passed by the Court on June 7 was an oral order and not a written order and he further contended that his statements in the earlier inquiry were the result of the pressure exerted by Shri Kapoor. As stated earlier, though the Sessions Court convicted both Kanti Prasad and the appellant, the High Court in appeals preferred by them acquitted Kanti Prasad outright and convicted the appellant only under Section 221 IPC and sentenced him to two years' RI.

4. Mr. Pramod Swarup, counsel for the appellant raised a couple of contentions in support of the appeal. On merits he contended that the High Court should have accepted his client's case that the Magistrate Shri Kapoor (PW 3) had passed an oral order releasing Vikram on bail on June 7 and that it was in pursuance of that order that Vikram was released on June 7 and in that behalf he relied upon evidence of police escort Mohd. Shabbir (PW 6), Vikram (PW 7) and Lachhman (PW 8) and further contended that Advocate Tyagi's attendance and arguments in the Court on June 8, and the Magistrate's passing bail order on June 8, should be regarded as a farce, especially when Vikram had already been released on the previous day and when on June 8, 1968 neither Vikram nor the sureties were present in Court. Secondly, he contended that the appellant, though a public servant, was not legally bound to retain Vikram in confinement on June 7 and as such could not be convicted under Section 221 IPC. For the reasons which we shall indicate presently, it is not possible to accept either of these contentions urged in support of the appeal.

5. At the outset it may be stated that on an appreciation of the evidence produced by the prosecution at the trial both the Sessions Court as well as the High Court have taken the view that there was no substance in the contention that Shri Kapoor had himself passed an oral order releasing Vikram on June 7, 1968 and we see no reason why we should take a different view on the point. In the first place Shri Kapoor (PW 3) has categorically denied that he had passed any order of release in respect of Vikram much less oral on June 7 and having regard to the written order which he passed on the bail application presented by Advocate Pahwa (PW 5) and having regard to his conduct in returning the second bail application that was made to him later in the day by Advocate Tyagi (PW 10), his denial of having passed any oral order of release seems to be true. In fact, on that very day when Vikram was produced before him by police escort Mohd. Shabbir (PW 6) for obtaining 14 days' remand for him Shri Kapoor had passed a written order remanding him to custody up to June 20, 1968. Thereafter on the first bail application Ex. ka-20 was specifically, by a written order, adjourned to the next day and when the second application for bail was made to him on behalf of Vikram by Advocate Tyagi, he returned that application telling the Advocate that a similar request had been adjourned by him till the following day and he could argue the matter on June 8, 1968 when the bail order would be made. Having regard to this behaviour and particularly the written

orders passed on the remand warrant and the first bail application, it is difficult to accept the defence case that Shri Kapoor had orally directed the release of Vikram on June 7. Kapoor's evidence is corroborated by both the Advocates, particularly Tyagi, who has stated that the Magistrate returned the second bail application to him. Moreover, the version that the Magistrate had orally directed the release of Vikram on June 7, was really an improvement over the appellant's earlier version which he had given during the course of inquiry conducted by Shri Mahey. In his statement before Shri Mahey, the appellant's case was that at 3.30 p.m. Kanti Prasad had told him that the Court had granted bail and Vikram should be released and that on the basis of this information he directed the police escort to release Vikram; in other words, he admitted that the release of Vikram was due to his direction to the police escort though he stated that in doing so he relied upon the information conveyed to him by Kanti Prasad. It was not his case then that the release was pursuant to the oral order of the Magistrate. The evidence of the three witnesses, namely, the police escort Mohd. Shabbir (PW 6), Vikram (PW 7) and Lachhman (PW 8) undoubtedly is to the effect that it was pursuant to the order of the Magistrate granting bail on June 7, 1968 the appellant directed Vikram's release and that Vikram was actually released in the presence of the Magistrate. It may be stated that so far as Mohd. Shabbir is concerned the prosecution had prayed for declaring him hostile and had sought leave to cross-examine him though the same was refused. So far as Vikram and Lachhman are concerned, it is obvious that they have given evidence in the aforesaid manner obviously because the Magistrate had refused to grant bail on June 7, while it was the appellant who directed Vikram's release on June 7, 1968. The evidence of these three witnesses was, in our view, rightly rejected by both the lower courts. It is not possible to accept the contention that all what happened on June 8, in the Court of the learned Magistrate was a farce as was suggested by the counsel for the appellant. Neither the Advocate nor the Magistrate had any knowledge about the actual of Vikram on June 7 and, therefore, it was natural for Advocate Tyagi to appear in the Court of the Magistrate and argue the matter before him for bail and it was natural for the Magistrate Shri Kapoor to pass the written order granting bail which he did on June 8, 1968. It is true that neither Vikram nor the two sureties had attended the Court on June 8, 1968 but all the preliminaries with regard to the verification of the sureties and the execution of the surety bonds, swearing of the affidavits etc. had been completed by Kanti Prasad on the previous day i.e. on June 7, 1968 and after the written order granting bail was passed these very documents which were completed on the previous day were put up before the Magistrate by Kanti Prasad and the Magistrate's signatures were obtained thereon. Kanti Prasad has admitted that he altered the date by converting the figure "7" into "8" before he put these papers before the Magistrate for the latter's signatures and it is quite possible that Shri Kapoor might not have noticed the alteration made in the figure "7" while converting it into "8". From that alone it is not possible to come to the conclusion that whatever was done on June 8, was a farce or that the Magistrate had orally directed the release of Vikram on June 7. In our view both the lower courts were right in rejecting this defence of the appellant.

6. In support of the legal contention that the appellant could not be convicted under Section 221 IPC counsel relied upon two decisions of the Allahabad High Court, one in the case of Bhagwan Din v. Emperor (AIR 1929 All 935) and the other in the case of Ram Lal v. Emperor (AIR 1936 All 651). In our view both the decisions are clearly distinguishable from the instant case on facts. In the former case the Court has held that the duties of a chowkidar as a private citizen ought not to be confounded with his duties as a public servant and when the legal obligation of the chowkidar to arrest or detain had not been established there was no dereliction from his statutory duty within the purview of Section 221 and the chowkidar could not be penalised for intentionally suffering a pilferer to escape from his detention. In the latter case the Court has held that when a public servant

who was legally bound to arrest a man who had committed murder in his presence omitted to apprehend him and allowed the murderer to escape he would be guilty of the offence under Section 221 IPC. Section 221 IPC requires that the accused as a public servant must be under a legal obligation to apprehend or keep in confinement a person charged with an offence and he must intentionally omit to apprehend such person or intentionally suffer such person to escape. It cannot be disputed that the appellant being a member of the police force was admittedly a public servant and he was attached as a court Moharrir to the Court of Judicial Magistrate, Mowana on June 7, 1968. What was urged was that he was under no legal purview of Section 221 IPC. It is not possible to accept this contention in view of his duties as a Court Moharrir which have been deposed to by Shri Kapoor. It has come in evidence that it was the appellant's duty as a Court Moharrir to remand papers in respect of a suspect produced in a Court and it was also his duty after the Magistrate has granted bail, to issue the release order and direct the police escort to release the suspects. In fact, in pursuance of these duties the appellant had prepared the remand warrant, Ex. 11 and evidence of Mohd. Shabbir (PW 6) shows that it was the appellant who had directed him to release Vikram. In fact, after Vikram was remanded to custody till June 20, 1968, it was the duty of the appellant to have sent him to jail custody which he failed to do and, in fact, directed Mohd. Shabbir to release Vikram, which conduct was clearly in violation of his legal obligation. The legal contention therefore fails and is rejected.

7. In the result the appeal fails and is dismissed.

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