Satish Chandra and Another

Vs

State of Uttar Pradesh

Criminal Appeal No. 249 of 1973

(V.D. Tulzapurkar, A. Varadarajan JJ)

03.02.1983

JUDGMENT

TULZAPURKAR, J.-

1. There is no substance in this appeal which is directed against the High Court's Judgment recording conviction against the two appellants under Section 411, IPC and sentence of three years' rigorous imprisonment imposed upon each.

2. An incident occurred during the right between April 1 and 2, 1968 at the factory of Vishnu Industries during the course of which one Lakhpat Rai (Senior Munim of Vishnu Industries) was murdered and he was robbed of a sum of Rs 8800 in currency notes which had been tied in the folds of his dhoti. At about 4 a. m. the gruesome murdered and loss of the money came to light when Ramesh Chandra, Dalal went to wake him up. FIR was lodged at 5.30 a. m. in the morning on April 2, 1968 at Police Station Kotwali, Chandausi about murder and robbery. Since the amount had been withdrawn from the Bank on the previous day the numbers of 87 currency notes of Rs 100 each which were in the possession of Lakhpat Rai and which were found missing were mentioned in the FIR. In respect of this incident four accused (Vishnu Gopal, Satish Chandra, Manohar Lal and Vishnu Shanker) were put up for trial in the Court of Second Temporary Civil and Session Judge, Moradabad for offences punishable under Section 392, 302 each read with Section 411, IPC. The prosecution purely depended upon circumstantial evidence, there being no eye-witness of the incident in question and principally the circumstantial evidence relied upon was in the shape of recoveries of the currency notes which were the subject matter of robbery from the accused person. The learned Session Judge disbelieved the recoveries made from the accused person due to irregularities attaching to them and felt that the possibility of the currency notes being planted upon the accused person could not be ruled out and as such no culpability could be fastened upon them either with regard to the offence of murder or robbery or even receiving the stolen property. All the four accused were therefore acquitted. In Criminal Appeal No. 1489 of 1969 preferred by the State, the High Court confirmed the acquittal of Vishnu Gopal and Manohar Lal but convicted the two appellants before us (Satish Chandra and Vishnu Shanker) for the offence under Section 411. IPC and sentenced each one of them to three years'RI. The High Court dealt with the reason given by the trial court for disbelieving the evidence pertaining to recoveries made from the accused person and found that the reason given for not accepting such evidence in the case of the two appellants were based on conjectures and surmises and therefore did not warrant its rejection. The High Court took the that so far as the two appellants were concerned the recovery witnessed were reliable and independent and their testimony could be made basis of conviction. It is this view of the High Court that is being challenged before us by the appellants in this appeal.

3. At the outset we might state that there is unimpeachable evidence on record to prove that the currency notes recovered from the two appellants (20 notes from Vishnu Shanker and 31 notes from the cash box of Satish Chandra) are the subject-matter of robbery that took place during the night in question. In the FIR lodged promptly at about 5.30 a. m. (within an hour and half from the time the offence was discovered) the numbers of 87 notes of Rs 100 each that were found missing have been mentioned and the 20 notes and 31 notes that were respectively recovered from the two appellants bear numbers which tally with the numbers mentioned in the FIR. Unless therefore, the recoveries of these notes from these two appellants said to have made on April 8, 1968 are shown to be doubtful or fictitious the appellants will have to be regarded as having received stolen property with requisite knowledge and their convictions will have to be upheld. Both in the trial court as well as the High Court the plea put forward on behalf of the appellants was that these notes were distributed and planted on the accused person by the police and a mere show was made that these were recovered from their possession. Counsel for the appellants pressed that very plea for our acceptance in this appeal.

4. In our view the said plea gets discredited for more than one reason. In the first place the loss of the currency notes came to light at about 4 a. m. on April 2, 1968 and at 5.30 a. m. When the FIR was lodged full particulars of the numbers of 87 currency notes were mentioned therein and thereafter the actual recoveries came to be made on April 8, 1968. To accept the suggestion of planting one will have to go to the length of saying that right from the commencement, that is, right from the time the FIR was lodged the police and the complainant were in league with each other in putting forth a false case of robbery in respect of these notes though in fact these notes had not been lost during the incident at night and were supplied by the complainant to the police for being planted on the accused persons. Such type of collusion between the police and the complainant right at the commencement of the lodging the FIR is highly incredible. Secondly if the positive evidence of actual recoveries having been made from the two appellants is believable then obviously this theory of planting cannot be accepted and that exactly has been the approach of High Court in the case.

5. So far as recoveries of 20 notes of Rs 100 each from Vishnu Shanker and 31 notes of Rs 100 each from the cash box of Satish Chandra are concerned the prosecution evidence mainly consisted of two witnesses. Om Prakash PW 16 and Shanti Prasad PW 17. Out of the two the latter was the Investigating Office and the former was a Panch witness - an independent witness as a clerk in the Head Post Office at Chandausi. The categorical evidence of PW 16 is that at about 11.30 a. m. after finishing his duty when he was going out of the post office a big police van arrived and stopped near the post office, the policemen came out of the van and in his presence, Vishnu Shankar who was going towards a bus stand was apprehended by the police and a sum of Rs. 2000 in cash in the form of 20 notes of Rs 100 each was recovered from his shirt pocket, and their numbers were noted down in the seizure memo. Thereafter, along with Vishnu Shankar and the other witness the Investigating Officer went to the shop of Satish Chandra who on interrogation took out Rs. 3100 form his cash box and handed over the same to the police officer : the police officer prepared a seizure memo relating to these notes by nothing their numbers. Nothing has been elicited in his cross-examination which would go to discredit his aforesaid evidence and counsel appearing for the appellants before us was not able to point out any material that could cast any doubt on the veracity of the story given out by the witness. If the evidence of this independent witness, which is corroborated by the testimony of the Investigating officer, is accepted it is obvious that the theory of notes being planted on these two appellants by the police must fall to ground.

6. However, counsel for the appellants urged that in the case of other two accused (Vishnu Gopal

and Manohar Lal whose acquittal had been upheld by the High Court) there was similar evidence of recovery of currency notes whose numbers tallied with those mentioned in the FIR but that evidence has not been accepted by the High Court and therefore it was a little strange that the High Court should have accepted the recovery evidence insofar as the two appellants were concerned for basing its conviction. We do not find anything strange about the two accused. In the case of Vishnu Gopal there was joint recovery of blood-stained gupti and currency notes from him during one and the same search and the High Court felt that it would be highly improbable that for about eight days after the incident Vishnu Gopal would continue to keep the blood-stained gupti in the same condition without erasing or wiping out the blood stains thereon and therefore some doubt was cast on the recovery of the notes also. So far as Manohar Lal is concerned the High Court took a view that all the three Panch Witnesses (public witnesses) who had deposed to the recovery of the notes form him appeared to be witnesses who could be said to be under the thumb of the police. In other words no real independent witness deposed about that recovery. It was for these reasons that the High Court did not accept the recovery evidence in the case of those two accused persons but that does not mean that the recovery evidence insofar as the two appellants are concerned should have also been disbelieved by the High Court.

7. Moreover, the High Court in our view has rightly discarded the so- called improbabilities and/or irregularities said to be attaching to the recoveries made from the two appellants.

8. We are satisfied that the trial court's appreciation of evidence in regard to the two appellants was clearly faulty and the High Court was justified in reappreciating the evidence and coming to a conclusion.

9. In the result the appeal fails and is dismissed. As regards the sentence it is true that the conviction was recorded by the High Court in the year 1937 and we are hearing the appeal in 1983 but that by itself is no ground to interfere with the sentence of three years imposed on them. On account of the appellants being on bail they have under gone only four months of imprisonment so far. The appellants will surrender to their bails.

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