

Chittaranjan Choudhury

Vs

State of Bihar

Criminal Appeal No. 103 of 1978

(M. M. Dutt, G. L. Oza JJ)

28.01.1987

JUDGMENT

M. M. DUTT, J. -

1. In this appeal by special leave the appellant has challenged the judgment of the Patna High Court affirming the order of the learned Judicial Commissioner, Ranchi, whereby the learned Judicial Commissioner altered the order of conviction of the appellant as passed by the learned Munsif Magistrate, First Class, Ranchi, to one under Section 409 read with Section 511 IPC, but maintained the sentence of two years rigorous imprisonment and a fine of Rs. 200. The High Court has, however, reduced the order of sentence to six months' rigorous imprisonment and to a fine of Rs. 50.

2. The appellant was the Senior Godown Keeper of the Food Corporation of India. The prosecution case, in short, was that on March 2, 1968 at 8.00 p.m. in the night on a confidential information, the Deputy Superintendent of Police, Ranchi, raided the Central Godown of the Food Corporation of India along with the Town Inspector and found that a truck bearing registration No. BRN 4281 standing in front of the godown, and that 22 bags of wheat had already been loaded in the truck. It was learned by him that the said bags were being loaded under the instruction of the appellant. The truck along with the said 22 bags of wheat was seized. The police also seized certain documents including the release order No. 115 in favour of Hatia Consumers, Co-operative Society in respect of 1200 bags of wheat. The appellant was, accordingly, prosecuted for criminal breach of trust.

3. Out of 14 witnesses mentioned in the charge-sheet, only 6 were examined at the trial. The Investigating Officer was, however, not examined by the prosecution.

4. The defence plea of the appellant was that the loading of the truck in question was being done for despatching wheat to Hatia Consumers' Co-operative Society in accordance with the said release order No. 115 which was seized by the police. The said release order, however, was not produced by the police at the trial. The learned Munsif Magistrate while convicting the appellant by his order dated September 7, 1973 recorded therein as follows :

Accused Chittaranjan Choudhury in his statement u/s. 342 CrPC has of course, stated that he was sending the wheat to HEC as per release order. This fact was hence within his knowledge and therefore it was his duty to produce the release order but unfortunately neither any release order has been produced by him nor any attempt was made by him to bring it on record.

5. As the release order was seized by the police and not produced at the trial, the appellant could not place any reliance thereon in proof of his plea that the loading was being made in the truck in question for despatching wheat as per the release order. Before the High Court also it was contended on behalf of the appellant that the said bags of wheat were being despatched to Hatia Consumers' Co-operative Society. As there was no material in support of the said contention, the High Court rejected the same.

6. It is curious that although the defence plea was based on the said release order No. 115, the same was not filed before the trial court or at any stage of the proceeding. Our attention has been drawn to the evidence of PW 2, Rajendra Narain Singh, the City Deputy Superintendent of Police, Ranchi. In the course of his evidence, PW 2 stated that he perused the Gate Pass-Book and also the printed release orders dated March 7, 1968 in which delivery was marked in respect of the goods which were despatched outside. This evidence is noticed only to be rejected. In our opinion where, as in the instant case, the defence is founded on a relevant and vital document seized from the custody of the accused and not deliberately produced, it is difficult to sustain the conviction of the accused. It was the duty of the prosecution to produce the release order No. 115 in order to remove all doubts by showing that the goods which were being despatched by the appellant, were not covered by the release order. The said statement of PW 2 that in the release order dated March 7, 1968 delivery was marked in respect of the goods which were despatched outside without producing the release order in question, is no evidence at all and is also no answer to the defence plea that the said 22 bags of wheat were loaded in the truck as per the release order No. 115. The learned Munsif Magistrate completely overlooked that the said release order was seized from the custody of the appellant.

7. The learned Magistrate was, therefore, not justified in rejecting the defence plea on the ground of non-production of the release order by him. The High Court also was not justified in rejecting the defence plea as there was no material on record in support of the same. As the release order, which is a very relevant and vital document, had been deliberately withheld by the prosecution, the conviction of the appellant cannot be sustained.

8. For the reasons aforesaid, the conviction and sentence of the appellant are set aside and he is acquitted of the charge under Section 409 read with Section 511 IPC. The bail bound is discharged.

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