

ALLAHABAD HIGH COURT

Ram Sunder Dubey

Vs.

State (Allahabad)

Criminal Revn. No. 2146 of 1960. , against order and judgment of Asstt. S.J. Bareilly,

(W. Broome, J.)

17.11.1960. 09.05.1961

ORDER

W. Broome, J.

1. Ram Sunder Dubey, the applicant in this Criminal Revision has been convicted by a Second Class Magistrate of Bareilly for an offence under Section 309, Indian Penal Code and has been sentenced to four months' S.I. and a fine of Rs. 200/-. His conviction and sentence were confirmed in appeal by the Assistant Sessions Judge of Bareilly.

2. The prosecution allegations were that the accused-applicant attempted to commit suicide by resorting to hunger strike. He was employed in the Mental Hospital, Bareilly, but was suspended from service. He alleged that the authorities in charge of the institution were guilty of unfair discrimination and on 27-2-1960, in order to coerce them into reinstating him, he lay down on a bed near the Gandhi statue in the heart of the city of Bareilly, flanked by placards proclaiming his grievances, and proceeded to fast. On 1-3-1960 the Station Officer of the Bareilly Kotwali found that the accused's condition was deteriorating and hence had him transferred to the District Hospital and from there to the District Jail.

3. The accused admitted that he had gone on hunger strike but denied that he had intended fasting to death. He produced evidence to show that he was taking lemon juice morning and evening during the continuance of his fast. The courts below, however, have not believed this defence evidence and have come to the conclusion that the accused actually meant to fast to death unless his demands were conceded.

4. The question is whether any offence under Section 309, Indian Penal Code has been made out. The peculiar difficulty about suicide by starvation is that it is a long drawn out process, which can be interrupted or given up at any stage (except perhaps the very last). Unless there is some

overt declaration by the accused of his intention to fast to death, it is difficult to be sure that he really intended to persevere to the bitter end. And even if there is such an intention at the beginning, one has always to make allowance for the possibility of the accused's changing his mind and breaking his fast before it becomes dangerous. I am prepared to concede that if a person openly declares that he will fast to death and then proceeds to refuse all nourishment until the stage is reached when there is imminent danger of death ensuing, he could be held guilty of the offence of attempted suicide. But in the present case the evidence falls short of this (and can scarcely be said to be sufficient to substantiate the charge.

5. In the first place, it is not clear whether the accused intended to fast to death or whether he had decided to fast for a limited period. The pamphlet Ex.Kha-1 which he issued on 17-2-1960 merely stated that if the authorities did not redress his grievances by 26-2-1960 he would start a hunger strike on 27-2-1960; but there was no indication of how long the fast was to continue. Quite probably the accused felt confident that public opinion would exert pressure in his favor and that the authorities would feel obliged to remedy his grievances long before he was in any real danger of succumbing to starvation. Alternatively it is conceivable that he had decided to fast only for a limited period, even though he made no public announcement as to what that period would be. The intention of the accused to persist in the fast and to cause his own death has by no means been proved.

6. Furthermore, when the accused was taken off to the District Hospital on 1-3-1960, he had only been fasting for three days and could scarcely be said to be in imminent danger of death at that time. The doctor who examined him on 29-2-1960 and 1-3-1960 found his general condition weak and remarked:

"Signs of starvation have set in. His condition needs careful watching. In case the signs aggravate, which is likely if he does not take any nourishment, danger to life will increase, even resulting in death."

But this could only mean that if the fast had been persisted in for some days more, it would probably have proved dangerous: symptoms noted do not suggest that on 1-3-1960 the condition of the accused was at all critical. Modi in his *Medical Jurisprudence and Toxicology* (13th Edition, 1959, p.185) states:

"Death occurs in 10 to 12 days if both water and food are totally deprived. If food alone is withdrawn life may be prolonged for a long period, say six to eight weeks or even more."

The accused had only been fasting for three days when he was taken away by the police, and it cannot be said that at that stage his life was in danger. And no evidence has been led to show that there was any further deterioration in his condition after 1-3-1960.

7. It is important to note that the prosecution has not chosen to produce any evidence to show that the accused persisted in his fast even after his arrest. There is no suggestion in this case that the authorities were ever obliged to resort to forcibly feeding and it seems that eventually the accused must have agreed to take food in the normal way. He himself says that he gave up his' fast when he found that action was being taken to redress his grievances.

8. I find therefore that there is no evidence of any clear intention on the part of the accused to kill himself; signs of starvation had only just begun to appear when he was arrested; and it would seem that eventually he himself voluntarily gave up the fast that he had undertaken. In the circumstances I am unable to agree with the findings arrived at by the courts below, for there appears to be no justification for holding that the accused actually attempted to commit suicide. All that the evidence on record proves is that he abstained from taking food for three or four days with the object of bringing pressure to bear on the authorities so as to force them to remedy his grievances. It does not appear that his life was ever actually in danger upto the time when he broke his fast and there is nothing on the record that would show that he had ever intended to carry on fasting to the point of death.

9. This revision application is accordingly allowed, the conviction and sentence of the applicant being set aside.

Revision allowed.