
(1987) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Criminal Appeal No. 111 of 1986

State of Rajasthan

APPELLANT

Vs

Vishna

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1987) WLN 581

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kishore Singh Lodha, J.—The State has filed this appeal with special leave against the acquittal of respondent Vishna from offence under Rule 3/6 of the Indian Pass-port (Entry into India) Rules, (here in after to be referred as "the Rules") by the learned Judicial Magistrate, Barmer by his judgment dated May 29, 1985.

2. The prosecution story, briefly stated, is that on January 1, 1979, at 12.00 in the night, Sub-Inspector Than Singh, In-charge post B.S.F., Janpalia, received information that some smuggler was coming from Pakistan towards India, where upon, a party of the B.S.F. Laid an ambush. At about 3.00 a.m. a man was found coming with a camel from across the boundary. When he came at about 130 yards inside the Indian border, the party surrounded him and caught hold him. On search, 128 shirts and 2 watches were found on his person. They along with the camel and its saddle were taken into possession and the accused was brought to the outpost of BSF. The seized articles were deposited with the Custom Department and a report was made at the police station, Sarwa about this incident. After usual investigation, the police put up a challan against the accused and he pleaded not guilty of the charge. The prosecution examined ten witnesses. Out of them, PW 9 Bahadur and PW 10 Mukim, the alleged Motbirs of the arrest and recovery, turned hostile. The rest of the witnesses, who are

members of the B.S.F. and who formed the ambush party, have supported the prosecution story. The learned Magistrate, then examined the accused u/s 313, Cr. PC He denied the prosecution story, but did not produce any evidence in defence. The learned Magistrate, after hearing the learned Public Prosecutor and the learned Counsel for the accused, rejected the prosecution story on two grounds. The first ground relied upon by the learned Magistrate is that where as the other B.S.F. personnel who have appeared in the witnesses box have stated that Shri Than Singh was not present at the time of ambush, but was called later. Than Singh states that he also was amongst the ambush party and this according to the learned Magistrate was a very serious contradiction between the statements of the witnesses. The second ground, on which the learned Magistrate disbelieved the prosecution story is that some of the witnesses stated that it was a moon-lit night, where as the others state that it was a dark night. Apart from these two discrepancies, learned Magistrate has not found any other weakness in the prosecution story.

3. I have heard learned Counsel for the parties and have gone through the record. It is contended by the learned Public Prosecutor that the grounds on which the learned Magistrate has discarded the evidence, are wholly fanciful because the contradictions pointed out by him are not at all material. The witnesses have consistently stated that the accused had come from across the Border and had been captured by them when he had come about 150 yards inside the Indian Border. Learned Counsel for the respondent, on the other hand, urged that apart from the two contradictions pointed out by the learned Magistrate, it also appears that as a matter of fact, there is no evidence to show that the accused had come from across the Border and, therefore, the acquittal of the accused was proper.

4. Having given my careful consideration to the rival contentions, I am of the opinion that the contention of the learned Public Prosecutor deserves to be accepted.

5. The first contradiction pointed out by the learned Magistrate is of not of much value because it was at the instance of Than Singh that the ambush party was arranged and had taken up the position. It is also admitted that as soon as the accused was captured. Than Singh had also reached. It hardly matters whether he had been with the ambush party throughout or he reached the spot as soon as the accused was captured.

6. The other contradiction about the night being moonlit a night or dark-night, is also insignificant because it is not a case of identification of the accused. The accused was captured and had been taken to the police station from the spot. It. may also be mentioned that the incident had taken place in January, 1979 where as, some of the witnesses were examined as late as in October and December, 1983 and after a lapse of such a long period, such contradiction is quite natural.

7. Coming to the contention of the learned Counsel that there is no evidence to

show that the accused had been seen coming from across the Border, it may at once be stated that this contention is not borne out from the record in as much as almost all the witnesses have stated that the accused was seen coming from across the Border and it was only after he had come about 150 yards inside the Indian Border that he was surrounded and captured. In view of that evidence, the acquittal of the respondent cannot be sustained because a case under Rule 3/6 of the Rules is clearly made out against the respondent.

8. This brings me to the question of sentence. Under Rule 6, the sentence provided is upto three months imprisonment or a fine Rs. 500/- or with both. Looking to all the circumstances of the case that the incident had taken place in 1979 and the accused have already suffered prolonged trial till May, 1985 when he was acquitted by the learned Magistrate, I am of opinion that a substantive sentence would not be in the interest of justice and a sentence of fine will serve the purpose.

9. The appeal is allowed. The acquittal of the appellant is set aside. He is convicted under Rule 3/6 of the Rules and is sentenced to a fine of Rs. 500/-; in default of payment of fine, to undergo one month's simple imprisonment. The accused-respondent is not present. One month's time is allowed as prayed for by the learned Counsel for the accused to deposit the amount of fine. If the fine is not deposited, the learned Magistrate will take steps for the arrest of the accused and to send him to jail for serving out the sentence awarded to him in default of payment of fine.