

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3167 of 1986

Appellant :- Amar Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Shankar Singh, Akhand Pratap
Tripathi, Shankar Suan

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Present appeal has been filed by accused-appellants - Amar Singh and Raghuraj Singh against the judgment and order dated 10.12.1986 passed by Special Judge, Ghaziabad in Criminal Case No.2 of 1985 (State Vs. Amar Singh and another) under Section 3 of U.P. Food Grain Dealer (Licensing and Restriction on Hoarding) Order 1976 and Clause 3 of the U.P. Wheat (Levy) Order 1982 convicting the appellants under section 7 Essential Commodities Act and imposing sentence for one year rigorous imprisonment with fine of Rs.500/- each and in default of payment of fine three months additional rigorous imprisonment.

2. The brief facts arising out of this appeal are that on 6.5.1983, S.I. Bhagirath Sharma was posted at P.S. Link Road and was on duty at Noida check-post between 6:00 P.M. to 12 midnight. At about 11:00 P.M., Senior Marketing Inspector Hari Chand approached him and told him that when he was trying to check a truck, it crashed the barrier and escaped and he asked for the police help in apprehending the truck. He told the above-named S.I. that the registration number of the truck was UPP-6845. When they were talking to each other, a truck was seen coming from the Ghaziabad side. They signaled to stop the truck, but it did not stop.

They chased the truck by police jeep and got it stopped near Delhi border, which was loaded with straw. When the above-named Marketing Inspector made a search, grains of wheat were also found loaded in the said truck. At this the straw was unloaded and 18 bags of wheat were found to be loaded in the truck. The truck was carrying the bill of loading of 16 quintals of straw only. The truck was driven by Amar Singh and one Raghuraj Singh was sitting beside the driver. They could not show any valid document in respect of carrying 18 bags of wheat to Delhi. At this, the recovery memo was prepared and case was registered at the police station. The police submitted a charge-sheet after investigation of the case.

3. Under the provisions of Clauses 3(2) and 11(5) of U.P. Food Grain Dealer (Licensing and Restriction on Hoarding) Order and U.P. Wheat (Levy) Order 1982 read with Section 7 of Essential Commodities Act, the case proceeded and the statement of accused Amar Singh was recorded in the Court to the effect that he was carrying the straw and 18 bags of wheat in his truck and that Raghuraj Singh was the owner of the consignment, who was with him in the truck. Statement of Raghuraj Singh was also recorded in the Court and he stated that he was living with one Pratap Singh in village Khanpur, Delhi, who had land in village Chanchola in U.P. and that he was carrying straw and wheat for the cattle kept by Pratap Singh in Delhi and for their own consumption in Delhi.

4. The prosecution, in order to prove its case, examined P.W.1 Constable Vijay Singh, P.W.2 S.I. Bhagirath Sharma, P.W.3 S.I. Shyam Bahadur, P.W.4 S.I. Sushil Chandra Tyagi and P.W.5 Hari Chand, Senior Marketing Inspector. Relevant documents were also filed by the prosecution.

5. The appellants/accused in their statement under section 313 Cr.P.C. though admitted the prosecution allegation regarding recovery of wheat but pleaded that the said wheat carried by them was in their bonafide possession without breaking any law and same was for their own consumption. In defense evidence, D.W.1 Pratap Singh, D.W.2 Udai Kumar, D.W.3 Khan Chand, Prabhakar Pal Tripathi, D.W.4 and Mahendra Singh, D.W.5 were examined as defense witness and some papers were also produced in support of defense evidence.

6. The trial Court after perusing the record and analysing oral and documentary evidence produced against the accused-appellants recorded a finding that the evidence rendered by the prosecution is trustworthy.

7. It was held that the prosecution has conclusively proved that the accused-appellants did commit an offence and were found guilty of the offence punishable under Section 3 of U.P. Food Grain Dealer (Licensing and Restriction on Hoarding) Order 1976 and Clause 3 of the U.P. Wheat (Levy) Order 1982 and a conviction was recorded accordingly and the accused-appellants were sentenced to rigorous imprisonment for a period of one years imprisonment and a fine of Rs.500/- each for the said offence.

8. During the course of argument, the learned counsel for the appellants submits that there is no error in the conviction recorded by the trial court but the imposition of sentence by the trial court is too harsh. The attention of this Court has been drawn towards the provisions of section 7(1)(a)(ii) of the Essential Commodities Act which provides that for adequate and special reasons mentioned, the sentence imposed may be less than three months. It has been submitted that at present the appellants are old aged persons and

must be dependent men. The appeal was filed in the year 1986 and about 37 years have passed. It has been further submitted that the appellants have already suffered since long on account of the pendency of the present criminal proceedings going on against them. It has also been submitted that the appellants in this case has been detained in jail for some days. The Trial Court has passed a sentence of rigorous imprisonment for one year. It has been submitted that the sentence as imposed by the trial court may be modified to the extent of the period already undergone.

9. The learned A.G.A. has made no objection to the submissions of the learned counsel for the appellants on the question of sentence and submitted that in view of the long pendency of the criminal proceedings against the appellants, the sentence imposed by the trial Court may be reduced.

10. From the perusal of the record, it is evident that the finding and conclusion given by the trial Court are on the basis of the evidence and facts on record which require no interference. On the basis of the facts and evidence on record, the conviction of the appellants has been correctly recorded by the trial Court.

11. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the court but the same has to be guided by certain principles. Hon'ble Supreme Court in **Raj Bala vs. State of Haryana & Ors (passed in Special Leave Petition (Crl.) Nos.4099-4100 of 2015)** in this context, has observed that neither the personal perception of a Judge nor self adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can

neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

12. In the instant case, criminal machinery came into motion about 40 years ago and the present appeal has been pending for 37 years. There is nothing on record to show that the appellants are previous convicts or having any criminal antecedents. Also the accused-appellants alone cannot be held responsible for long delay in disposal of this appeal. They are old aged persons. It has been submitted and also finds support from the record that the appellants remained in custody for some days during trial. Hence, considering all aspects of the matter, no useful purpose would be served by sending accused-appellants in judicial custody at this stage, rather in the aforesaid special circumstances, it appears that ends of justice would be served if sentence imposed upon the appellants by the trial court be modified to the extent that the sentence of the period already undergone is imposed and as such the appeal is liable to be partly allowed accordingly.

13. Therefore, the conviction of accused-appellants Amar Singh and Raghuraj Singh is upheld, but sentence of one year rigorous imprisonment for the aforesaid offences, awarded by the trial court, is modified to the period of sentence already undergone by

them.

14. The instant appeal is **partly allowed** in above terms.

15. A copy of this order be transmitted to the court concerned.

Order Date :- 21.3.2024

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