

The State of M.P. Vs. Gajanand

The State of M.P. Vs. Gajanand

SooperKanoon Citation : sooperkanoon.com/1039650

Court : Madhya Pradesh

Decided On : Jun-28-2012

Appellant : The State of M.P.

Respondent : Gajanand

Judgement :

1 Cr.A. No.1434 of 1996 HIGH COURT OF MADHYA PRADESH : JABALPUR
BEFORE : TARUN KUMAR KAUSHAL, J.CRIMINAL APPEAL No.1434 OF
199.APPELLANT: The State of M.P. Versus RESPONDENTS:

1. Gajanand, S/o Shrikishan, Caste-Paliwal, aged 24 years, R/o Jaswadi, Police
Station-Khandwa, at present R/o Head office-Khandwa, Rameshwar Road.

2. Nathu, S/o Tukaram Mahajan, aged 26 years, R/o Khamni, P.S.Shahpur (M.P)

***** For Appellant : Shri
R.S. Shukla, Panel Lawyer. For Respondents : Shri Vivek Rusia, Advocate.

JUDGMENT

28/06/2012 This appeal has been preferred under section 378 (1)/ (3) of Code of
Criminal Procedure 1973 by the State appellant challenging the judgment dated
10/10/1995 passed by Judicial Magistrate, First Class Bhurhanpur in Criminal
Case No.2349/1984, acquitting the respondents of the charge under section 409
IPC.

2. Facts of the case, in short, are that respondent no.1 Gajanand was the Samit Sevak and respondent no.2 Nathu was the Salesman in Seva Sahkari Samit Khamni since 21/01/1981. The aforesaid Society was undertaking the work of public distribution and agriculture finance. On having some doubt of working of the respondents in respect of distribution of sugar, kerosene etc. Anna Rao, Branch Manager, Zila Sahkari Kendriya Bank Branch-Shahpur (PW-1) directed Amritlal, Supervisor (PW-3) to make physical verification of the stock, inspect the records and 2 Cr.A. No.1434 of 1996 to submit a report. On 15/03/1983 PW-3 submitted report Ex.P-1 showing the shortage in stock of sugar, kerosene, cereals etc to the tune of Rs.11,209.36 paisa. After about a period of 2 months on 24/05/1983, PW-1 submitted a written report Ex.P-2 to Police Station-Shahpur. A case at Crime No.219/1984 under section 409 IPC was registered against the respondents.

3. After due investigation, police submitted a charge sheet in trial court. Trial court framed charge under section 409 IPC against the respondents. Respondents abjured guilt. To substantiate case of the prosecution, statements of Anna Rao, Branch Manager, Zila Sahkari Kendriya Bank Branch-Shahpur (PW-1), Yashwant Rao, Samit Sevak (PW-2), Amritlal, Supervisor (PW-3), and Kashinath (PW-4), were recorded. Defence of the respondents was that of false implication. After appreciation of aforesaid evidence, Trial Court considering the evidence of the prosecution to be doubtful and acquitted the respondents of the charge under section 409 IPC.

4. Challenging the aforesaid findings of the trial Court, State has preferred this appeal on the grounds that appreciation of evidence is not proper. Though prosecution has succeeded to prove the ingredients of offence under section 409 IPC acquittal has been recorded in wrong manner. On the other hand, learned counsel for the respondents supported the finding of acquittal and opposed this appeal.

5. Anna Rao, Branch Manager (PW-1) stated that in the year 1981 to 1983, respondent no.2 Nathu was working as Salesman and respondent no.1 Gajanand was Samiti Sevak in Khamni Society. He had issue a certificate Ex.P-4 to that effect. This fact has not been challenged in the cross-examination also, hence, it is

proved that respondents were working as public servant in the relevant period.

6. In so far as act of embezzlement by respondents is concerned Anna Rao (PW-1) stated that while he suspected something wrong 3 Cr.A. No.1434 of 1996 in the maintenance of the account and working of the Society he asked Supervisor to go and look into the matter. Amritlal, Supervisor (PW-3) submitted report Ex.P-1 to him showing the shortage of items and accordingly embezzlement of Rs.11,200/- from the Society and respondents were prima facie found liable for the same.

7. Amritlal, Supervisor (PW-3) stated in the month of September 1982 Branch Manager has directed him to go and inspect the Society. Two months prior to that period, he had inspected the Society and found everything to be in line. He has submitted the report within a period of 2 months. Regarding relevant period of embezzlement, evidence of PW-1 and PW-3 is inconsistent. It is doubtful that report is related to the period of September 1982 or is related to March 1983. Comparing the evidence of both the witnesses, evidence of Amritlal, Supervisor (PW-3) seems to be not reliable because he has disowned his previous statement Ex.D-1 entirely. It is pertinent to note that FIR has been lodged by PW-1 on the basis of report Ex.P-1 submitted by PW-3.

8. Anna Rao (PW-1) Branch Manager stated that on 25/03/1983 on receiving inspection report Ex.P-1 he lodged the report in police Ex.P-2 on 24/05/1983. He has issued notice to the respondents to deposit the amount. Respondent no.2 Nathu has deposited Rs.4,000/- in response of the notice. PW-1 has issued a certificate Ex.P-3 in this regard. Ex.P-3 is dated 14/06/1984. Without actual stock verification fair inspection of Registers etc, it was not possible to ascertain the embezzlement.

9. Evidence of Anna Rao (PW-1) is not clear on the point as to when notice was issued to the respondent no.2 Nathu. It appears that FIR has been lodged and notice has been issued simultaneously. Part of the amount has been deposited by the respondents is not mentioned in the FIR Ex.P-2. In Para 11 of his statement PW-1 has admitted that he himself did not examine the record of the Society after receiving the report Ex.P-1 and he did 4 Cr.A. No.1434 of 1996 not remember the actual amount deposited by the respondents. Actual amount of embezzlement

cannot be ascertained on the basis of evidence of Anna Rao (PW-1). PW-1 has failed to mention the fact that whether part of the amount has been deposited by the respondents prior to the filing of the charge sheet or not.

10. Prosecution has failed to prove the actual period and duration of embezzlement. Inspection Report Ex.P-1 is also vague in this respect. After issuance of the notice amount has been deposited by the respondents. This fact has not been brought into notice at the time of making of the FIR in the matter. In view of the aforesaid fact of embezzlement has not been proved by the prosecution by reliable evidence. Trial Court has taken into consideration these facts and has appreciated the evidence in right perspective.

11. Evidence of Anna Rao, Branch Manager (PW-1) and Amritlal, Supervisor (PW-3) is discrepant. Their evidence is suffering from lapses on material particulars and statement of PW-3 is not reliable. Pursuant to the notice issued, defalcation amount has been partly deposited by the respondents pending investigation and partly amount during the trial. Evidence of PW-1 and PW-3 is not sufficient to prove the charge of embezzlement against the respondents beyond doubt.

12. Acquittal recorded by the trial Court is proper and requires no interference at this stage by this court. Being probable and proper deserves to be affirmed.

13. As discussed above, I see no force in the appeal. Appeal deserve to be and is hereby dismissed. (Tarun Kumar Kaushal) Judge tarun/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com