Md. Ashanullah Vs. Md. Abdul Nessim @ Danger Bhaity and anr.

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SooperKanoon Citation : sooperkanoon.com/129821

Court : Guwahati

Decided On : Jun-30-2006

Judge : I.A. Ansari, J.

Appellant : Md. Ashanullah

Respondent : Md. Abdul Nessim @ Danger Bhaity and anr.

Disposition : Petition allowed

Judgement :

I.A. Ansari, J.

1. This revision is directed against the order, dated 28.6.2002, passed, in Criminal Appeal No. 08(S-1) of 2002, whereby the learned Sessions Judge, Sonitpur, has allowed the appeal of the accused-opposite party herein and set aside the judgment and order, dated 22.2.2002, passed, in GR Case No. 1346/2000, by the learned Judicial Magistrate, Tezpur, convicting the accused under Section 406 IPC. Aggrieved by the acquittal of the accused-opposite party, the present petitioner, who is the informant, in GR Case No. 1346 of 2000 aforementioned, has, impugned the acquittal of the accused-opposite party in the present revision.

2. I have heard Mr. I. Uddin, learned Counsel for the informant-petitioner, and Mr. I. Hussain, learned Counsel for the accused-opposite party. I have also heard Mr. B.S. Sinha, learned Additional Public Prosecutor, Assam.

3. The prosecution's case, as unravelled at the trial, may, in brief, be described as follows:

On 22.1.2000, the informant, Md. Ashanulla, accompanied by accused, Md. Abdul Nessim @ Dangar Bhaity, went to the Central Bank, at Tezpur, for withdrawing his fixed deposit of Rs. 50,000 (Rupees fifty thousands) only. The informant and the accused were known to each other, for, the informant had, for sometime, been a tenant of the accused. After submitting necessary documents to the bank for encashment of his fixed deposit, the informant, having, suddenly, started feeling giddiness, sat a on a chair inside the bank and gave the token, which had been given by the bank, to the accused and told the person, at the counter of the bank, to give the amount of Rs. 50,000 to the accused in return of the token. While the informant was still awaiting for the accused to arrive, the accused received, on the strength of the said token, the cash amount of Rs. 50,000 and disappeared. As the accused did not turn up for sometime, the informant thought that the accused might have gone to the informant's house for giving the money to his family members. The informant, then, went to his house ; but on query made there, the informant came to know from his wife that the accused had not come to their house. The informant, thereafter, went to the house of the accused ; but there also he did not find the accused. The informant, then, accompanied by his wife, went back the bank and told the cashier about what had happened and the cashier told the informant that as per the informant's instructions, he (cashier) had given the money to the accused. As the accused remained untraced for 2/3 days, the informant lodged a written Ejahar. Based on this Ejahar and treating the same as FIR, a case was registered against the accused under Section 406 IPC and, on completion of investigation, a charge-sheet was accordingly laid against the accused.

4. To the charge framed under Section 406 IPC, at the trial, the accused pleaded not guilty. In support of their case, the prosecution examined 4 witnesses. The accused was, then, examined under Section 313 Cr.P.C. and in his examination aforementioned, the accused denied that he had committed the offence alleged to have been committed by him, the case of the defence being that of denial. No evidence was, however, adduced by the defence.

5. While considering the present revision, it is important to bear in mind that the role of revisional court against an appellate judgment of acquittal, is somewhat, circumscribed. The revisional court cannot convert a finding of acquittal into a finding of conviction. If, however, the trial court, while acquitting an accused, does not take into account a piece of evidence, which has a bearing on the acquittal, or has completely misread a crucial piece of evidence and caused thereby manifest injustice, the revisional court may interfere with such acquittal directing the trial court to take the evidence on record into consideration and, then, reach the conclusion with regard to guilt or otherwise of the accused. When the evidence on record may lead to two possible views and the trial court or the appellate court, while acquitting an accused, in such a case, adopts one of such views, the revisional court will not substitute its own view in place of the view adopted by the trial or appellate court, while acquitting the accused.

6. In the case at hand, the evidence of the informant (PW1) is to the effect that after he had submitted to the bank the withdrawal form, etc., he was given a token by the bank and the payment was to be made on presentation of the token to the cashier, the cashier, Sri K. Bora (PW 3), being known to the informant (PW 1). It is in the evidence of PW1 that after obtaining the token, he, suddenly, felt giddiness and sat down, on a chair, at the Bank itself and, by handing over the token to the accused, he (PW 1) asked the cashier (PW 3) to deliver the cash amount of Rs. 50,000 to the accused. PW 1 has also deposed that the cashier accordingly gave the said cash amount of Rs. 50,000 along with the relevant pass book to the accused and while PWl was still waiting for the accused to arrive with the cash, the accused disappeared. In short, in his evidence, the informant (PWl) claimed that the cash amount of Rs. 50,000 was handed over to the accused by the cashier (PW3) on the instructions of the informant and also in presence of the informant. As against the evidence so given by PW 1, the categorical assertion of the cashier (PW 3) is that PW 1 was known to him (PW 3) and when the accused presented the token, he (PW 3) told the accused that the token would not be given to the accused, but would be given to Ashanulla (PW 1). It is further asserted by PW3 that he handed over accordingly the cash amount of Rs. 50,000, contained in five bundles of currency notes of rupees one hundred denomination, to PW 1.

7. In the appeal against acquittal, on noticing that while PW 1 claims that PW3 had handed over the cash to the informant. PW3 asserts that he (PW 3) did not hand over the cash to the accused, but to PW 1, learned Sessions Judge concluded that this contradiction is a material contradiction and, in the face of such irreconcilable assertions made by PWs 1 and 3. it cannot be held, conclusively and confidently, that the accused was entrusted with the cash by PWl and/or PW3. I see no error in the conclusion, so reached, by the learned Sessions Judge. In the face of the evidence, as indicated hereinbefore, it is clear that neither PW 1 claimed to have entrusted the accused with the cash amount of Rs. 50,000 nor did PW 3 assert to have handed over the cash to the accused. In such circumstances, the entrustment to the accused of the said cash amount of Rs. 50,000 cannot be said to have been proved. When the entrustment was not proved, the question of misappropriation thereof and/or conversion of the same to the use of the accused does not arise at all.

8. What crystallises from the above discussion is that the learned Sessions Judge has assigned cogent and convincing reasons for interfering with the conviction of the accused-opposite party and I see no reason to interfere with the same.

9. In the result, and for the reasons discussed above, this revision fails and the same shall accordingly stand dismissed.

10. Send back the LCRs.