

The State of Bihar Vs. Khurshid Imam

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Court : Patna

Decided On : Aug-17-2007

Judge : Madhavendra Saran, J.

Acts : Indian Penal Code (IPC) - Sections 409 and 468

Appeal No. : Government Appeal No. 36 of 1991

Appellant : The State of Bihar

Respondent : Khurshid Imam

Advocate for Def. : Nagendra Kumar Roy, Adv.

Advocate for Pet/Ap. : A.H.M. Rahman and Md. Mushtaque Alam, A.P.Ps.

Disposition : Appeal dismissed

Judgement :

Madhavendra Saran, J.

1. This appeal by the State has been preferred against the judgment of acquittal dated 27.6.1991 passed by 2nd Additional Sessions Judge, Aurangabad in S.Tr.No. 19/1976/65//1990.

2. Shortly stated the prosecution case is that in the month of July, 1969 triplicate copies of receipt No. 1574 of Central Cooperative Bank, Aurangabad were found

missing from the receipt book of the bank. The Joint Secretary of the bank, who was Assistant Registrar, Cooperative Society, Aurangabad at that time, by memo No. 35 dated 17.7.1969 informed all the P.V.Ps./B.D.Os of the area to locate the said receipt. In response to the letter, P.V.P. of Baroon block informed the bank and other authorities that the receipt No. 1574 dated 28.6.1969 for Rs. 926.70 paise was granted to the Secretary of Kurwan M.P.C.S. and the receipt was signed by the head clerk cum cashier of the bank named Khurshid Imam who also admitted its genuineness. On verification of the bank account it was found that the said amount was lying in suspense account of the bank. Accordingly the amount was adjusted to the credit of Kurwan M.P.C.S. It appears that on 16.1.1970 the P.V.P. Aurangabad by his letter No. 37 dated 16.1.1970 informed that Sri Bengali Singh, Secretary of Karanja M.P.C.S. of his block had reported to him on that very date through a petition that he had deposited a sum of Rs. 18,500/- in Central Cooperative Bank, Aurangabad for which receipt No. 1574 dated 28.6.1969 was granted to him but the said amount had not been accounted for in the loan account of the society. On the basis of said letter of P.V.P. inquiries were made and it was found that the alleged sum of Rs. 18,500/- was not deposited in the bank nor there was any mention of this amount in the various reports and progress report of the concerned authorities. The Assistant Registrar, Cooperative Society, Aurangabad Circle accordingly filed written report before the police alleging that either Shri Khurshid Imam is guilty of criminal misappropriation and breach of trust or Shri Bengali Singh is guilty of fabricating a false document and using it as genuine. On the basis of written report of the informant the police registered Aurangabad P.S. Case No. 6(4)/70 and after investigation submitted charge sheet only against Khurshid Imam, on the basis of which the learned Sub-divisional Magistrate, Aurangabad took cognizance under Sections 408, 409 and 467 of the Indian Penal Code on 23.2.1972 and after inquiry the case was committed to the court of Session. On 5th August, 1978 the charges were framed under Sections 409 and 468 of the Penal Code. After trial the learned Additional Sessions Judge by judgment dated 27.6.1991 acquitted the accused. Against the said acquittal the State has preferred the present appeal before this Court.

3. The defence of the accused was total denial of the alleged occurrence and false implication in the case. It was also his defence that he had not issued any receipt

to Bengali Singh nor had received the amount from him.

4. To bring home the charges the prosecution examined in all nine witnesses before the court below who are P.W.1 Nawal Kishore Baidya, P.W.2 Bengali Singh, P.W.3 Deo Narayan Prasad, P.W.4 Chaneshwar Singh, P.W.5 Bishwanath Singh, P.W.6 Rambilas Singh, P.W.7 Mahmood Irshad, P.W.8 Jugeshwar Singh and P.W.9 Brij Kishore Sharma. Out of them P.W.7 is the informant, P.W.5 is the Investigating Officer of the case and P.W.2 is the person whose name is mentioned in the First Information Report as an accused. P.W.1 Nawal Kishore Baidya in the year 1969 was posted as Accountant in the Central Cooperative Bank, Aurangabad and accused Khurshid Imam was posted there as head clerk cum - cashier. In cross examination this witness has admitted that on 28.6.1969 he had made total of the entries of the cash book. He has further admitted that he did not compare the amount of the cash book with the corresponding receipts as it was the duty of the Assistant Manager. It appears from his evidence that he has no knowledge as to how receipt No. 1574 dated 28.6.1969 was issued to Kurwan Cooperative Society as well as to Karanja Cooperative Society.

5. P.W.2 Bengali Singh was Secretary of Karanja M.P.C.S. from 1969 to 1970. He deposed before the court that he had deposited Rs. 18,500/- on 28.6.1969 in the Central Cooperative Bank, Aurangabad for which he had received receipt No. 1574 from Khurshid Imam. The receipt has been marked as Exhibit-3/2. According to this witness Exhibit-3/2 had three counterfoils and the first copy was given to him bearing signature of the accused. This witness further stated before the court that he had collected the alleged amount of Rs. 18,500/- within a week from 20-22 persons. Then it appears that in cross examination the defence countered this witness that an amount of Rs. 1,000/- only of Karanja M.P.C.S. was deposited on 28.6.1969 under a proper receipt to which this witness showed his ignorance. The defence brought on record a receipt dated 28.6.1969 Exhibit-3/7 to show that on 28.6.1969 Rs. 1,000/- was deposited in the Central Cooperative Bank, Aurangabad by Karanja Cooperative Society. P.W.3 Deo Narayan Prasad has proved the complaint petition Exhibit-1. This witness has no knowledge whether Bengali Singh had deposited any loan amount with accused Khurshid Imam.

6. P.W.5 Bishwanath Singh is the Investigating Officer of the case. It appears that in course of investigation he sent 11 receipts and the specimen signatures of accused Khurshid Imam for expert report to police laboratory, Patna but the said report of the expert was not produced before the court below during trial. It appears that the said expert was also not examined by the prosecution. It further appears from his evidence that during investigation he had not seen any document of Karanja Cooperative Society. He also did not record statement of any member of Karanja Cooperative Society. It further appears from his evidence that no evidence was collected to establish that till 28.6.1969 Bengali Singh had collected Rs. 18,500/- from the members of Karanja Cooperative Society.

7. P.W.6 Rambilas Singh stated before the court that in the year 1969 he was Secretary of Kurwan M.P.C.S. He stated that on 26.7.1969 he got a receipt from accused Khurshid Imam on account of deposit of Rs. 83.00 and in the evening on the same day he went to the house of accused Khurshid Imam along with Abdul Khair Ansari, Cooperative Supervisor, Aurangabad and then Khurshid Imam gave him receipt No. 1574 for Rs. 926.75 and at the request of Khurshid Imam he put the date i.e. 28.6.1969 under his signature on the receipt. So according to this witness receipt No. 1574 was granted to him on 26.7.1969. It appears that receipt No. 1574 which was granted to Kurwan M.P.C.S. for Rs. 926.75 dated 28.6.1969 is Exhibit-3/1. It appears that this receipt was a provisional receipt as the word provisional is printed over it. Then it appears that on Exhibit-3/2 the word provisional is stamped. This receipt Exhibit-3/2 was produced by Bengali Singh. These two receipts are not counterfoil of each other rather they have been prepared under different process and printed separately.

8. P.W.7 is the informant of this case. He has proved the complaint which is Exhibit-1. In cross examination this witness stated before the court that accused Khurshid Imam admitted before him during inquiry that he had issued receipt No. 1574 to Kurwan Cooperative Society and that he had not issued receipt No. 1574 in favour of Karanja Cooperative Society. It further appears from his cross examination that Bengali Singh (P.W.2) had told this witness that when he deposited Rs. 18,500/- in the bank a Kacha receipt was granted to him and thereafter he went to Dalmianagar and on return he got the Pacca receipt at about

5.00 PM. It appears that P.W.2 during evidence in Court denied to have made such statement before P.W.7.

9. P.W.8 at the relevant time was store keeper of Central Cooperative Bank, Aurangabad. He has proved the day book of Central Cooperative Bank, Aurangabad which is Exhibit-4. This witness stated before the Court below that in the day book register against receipt No. 1574 dated 28.6.1969 no amount was entered. It further appears from the evidence of this witness that day book Exhibit-4 was written by Brij Kishore Sharma also who was then Peon in the bank.

10. P.W.9 Brij Kishore Sharma at the relevant time was Peon in the Central Cooperative Society, Aurangabad. He admitted that on 28.6.1969 he made entry in the day book of the bank.

11. It has been argued on behalf of the respondent that the case is based on the sole four testimony of Bengali Singh who was an accused in the F.I.R. along with the present respondent. Learned Counsel argued that no oral or documentary evidence was produced before the court below to show that till 28.6.1969 Bengali Singh had collected Rs. 18,500/- from the members of the Karanja M.P.C.S. He also pointed out that the alleged receipt issued by the respondent has not been supported by any expert evidence nor there is any oral evidence to prove the handwriting of the respondent on the alleged receipt Exhibit-3/2. Learned Counsel thus pointed out that the respondent has rightly been acquitted by the learned court below after protracted trial of 21 years.

12. It appears from the evidence of P.W.5, Investigating Officer that 11 receipts and specimen signatures of accused Khurshid Imam were sent to police laboratory for verification but the report of the expert was not produced during trial by the prosecution. Expert of the police laboratory who examined the papers was also not examined in the case as prosecution witness. Therefore, there is no expert report that Exhibit-3/2, the disputed receipt, is in the handwriting of the accused and the same bears his signature. There is also no oral or documentary evidence on record that till 28.6.1969 accused Bengal Singh had collected Rs. 18,500/- from the members of Karanja Cooperative Society. Then it appears that Exhibit-3/1 which is a receipt issued in the name of Kurwan M.P.C.S. bears the word

provisional which is printed on it whereas on Exhibit-3/2 the same word provisional has been stamped. So these two receipts are not counterfoil of each other rather they have been printed separately.

13. The prosecution in absence of above oral and documentary evidence, therefore, has failed to establish that the bank receipt No. 1574 dated 28.6.1969 Exhibit-3/2 was granted to Bengali Singh by accused Khurshid Imam on payment of Rs. 18,500/-. It has also failed to establish that the said receipt was in the pen and signature of accused Khurshid Imam. The prosecution has also failed to establish by oral and documentary evidence that before 28.6.1969 Bengali Singh had collected Rs. 18,500/- from the members of Karanja Cooperative Society. There is also no evidence to show that the handwriting of disputed receipt Exhibit-3/2 was of the accused.

14. I have seen the judgment of the trial court and the same indicates proper appreciation of evidence. The view taken by the trial court is quite reasonable and I find no infirmity in the judgment. The learned trial court, therefore, has rightly acquitted the accused.

15. In the aforesaid facts and circumstances of the case, I find no merit in this appeal. It is accordingly dismissed.