

K. Malaiah Vs. State of Mysore

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Court : Karnataka

Decided On : Oct-17-1955

Reported in : 1956CriLJ253

Judge : Padmanabhiah and ;Sreenivasa Rau, JJ.

Appellant : K. Malaiah

Respondent : State of Mysore

Judgement :

1. This is an appeal preferred by the appellant-accused against the judgment of the learned First Additional Sessions Judge, Bangalore Division, in Tumkur Sessions Case No. 3 of 1955, convicting him of offences under Sections 467 and 409, I.P.C. and sentencing him to undergo rigorous imprisonment for two years and also to pay a fine of Rs. 100/- and in default to undergo rigorous imprisonment for a further period of three months, under each count, and directing that the substantive sentences should run concurrently.

2. The case for the prosecution was that the accused, who was a postman in Kunigal Post Office, was on 28-11-1949 entrusted with a money order for Rs. 20/-, which was received from Bangalore as unpaid to the payee, for payment to the remitter P. W. 9 Ramkrishna at Kunigal, that the accused forged the signature of Krishnaiah (also called Krishnappa) on whose behalf the money order was sent by P. W. 9 and misappropriated it and that he thereby committed offences under

Sections 467 and 409, I.P.C.

The learned Sessions Judge, agreeing with the unanimous opinion of the Assessors, convicted and sentenced the appellant as stated above. As against that decision, the present appeal is preferred.

3. The point that arises for consideration is whether the charges against the appellant have been made out. That a money order as per Ext. P-1 was sent by P. W. 9 Ramakrishna on behalf of P. W. 8 Krishnaiah addressed to Venugopalakrishna Ananda Bhavan, Bangalore, and that the same was returned undelivered are proved by the evidence of P. Ws. 1, 8 and 9. The amount due under that money order had to be paid to the remitter at Kunigal. P. W. 8, the then Sub-Postmaster, has shown that the money order was received from Bangalore undelivered to the payee and that it was handed over or entrusted to the accused for payment to the remitter.

His evidence is corroborated by the Register of Money Orders Ext. P-15 as per the entries Exts, 15(c) and 15(d). The accused has acknowledged having received the money order for payment to the remitter under Ext. P-15(d). Thus there can be no doubt that a money order sent from Kunigal to Bangalore was returned undelivered to the payee that the same had to be paid to the remitter and that the money order was entrusted to the accused for the payment of the amount to the remitter Ramakrishna. These facts are not disputed on the side of the appellant.

4. The next point that arises for consideration is whether the amount due under the money order Ext. P-1 was paid to the remitter Ramakrishna. Admittedly the amount due under the money order was not paid to him. The contention of the appellant is that the name of the remitter in the detached portion of the money order Ext. P-1 was noted as 'Krishnappa' and that the amount was got paid to P. W. 8 G. Krishnaiah (also called Krishnappa) and that Ext P-1(b) is the signature of Krishnaiah.

We do not see any substance in the contention of the appellant that the name of the remitter was mentioned as Krishnappa in the detached portion of the money order form. It is very unlikely that Ramakrishna P. W. 9, who sent the money order

in his name, could have written the name of Krishnappa, as the remitter in the bottom portion of the money order form. The detached portion of money order has not been produced and further the postal authorities do not seem to have taken any objection to the alleged delivery of the amount due under the money order to Krishnappa as mentioned in the money order form.

Even if the contention of the appellant to the effect that Krishnappa's name was found in the detached portion of the money order is accepted as true, then his conduct in the alleged payment of the money to Krishnappa will have to be justified. The point therefore, that arises for consideration is whether the money was paid to Krishnappa P. W. 8. There does not appear to be any truth in the contention of the appellant that the money order amount was paid to P. W. 8 and the suggestion that Ext. P-1(b) is his signature,

5. P. W. 8 has shown that he did not receive the amount due under the money order Ext. P.-1 and that Ext. P-1(b) is not his signature. This evidence is fully corroborated by the evidence of the Handwriting Expert P. W. 2. He has compared the writing in Ext. P.-1(b) with the writing of P. W. 8 in Ext. P.-2 and his opinion is that they are different. We may also state in this connection that it is not the appellant's contention that he paid the amount to P. W, 8 directly.

His plea is that some one in the hotel stated that Krishnappa was preparing eatable inside, that he (accused) handed over the form to that person who went and brought it back with the signature Ext, P-1(b) purporting to be that of Krishnappa, that the accused believed that to be true and made payment of the amount to the hands of that person, that he bona fide believed that the payment was made to Krishnappa and that Ext. P-1(b) was his signature.

Therefore, in view of this stand taken by the appellant, the evidence of P. W. 8 that he did not receive the amount and that Ext. P-1(b) is not his signature may safely be accepted as true. As found by the learned Sessions Judge, the truth appears to be that the accused forged the name of P. W. 8 as per Ext. P.-1(b) and misappropriated the amount in question.

6. P. W. 2, the Handwriting Expert, has compared the admitted writings of the appellant as per Ext. P-3(a) to P-3(f) with the writing in Ext. P-1(b) and has come to the conclusion that they are of one and the same person. He has given valid reasons for coming to that conclusion, It was contended that the writing of the appellant in Ext. P-3 is not his standard writing inasmuch as when that writing was taken, the accused was aware that his writing was being taken for purposes of comparison.

We do not see any substance in this argument. We hope the suggestion is not that the accused feigned his writing so that it may not admit of comparison. On the other hand, it would be more reasonable to draw an inference that the accused wrote it in the normal way, The features of similarity found in the admitted and disputed writings of the accused can also be noticed by a careful examination of those writings. Again it was contended that PW2 being a Police Officer, his evidence should not be acted upon.

We see no substance in this argument. PW2 is a well qualified person to compare writings and give his opinion. Simply because he is attached to the Police Department, his evidence cannot be rejected on that score. There can be no dispute about the proposition that the opinion of a handwriting expert is not conclusive. Still it cannot be brushed aside as useless. The opinion of an expert is entitled to some consideration and weight when it is corroborated by other evidence.

7. The evidence of this expert is corroborated by the circumstances and probabilities in the case. As admitted by the appellant, the money was entrusted to him for payment to the remitter. As per rules, he was expected to make payment of the money due under the money order directly to the person named therein or to some person duly authorised in that behalf, which admittedly the accused did not do.

The explanation given by him, that he handed over the money order form to some one that was in the hotel, that the latter took the money order form and brought it back with Ext. P-1(b) signature saying that it is the remitter's signature and that believing it to be true he handed over the money to that person, has rightly been

found to be unacceptable by the learned Sessions Judge, with which we entirely agree.

Further there is no evidence of any kind in support of this explanation given by the appellant. It is highly improbable that a postman of the standing of the appellant, who had by then put in nearly fifteen years of service in the Department, would have acted in the manner in which he has done. In the absence of a satisfactory explanation on the part of the appellant in this behalf, we will be justified in presuming that the accused himself forged the signature Ext. P-1 (b) or got it forged through somebody and misappropriated the amount referred to therein.

8. With the object of finding out if there was any truth in the contention of the appellant that he never intended to defraud anybody that he handed over the money order to someone in the hotel of the remitter bona fide believing in what he said, that the payment has been made to the remitter and that Ext. P-1 (b) is his signature, the learned Sessions Judge has referred to two statements of the appellant made in two other criminal cases i.e. C.C. Nos. 5 and 7 of 1952-53.

In those cases also, the case for the prosecution was that the accused was entrusted with two money orders and that he forged the signatures of the payees and misappropriated the amounts referred to therein. Therein, also the accused pleaded that he sent the money order forms through some persons whom he could not identify, that the said persons brought back the forms with the signatures purporting to be those of the payees and that believing the same to be true, he paid the amounts to the hands of those strangers.

Ext. P-25(a) is the statement filed by the appellant in C.C. 5/52-53 and Ext. P-26 (a) is his statement in C.C. 7/52-53. The contention of the learned Counsel for the defence is that the said statements are inadmissible and that the same should not have been admitted by the learned Sessions Judge We find no force in this contention.

(9) Section 342(3) Criminal P. C runs as follows:

The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into or trial, for, any other offence which such answers may tend to show he has committed.

According to this provision, the answers given by an accused, when he is examined under Section 342, Cr. P.C. may be taken into consideration in such inquiry or trial and may also be put in evidence for or against him in any other inquiry or trial for any other offence when such answers tend to show that the accused has committed that offence. It was argued by the learned Counsel for the accused that the inquiry into, or the trial for, an offence in the other case should be an offence which is disclosed in the statement itself.

We are not inclined to accept such a proposition. The very words 'may tend to show' appearing in Section 342(3), Cr. P. C go to suggest the contrary. What that provision means is, in Our opinion, that the answers given in the one case must go to indicate or suggest that he had committed the offence of which he stands charged. Further, as found by the learned Sessions Judge, these statements become relevant and admissible under Sections 14 and 15, Evidence Act.

10. The said sections have to be read together inasmuch as Section 15 is only an application of the general rule laid down in Section 14. Section 14 runs thus:

Facts showing the existence of any state of mind, such as intention, knowledge, good faith negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant. Explanation 1

A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. x x x

Section 15 runs as under:

When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of

similar occurrences, in each of which the person doing the act was concerned, is relevant.

As stated already, the contention of the appellant is that he paid the money order in question by mistake or by a bona fide error to a person other than the payee, thereby impliedly suggesting that the payment was made accidentally or through inadvertence. Though the evidence of similar unconnected acts of the accused may not be admissible to probabalise the commission of the offence with which he stands charged in another case, yet, such evidence will be admissible under Sections 14 and 15, Evidence Act as evidence of intention or knowledge on the part of the accused and in cases where it is necessary to rebut even an anticipated defence of accident or mistake or other innocent condition of mind.

In this case, within an interval of 2 or 3 months, the accused, according to the prosecution, committed criminal breach of trust and forgery in three or more cases. In all these cases, the same sort of defence is taken viz., that of good intention, bona fide belief, accidental payment and innocent condition of mind. As observed by the learned Sessions Judge, it is highly improbable that a postman of the standing of the accused could have committed the same kind of mistake in all the three cases. There can be no doubt that the accused was concerned in a systematic course of conduct of the same specific kind as that in the present case. Evidence of such conduct is admissible under Sections 14 and 15, Evidence Act.

11 The learned Counsel for the defence drew our attention to the decision reported in *In re Setty* 17 Mys LJ 238 (A). That does not seem to support the contention of the learned Counsel for the appellant. What that decision points out is that evidence of similar and unconnected acts of an accused are inadmissible under Section 11, Evidence Act rendering the crime charged with, more probable.

We do not propose to make use of the, statements Exts. P-25(a) and P-26(a) to probabalise that the appellant must have committed the offences in this case also: but, as pointed out in that very case, evidence of such transactions can be admitted under Sections 14 and 15, Evidence Act as evidence of intention or knowledge and also to rebut even by anticipation the defence of accident, mistake or other innocent condition of mind, as pointed out in the decision reported in 35

Mys CCR 319 (B).

In the present case, the intention which can be gathered from the conduct of the appellant-accused at the time he is said to have committed the offences becomes a relevant fact and, therefore, evidence of similar transactions, both prior and subsequent to the occurrence, must be held to be admissible. It was urged By the learned Counsel for the appellant that the learned Sessions Judge should not have taken the statements Exts. P-25(a) and P-26(a) into consideration inasmuch as the cases in which those statements were made were still pending at the time when this case was disposed of.

We do not think that the pendency of those two cases should have made any difference with respect to the admission of these statements. What was intended to be made use of was only the answers given by the accused in those cases when he was examined under Section 342, Cr. P.C. In this connection, we would like to reproduce the observations made in Halsbury's Laws of England, Second Edition, Vol. XIII, para 641, quoted by the learned Sessions Judge in the course of his judgment:..In general, wherever it is necessary to rebut (even by anticipation) the defence of accident, mistake, or other innocent condition of mind, evidence that the defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given. To admit evidence under this head, however, the other acts of which evidence is tendered must be of the same kind as that in question.

If the acts are sufficiently proximate, in point of time to be relevant to the case under consideration, they may be given in evidence whether done before or after the acts the subject of such case, and it is no objection that the similar facts are the subject of prior indictments on which the defendant has already been acquitted, or of separate indictments still to be tried.

Under these circumstances, we see no merit in any of the contentions urged on the side of the appellant. The decision of the learned Sessions Judge has to be affirmed.

12. In the result, the conviction of the appellant and the sentence passed on him are confirmed and this appeal stands dismissed. The accused will surrender to his bail and undergo the unexpired portion of his sentence.

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