

The State Vs. Hiralal

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Court : Allahabad

Decided On : Nov-21-1956

Reported in : AIR1957All342; 1957CriLJ614

Judge : Roy and ;Sahai, JJ.

Acts : [Evidence Act, 1872](#) - Sections 114; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342; Indian Penal Code (IPC) - Sections 477A

Appeal No. : Govt. Appeal No. 20 of 1953

Appellant : The State

Respondent : Hiralal

Advocate for Def. : K.N. Seth, Adv.

Advocate for Pet/Ap. : Government Adv.

Disposition : Appeal dismissed

Judgement :

Roy, J.

1. This is an appeal by the State against the acquittal of Hira Lal passed in appeal by the learned Second Additional Sessions Judge of Allahabad. The respondent was prosecuted of charges under Section 408, I. P. C. (Criminal breach of trust by

clerk or servant) and 477A. I. P., C. (falsification of accounts) and he was convicted and sentenced by a Magistrate under both the sections. In appeal the learned Second Additional Sessions Judge found that the charges were not proved beyond doubt and held that the accused was entitled to an acquittal.

2. Hira Lal respondent was serving as a Munim in firm Sundarram Ramphal. He was responsible for the maintenance of accounts and for the handling and disbursement of cash. One Jagdeo had an account with this firm. On the 10th February, 1949, corresponding to Magh Sudi Duadashi, Sambat 2005, a sum of Rs. 596/7/ was said to have been advanced from this firm by the respondent to Jagdeo. A slip of account was said to have been given in the handwriting of the respondent to Jagdeo containing a settlement of account of previous dates and mentioning also that Rs. 596/7/- had been advanced to him on the 10th February 1949. It was alleged on behalf of the prosecution that in the books of account the respondent had first made an entry of Rs. 596/7/-, which was the actual amount that was advanced to Jagdeo, but he later on interpolated the entry in the Kachaha Rokar as also in the Pakka Rokar and Khata by adding the digit '1' before the sum of Rs. 596/7/- making it to appear that the amount that he advanced to Jagdeo was really Rs. 1596/7/-.

3. The defence taken up by the accused was that after the account-slip had been prepared and given to him by Jagdeo in which the sum of Rs. 596/7/- was entered as having been advanced on that particular day, Jagdeo asked for a further advance of Rs. 1000/- and the proprietors of the firm asked the respondent to make over a further sum of Rs. 1000/-; whereupon he did so in the presence of Kamla Prasad and Ramphal the proprietor, and that as the statement of account which was earlier given by him to Jagdeo was not given back to him, this sum of Rs. 1000/- had not been entered there. His defence further was that subsequently there was some trouble between him and Ramphal, the proprietor, which necessitated his giving up his job and that it was on that account that he has been falsely implicated.

4. In support of the prosecution story there was the evidence of Thakur Prasad, who was a Munim of a sister firm and who was later on absorbed as Munim in the

firm in question, and there was further the evidence of Jagdeo. Reliance was also placed upon the entries in question in the Kachcha Rokar, the Pakka Rokar and the ledger or the Khata. Entries in these three books have been placed before us and prima facie it appears that there is an interpolation and the digit '1' has been placed in all these three books of account before 596/7/-. There was, however, no evidence on behalf of the prosecution as to whether the entries in these books of account were simultaneously made or whether the entry in the one was made a few days before the other. There was a bare statement of Thakur Prasad in cross-examination on that point which was to the effect that 'the entries in the Khata are made after 2 or 4 days.' He was not asked the question as to whether the Chaubanda Bahi or the Kachcha Rokar was made out simultaneously with the Pakka Rokar or whether the entry in the former used to be made a few days before they were transferred on to the Pakka Rokar. Furthermore the proprietors of the firm were not produced on behalf of the prosecution to controvert the assertion made by the accused, namely, that the sum of Rs. 1000/- was advanced to Jagdeo at the very moment when the proprietors were approached by Jagdeo for a further sum of Rs. 1000/-.

5. The proprietors were cited as witnesses in the trial court on behalf of the prosecution. But for reasons best known to the prosecution they were not produced. The learned Judge of the court below was, therefore, right in holding that an adverse inference must be drawn against the prosecution on account of these circumstances. Where in a prosecution for false entries the defence raises a question that the entries were made under the direction or authority of some members of the complainant firm and the money was also said to have been advanced under his direction, it was the duty of the prosecution to call that particular partner of the firm as a witness to give a positive denial of the allegation which the accused put forward. There was, therefore, a great paucity of evidence in the case and the gravest suspicion against the accused would not have sufficed to convict him of a crime unless it was established beyond all reasonable doubt.

6. There is another aspect which we cannot allow to go unnoticed. In the examination of the accused by the trial court the suspicious circumstances appearing in the books on record were not at all put to him to be explained. This

Court has on occasions more than one stated that the compliance with the provisions of Section 342 of the Code is not a mere idle formality. The examination of the accused to enable him to explain circumstances appearing against him was neither full nor complete in this case. Consequently the entries in the books of account will not by themselves be sufficient to justify the conviction of the accused, and no adverse presumption is to be drawn, in the circumstances of the case, against him.

7. In view of all these circumstances it would not be safe to rely upon the solitary testimony of Jagdeo, who was certainly interested in denying having received the additional sum of Rs. 1000/-, to come to the conclusion that the prosecution evidence was clear, cogent and convincing to establish a charge under Section 408 or under Section 477A of the Indian Penal Code. At any rate, we do not see any compelling reason to differ from the view taken by the court below to the effect that the charge was not established beyond all reasonable doubt.

8. Consequently we dismiss this appeal.

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