

Gopiram Vs. the State

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Court : Madhya Pradesh

Decided On : Sep-30-1953

Reported in : 1954CriLJ448

Judge : Dixit, J.

Appellant : Gopiram

Respondent : The State

Advocate for Pet/Ap. : Mr. Anand

Judgement :

ORDER

Dixit, J.

1. The petitioner Gopiram has been convicted by the Sub-Divisional Magistrate, Gwalior under Section 408, Indian Penal Code and sentenced to rigorous imprisonment for six months and a fine of Rs. 50/- in default, rigorous imprisonment for one month. He appealed to the Sessions Judge, Gwalior and his appeal was dismissed. He has now come up in revision to this Court.

2. The material facts are that the applicant Gopiram was an assistant cashier in Gwalior Sugar Company Ltd., Dabra. The prosecution witness Raghuwar Swaroop Bhatnagar was a cashier in the company. From 27th June 1951 to 30th

June 1951 Raghuwar Swaroop Bhatnagar was on leave. During his absence Gopiram worked as cashier and in that capacity he received on 28th June 1951 Rs. 238/15/6 from the Co-operative Stores of the Sugar Company for being credited in the account of the stores. On 30th June 1951 the accounts of the Sugar Company were audited by Mr. Bhattacharya of a firm of Chartered Accountants of Kanpur. The cash balance belonging to the co-operative stores was found to be Rs, 3,971/7/- whereas according to the books of the stores it should have been Rs. 4,210/6/6. The prosecution alleged that the applicant did not deposit the amount of Rs. 238/15/6 in the safe where all moneys belonging to the Gwalior Sugar Company Ltd., and the co-operative stores was kept, and that he did not produce this amount in the audit and that on the other hand on 30th June 1951 when the cash in the possession of Gopiram was counted during the audit he produced Rs. 49,272/11/- as cash belonging to the Sugar Company which did not include the cash belonging to the co-operative stores and said that he had no other amount in his hands.

On these facts Gopiram was tried on a charge of an offence under Section 408, I. P. C. namely that he between 28th June and 30th June 1951 being an assistant cashier in the Gwalior Sugar Company Ltd., committed criminal breach of trust by misappropriating Rs. 238/15/6 belonging to the Co-operative Stores of the Company. The applicant admitted that he was an assistant cashier in the Sugar Company, that from 28th June 1951 he worked as cashier during the absence of Raghuwar Swaroop Bhatnagar and that on 28th June 1951 he received from the co-operative stores Rs. 238/15/6 for deposit in the coffers of the stores. His defence was that on 28th June 1951 Raghuwar Swaroop Bhatnagar, though he was on leave, came to the office for a short time for some work and that while he was in the office he, that is the accused handed over to Bhatnagar Rs. 239/-, that Bhatnagar returned to him two pice and asked him to put the amount of Rs. 239/- in an iron box which was underneath the office table of Bhatnagar and that accordingly he paid over the amount to Bhatnagar by putting the amount in the iron box. This plea of the accused was rejected by the Courts below.

3. Mr. Anand learned Counsel for the applicant argued that in this case the prosecution had only proved the fact that the accused received Rs. 238/15/6 on

28th June 1951 on account of the co-operative stores and that at the audit he failed to produce the money, that there was no evidence whatsoever of dishonest misappropriation, and the mere non-production of money or the rejection of the plea of the accused that he paid the amount to Bhatnagar cannot lead to the conclusion that Gopiram dishonestly misappropriated the amount. Mr. Anand relied on - 'Robert Stuart Wauchope v. Emperor' AIR 1933 Cal 800 (A). Learned Counsel for the applicant, also contended that from the evidence of Bhatnagar it was amply clear that he received the amount of Rs. 238/15/6 from the applicant. He proceeded to say that at the audit the entire cash was not counted and that on 6th July 1951 during Spring cleaning an amount of Rs. 500/- was found in an iron coffer in the room where the safe was kept.

4. In my opinion there is no force in any of the contentions advanced on behalf of the applicant. Before considering the facts of the case, it seems to me necessary to make it clear what the prosecution has to prove in a case of this type. There can be no quarrel with the, general proposition laid down in the decision of the Calcutta High Court reported in - AIR 1933 Cal 800 (A) and referred to by learned Counsel for the applicant, that in a case of criminal misappropriation the prosecution must prove dishonest misappropriation and that in a criminal case the onus of proving the general issue never shifts and it lies upon the prosecution to prove by relevant evidence and beyond reasonable doubt the guilt of the accused. Some observations made by Lort-Williams J., in the Calcutta case are often pressed into service to support the contention that in cases of criminal breach of trust the failure of the accused to produce the money or to account properly for the money received by him can by itself never prove the dishonest intention of the accused, I do not think the learned Judge intended to lay down this rule. In a latter case - 'Manmatha Nath v. Union Board of Dhatri-Gram' 164 Ind Cas 270 (Cal) (B), Lort-Williams J. himself made it clear that in exceptional circumstances the dishonest intention of the accused could be inferred from the mere non-production of money by the accused and further observed that the dishonesty of the accused must be inferred from the surrounding circumstances, and the terms upon which he had the money in his possession. It is thus clear that what Lort-Williams J., said in - AIR 1933 Cal 500 (A) was in accord with the opinion expressed by Henderson J., in that case who made the observations that:

The prosecution must always prove misappropriation, but they may do so either directly (e.g., by showing that the notes were paid into the account of the accused) or Indirectly by Circumstantial evidence. No doubt in the latter case the fact that the accused has failed to show what has happened to the money coupled With other circumstances may justify an inference that he misappropriated it. But that does not mean that the burden of proof has shifted from the prosecution to the defence.

5. To me it appears that the correct principle has been laid down in the decision of the Patna High Court in - 'Harakrishna Mahtata v. Emperor' AIR 1930 Pat 209 (C). In that case Fazl Ali J. said:

It is not necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused because under the law even temporary retention is an offence provided that it is dishonest 'but' the essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intention or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime. So in cases of criminal breach of trust the failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. We should, however, not lose sight of the principle and make a universal formula of what is after all only indication of or a piece of evidence pointing to dishonest intention.

6. If I may say so with respect, I am In entire agreement with the principle laid down in the Patna Case. Applying this principle here, the question which we have to consider is whether the prosecution has proved a set of facts and circumstances to justify an inference that the applicant dishonestly misappropriated the amount he received on 28th June 1951. In the present case the applicant Gopiram admitted the receipt of the money. He attempted to account for it at the trial by saying that he had paid the money to Bhatnagar. The prosecution led evidence to show that at the audit he only produced the cash

belonging to Gwalior Sugar Company Ltd., and said that he had no other cash with him and that he did not pay the amount to Bhatnagar. The evidence is also to the effect that when on the afternoon of 30th June 1951 the cash belonging to the Stores was counted in the presence of Bhatnagar and it was found short, the applicant said nothing and did not enquire from Bhatnagar whether the amount said to have been paid by him to Bhatnagar had been included in the cash counted by the auditors.

The prosecution is thus not relying on the mere failure of the accused to produce the money at the audit or at any time subsequently to prove the mala fide intention of the accused. They also rely on the circumstances that on the morning of 30th June 1951 the applicant said at the audit that he had no other moneys with him. except that belonging to the Gwalior Sugar Company Ltd., and that he did not pay the amount to Bhatnagar and further that at the audit he did not even suggest that he had paid the amount to Bhatnagar. If this prosecution evidence is accepted, and I see no reason to disagree with the Courts below and reject it, and if the plea of the accused that he gave the amount to Bhatnagar is rejected as untrue, then I think there can be no escape from the conclusion that the applicant Gopiram dishonestly misappropriated the amount of Rs. 238/15/6 which he received. on 28th June 1951. The rejection of the plea of payment to Bhatnagar coupled with the circumstances referred to above justify, in my opinion, an inference that the applicant dishonestly misappropriated the amount.

7. Realising the fact that in the present case, the question of dishonest intention of the accused depends to a great extent upon the rejection or acceptance of the plea of payment to Bhatnagar learned Counsel for the applicant dwelt at length on the evidence of Bhatnagar to show that he had received the amount of Rs. 238/15/6 from the accused. In my view Bhatnagar's evidence is of no assistance to the applicant. Bhatnagar was examined twice in the case, first as a prosecution witness and second time as a defence witness. While giving evidence on behalf of the prosecution Bhatnagar said that on the morning of 28th June he had gone to the office only for a few minutes to answer certain queries about cane cash and that on that day or at any time subsequently the accused never gave him any amount. As a witness on behalf of the defence he no doubt first said that he did

not remember whether on 28th June 1951 Gopiram gave him any amount or whether he asked him to keep the money in any iron box. But later on he admitted that during the short time he was in the office on 28th morning, he did not do any money transaction.

It must be noted that Bhatnagar is also being prosecuted for criminal breach of trust of sums of the amounts in his possession. It is obvious that Bhatnagar deliberately varied his statement when he gave evidence on behalf of the accused and said that he did not remember whether Gopiram gave him any money. This was just to save the accused. In my opinion the Courts below have rightly rejected the plea of the accused that he had paid the amount to Bhatnagar. Mr. Anand pointed out that the accused had made true and correct entries about the receipt of this amount in the account books and that this negated the mala fide intention and supported the plea of payment to Bhatnagar. I do not think that when the dishonest intention of the accused is abundantly proved, the accused can claim that he is entitled to be acquitted because he made true and correct entries in the account books.

8. Considerable stress was led by learned Counsel on the fact that on 6th July 1951 Rs. 500/- were found in an iron coffer and that this amount was not counted at the time of the audit. It is no doubt true that according to the evidence of Mr. Hiliman who was on 6th July 1951 the acting general manager of the Gwalior Sugar Company, Rs. 500/- in currency notes and some loose cash was found in an unlocked iron coffer. But from this statement of Mr. Hiliman it does not follow that this amount was in the coffer at the time of the audit. On the other hand the statement of Mr. Bhattacharya is that at the time Of the audit there were no small boxes in the room in which the cash and the safe were kept. It is also noteworthy that at the time of the audit the accused also did not say to the auditors that there was some cash in a box and that it should also be accounted. Indeed in the Courts below it was never the plea of the accused that the cash was not properly counted at the time of the audit. The accused also did not claim in the lower Courts that the iron coffer in which the money was found was the same in which he had kept the amount at the suggestion of Bhatnagar. Obviously somebody interested in the accused took the opportunity of spring cleaning for introducing in the room in

which the safe was kept an iron box containing Rs. 500/-.

9. In my opinion the applicant has been rightly convicted under Section 408, I. P. C. The sentence of imprisonment and fine awarded to him is appropriate. Before I conclude I must condemn the practice of examining the same person as a witness both for the prosecution and for the defence. There is no provision in the Code of Criminal Procedure warranting this practice. If a witness is called for the prosecution and the defence desires to elicit any facts from him, then those facts must be elicited by questions asked in cross-examination at the proper time.

10. For the above reasons I dismiss this revision petition.

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