

Ramgopal Chotelal Vs. the State

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Court : Madhya Pradesh

Decided On : Jan-08-1954

Reported in : 1954CriLJ1178

Judge : Nevaskar, J.

Appellant : Ramgopal Chotelal

Respondent : The State

Judgement :

Nevaskar, J.

1. Accused Ramgopal was prosecuted for offences under Section 409, I.P.C., in three different cases Nos. 581 of 1949, 582/1949 and 583/1949 and was jointly tried before the Sub-Divisional Magistrate, Mhow, who found him guilty and sentenced him to three month's rigorous imprisonment and a fine of Rs. 10/- in respect of each of the offences. The sentences of imprisonment were to run concurrently,
2. Accused preferred an appeal to the Sessions Judge, indore, who confirmed his conviction.
3. Aggrieved by this decision the accused has preferred this revision application.

4. Prosecution case against him is that he was employed in the Post Office at Mhow and was working as an Assistant Parcel Clerk between 13-5-1949 and 10-7-1949. In addition to his duties as Assistant Parcel Clerk, he was assigned additional work as Mall Clerk during this period.

It is said that during this period he was entrusted with three parcels No. 163 deliverable to Self Ridge India, Mhow from whom Rs. 398-9-0 were recoverable on delivery, No. 1347 deliverable to Teherali of Mhow from whom Rs. 32-5-0 were to be recovered and No. 3 deliverable to Abdul Karim from whom Rs. 37-6-0 were to be recovered.

It is said that the accused whose duty it was to deliver these parcels to the addressees at the window did in fact effect delivery of the same and recovered from the respective addressees the amount of parcels but continued to show as undelivered in the register of V. P. articles received by continuing to endorse thereon as re-entered on (re. on) and failed to make money-orders to the senders of these parcels which he was bound to do and misappropriated the same having come by the same in charge of his duty as public servant.

5. It is said that first parcel No. 163 reached at the Mhow Post Office on 13-6-1949 and was so entered in the register of V. P. Articles received. This was delivered to the addressee on 14-6-1949 and the amount of Rs. 393-9-0 and money-order commission Rs. 5 was recovered. The second article No. 1347 reached Mhow Post Office on 2-7-1949 and its delivery was given at the window to Taherali on 4-7-1949 and from him accused recovered Rs. 32-5-0 and the third parcel No. 3 reached Mhow Post Office the same day i.e. 2-7-1949 and delivery of this was given to Abdul Karim on 9-7-1949 and accused recovered from him Rs. 37-6-0.

6. Thereafter on 10-7-1949 he reported that he was ill. Till 9-7-1949 all the three are shown 're. on', meaning undelivered. On 11-7-1949 when the parcels in the Almirah of the Parcel Clerk were checked it was discovered that these parcels were missing in spite of entries in the register indicating their being with the Post Office, On further investigation it was found that they had been delivered to the addressees and money in respect of these parcels had been recovered and receipts passed to them.

7. Explanation of the accused was sought while he was said to have been ill. His uncle, it is said, made good the deficiency.

8. Thereafter after investigation the present prosecution was launched one in respect of each offence. All the three being within the course of one year a joint trial was held & the accused was found guilty and sentenced as aforesaid.

9. In support of this case prosecution examined three persons to whom actual delivery of the three parcels in question was given.

Madholal P. W. 3 stated that he obtained parcel No. 163 on 14-6-1949 and paid to the clerk concerned Rs. 398-9-0 but he was unable to say if the present accused was that clerk. P. W. 4 Nasiruddin speaks of having received delivery of Parcel No. 3 on 6-7-1949 and his having paid Rs. 37-6-0 but is unable to identify the clerk who gave the delivery and obtained money. P. W. 5 Kadarbhai stated that he obtained delivery of Parcel No. 1347 and paid Rs. 32-5-0. He first said that it was the accused who gave him the parcel addressed in the name of Teherali and obtained money on 9-7-1949 but later on admitted in the cross-examination that he was not sure if it was the accused.

10. Evidence of these witnesses proves only the fact that the 3 parcels in question were delivered to the addressees and money obtained from them.

The evidence however is insufficient to connect the accused with the delivery of those parcels or the receipt of money in respect of the same.

11. The prosecution besides this examined number of postal employees including Parcel Clerk, Post Master Supervisor in order to suggest that it was the accused who must have delivered the parcels and obtained money,

12. The principal witness in this respect is the Parcel Clerk. It appears from his statement that the parcels are first received by the Parcel Clerk who is bound to keep them in an almirah. He is in charge of the key of that almirah and a duplicate of the key is with the Post Master. When on any day parcels are received the Parcel Clerk hands them over to the Assistant Parcel Clerk and obtains his signature as regards their receipt. Assistant Parcel Clerk then enters them in the

register of parcels received and sends the intimation of their receipt in the Post Office to the addressees. If the parcels are delivered the same day and money in respect of them received the Assistant Parcel Clerk has to send the money order to the sender.

If the parcels are not delivered the same day they are returned to the Parcel Clerk at the end of the day. When this is done no fresh signature of the Parcel Clerk is taken by Assistant Parcel Clerk and no further signature is taken by the Parcel Clerk if the parcel is again handed over to the Assistant Parcel Clerk for delivery the next day. As long as it is not delivered it is entered in 're.on' meaning 're-entered on'. It is the duty of the Parcel Clerk to check the parcels returned with reference to their serial number. They are further checked by the Supervisor each day at the end of the day and serial numbers are to be checked by him.

13. It also appears from the statement of Mehfuja Ali, Parcel Clerk that when the accused went on leave on 10th he received from the accused 32 articles of parcels and this was the total number according to the correct position but he stated that three parcels of different category were put in to make up the number. He stated that it was not his duty to check the serial number of parcels but only to count the total number. It was the duty of the Supervisor. The witness did state that in Ex. P/6 for parcels No. 1347 accused showed as 're.on'. This entry is marked A. Similar entry for article No. 3 in Ex, P/6 is marked B and entry for article No. 163 is in Ex. P/6 and marked C.

14. It was disclosed in his cross-examination that besides the duty regarding entering the V. P. Parcels in the register, delivering the parcels, receiving money for them Assistant Parcel Clerk also did the work of a sorting Clerk but he denied that during his absence from the duty for doing the work of sorting Parcel Clerk did the work of delivering of parcels, He stated that it is only if he is totally absent and Post Master instructed him to do that work that he did it. Rs. 78-15-0 which were found short after the uncle of the accused had made the payment were recovered from this witness Mehfuja Ali and he did not appeal against that recovery. He further stated that he did not remember if he was given charge of parcels by the accused on 10-7-1949 at the end of the day.

15. P. W. 6 Mishrilal stated that the accused was on duty as Assistant Parcel Clerk from 13-5-1949 to 10-7-1949. He was not on leave during the interval. He produced Ex. P/11 regarding the work assigned to various postal employees in the office. In Ex. P/6 A entry C was stated to be in the hand-writing of the accused.

16. Entry B in Ex. P/6 register is also in the hand-writing of the accused. This relates to the receipt of Parcel No. 3 on 2-7-1949.

17. On the same day article No. 1347 was received by the accused and an entry made in Ex. P/6 marked A.

18. Intimations Exs. P/8 and P/9 to the addressees were stated to be in the hand-writing of the accused. The third one relating to Article No, 1347 could not be traced according to the witness.

19. He admitted that the articles given to the accused were returned by him in the evening as undelivered. It is the duty of the Supervisor, according to the witness, to check the articles thus returned undelivered. He admitted that he did not properly check Ex. P/6 register before 10-7-1949. According to the witness Rs. 600/- were made up on behalf of the accused by his uncle and the rest were paid by Mr. Upadhyaya and Mehfujaali. It was contrary to the rules according to the witness that Parcel Clerk would make delivery if Assistant Parcel Clerk was busy in the work of sorting. If any misappropriation takes place with respect to any parcel the Supervisor ought to know in the evening stated the witness.

In re-examination he stated that whatever was stated by him as to what ought to have happened was on the basis of rules but he was unaware as to actualities.

20. P. W. 7 Mr. Keshavrao Upadhyaya was another witness examined. He stated that it was his duty to check the Parcels every day at the close of the day with reference to their serial number and also their total number but he did not check serial number as he placed reliance upon the accused and only counted the total number.

21. Accused in his statement denied to have made deliveries. He also denied to have obtained money from the addressees and to have misappropriated the same.

He stated that he was a new clerk employed since two months and used to do what he was asked to do including making 're.on' entries in the V. P. articles received register after they were delivered. He further stated that he was not in charge of V. P. articles. He also stated that he was required to work at two places.

22. It appears from this evidence read as a whole that there is no direct evidence to connect the accused with the actual delivery of parcels and obtaining money. The persons making payment and obtaining parcels viz. P. W. 3 Madholal, P. W. 4 and Nasiruddin and P. W. 5 Kadarbhai were unable to say if it was the accused with whom they dealt.

The prosecution however rely upon circumstantial evidence viz., that according to rules it was the duty of the accused to do this and further that he continued to show the parcels as 're.on' even after they were delivered. Accused's version is that he was a new man and did what he was asked to do and that he was working at two places viz. as an Assistant Parcel Clerk & sorting Clerk. Now if the matter is to be determined on the basis of probability from practice it should be an invariable practice and there should appear to be no laxity or want of alertness on the part of others concerned. This is not the case in this case.

Parcel Clerk was formally in charge of the parcels and he and the Post Master were in charge of the keys. Though when the parcels are first received they are given to Assistant Parcel Clerk and his signatures for receipt taken when he returned the same in the evening no entry pertaining to the same is made anywhere and when he again takes undelivered parcel next day or any other day no fresh signature is taken. Parcel Clerk is supposed to be responsible for the undelivered parcels and he therefore was bound to check the same every day. Then there was Supervisor. He too was bound to check with reference to serial number. He failed to do this either and says that he relied upon the accused. Then the Post Master also was to check the register Ex. P/6 but he says he also did not check the same till 11-7-1949.

23. It also appears from the statement of Mehfuj Ali that sometimes when accused was not present he could make deliveries.

24. In the state of the laxity involved surrounding the deliveries in the discharge of their duties by various officials concerned and the fact that the accused was a new man it is difficult to take this as a case in which the guilt of the accused is brought home to him beyond reasonable doubt. There may be room for suspicion but there is no absolute certainty about his guilt. Mere 're.on' entries are insufficient for the purpose because if 're.on' would indicate his guilty conduct if he made it after making deliveries, in the absence of proof of the latter kind, this could be innocent also if made at the instance of somebody else. He was a new. man there and had to attend to two duties.

25. No significance attaches to the payment of Rs. 600 / -. by his uncle when the same is suggested to have been made after mortgaging his house. Even if the latter fact is not true then too it is not material.

26. On the whole as I am not convinced of the guilt of the accused beyond reasonable doubt in this case, which mainly stands on circumstantial evidence alone, I deem it proper to acquit the accused. He shall be released at once. Fine if paid shall be refunded.