Sankari Narasingulu Vs. the State

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Court : Orissa

Decided On : Sep-14-1954

Reported in : AIR1955Ori145; 21(1955)CLT24; 1955CriLJ1371

Judge : Mohapatra and ;Misra, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 405 and 406

Appeal No. : Criminal Revn. No. 331 of 1953

Appellant : Sankari Narasingulu

Respondent : The State

Advocate for Def. : Govt. Adv. and ;P.C. Chatterji, Adv.

Advocate for Pet/Ap. : H. Mohapatra and ;R.N. Misra, Advs.

Disposition : Revision dismissed

Judgement :

Mohapatra, J.

1. The petitioner (Sankari Narasingulu) stands convicted under Section 406, Penal Code, and has been sentenced to pay a fine of Rs. 300 in default to undergo simple imprisonment for two months. Rupees 100 out of the fine has been' ordered to be paid to P. W. 1 if realised.

2. The prosecution case is that on 12-7-51 P. W. 1 (Venkata Ratnamroa) borrowed a sum of lts. 800 from the accused and pledged her gold necklace weighing nearly twelve tolas and a half the accused. The accused gave to the complainant a chit scribed by himself in token of the pledge. The loan was to carry an interest of Rs. 18/- per cent per annum. On 6-7-52 in the afternoon, Venkata Ratnamma (P. W. 1) paid the entire dues of the accused (principal and interest) amounting to Rs. 944 and the accused on receipt of the money promised to return the gold necklace.

P. W. 1 happens to be a coffee-keeper and the amount was paid in the coffee-hotel. The accused did not return the necklace. P. W. 1 therefore reported the fact to P. W. 6 (V. Nagabhusanam) and P. W. 7 (K. Krishnamurthy) the neighbours of the parties. The complaint on the basis of which the case was started was filed on 10-7-52.

3. The defence, as it transpires from the statement of the accused under Section 342, Cr. P.C. is that P. W. 1 husband Venkataramana had taken a sum of Rs. 1800 and pledged the ornament in question. It was the husband who paid Rs. 800 only and promised to pay the balance of Rs. 1000 and the interest due on the entire sum of Rs. 1800 and the ornament was to be returned only on payment of the entire dues of the accused.

4. This Court on 5-3-54 had issued notice on the accused-petitioner to show cause why the sentence should not be enhanced. We therefore allowed Mr. Mohapatra, appearing for the petitioner to take us into the entire evidence on record and in fact he placed the entire evidence before us.

5. The Courts below have rightly applied their mind to determine the first question arising in the case

'whether the pledge was for a loan of Rs. 800 taken by P. W. 1 as thy prosecution states, or whether the pledge was for a sum of Rs. 1800 taken by P. W. 1's husband.'

The chit which has been duly proved to be in the handwriting of the present accused is a very important piece of evidence in this respect. It mentions the loan

to be for Rs. 800, both in figure and in words. The rate ot interest also is given at Re. 1/8. It also mentions that the above amount is lent on the pledge of a gold necklace weighing 12 1/2 tolas.

It is dated 12-7-51. The Courts below on a discussion of the evidence of the three witnesses examined on this point, that is, P. Ws. 1, 2 and 3, and the above chit have come to the right conclusion that in fact the loan of Rs. 800 was taken by P. W. 1 on a pledge of her gold necklace. They particularly relied upon the evidence of P. W. 2 who appears to be a disinterested person.

6. The next important question is whether P. W. 1 had paid the entire dues, that is, the principal of Rs. 800/- and the interest due thereon to the accused on 6-7-52.' The prosecution on. this point relies upon the oral testimony of P. Ws. 1 and 3 to 5. P. W. 1 is complainant herself and P. Ws. 3 and 5 appear to be the servants sometime or other of P. W. 1.

But there is no suggestion even against the evidence of P. W. 4. Mr. Mohapatra has drawn our attention to a few discrepancies in the evidence of these witnesses on the point of payment of the entire dues of the accused.

Indeed P. W. 1 consistently told that a sum of Rs. 940 was paid, but the evidence of the other witnesses is to the effect that in fact P. W. 1 paid a sum of Rs. 944. The discrepancy seems to be too minor to discredit the story of the prosecution. He has drawn our attention to a statement in cross-examination of P. W. 5 running to the effect 'there were five hundred rupee notes and 4 heaps each heap being 100 rupees'.

Taken together it amounts to a sum of Rs. 900 and not Rs. 944. To us the statement in cross-examination of this witness appears to be a mere inaccuracy. But as to the fact that the entire dues of the accused were paid off on that date, there is absolutely no doubt in our mind by reference to the evidence of P. Ws. 6 and 7, who are business-men in the neighbourhood and who appear to be completely disinterested persons. At 9 O'clock in the night P. W. 1 approached these two neighbours with her own grievance that in fact she had paid up the entire dues of the accused, but nevertheless the accused would not return the

necklace.

According to the evidence of these two witnesses, the accused appeared before them immediately after P. W. 1 narrated the story arid stated that in fact he had received the amount as told by P. W. 1, but he refused to return the necklace until he was paid off his dues from Venkataramana, the husband of P. W. 1 and the accused stated that to be Rs, 1000. The evidence of these two witnesses is clear to the effect that in fact the entire dues from P. W. 1 were acknowledged to be paid off.

We therefore agree with the finding of the Courts below that P. W. 1 had paid the entire dues (including the principal of Rs. 800 and the interest due upto 6-7-52).

7. Mr. Mohapatra, however, on the basis of the position arising out of the evidence of these two important witnesses, that is, P. Ws. 6 and 7, strongly contends that there cannot be a conviction under Section 406, Indian Penal Code as there was no dishonest intention on the part of the accused. Indeed, as we have indicated above, the accused on the same day at about 9 O'clock in the night appeared before these two witnesses to whom the complainant had narrated the story of her grievance and demanded that it was only on payment of the husband's debt of Rs. 1000 that he would release the pledge.

Even it appears from the evidence of P. W. 1 herself that the refusal to return the ornament was not an unconditional refusal but he demanded the payment of debt of her husband, that is, a thousand rupees more.

We will observe here that the Courts below on an examination of the evidence on record have come to the finding that 'P. W. 1 is not the legally married wife of Venkataramana though there may have been some connexion between the two'.

After carefully perusing the evidence we do not see any reason to interfere with the above finding, and further we confirm the finding of the Courts below that in fact the pledged ornament belonged to P. W. 1. Now, therefore, on the basis of the above findings the position is clear that P. W. 1 pledged her ornament on having taken a loan of Rs. 800 and even after the payment of the entire dues in respect of

this transaction the ornament was not returned by the accused who demanded payment of Rs. 1000 more as a debt of the husband, which indeed has absolutely no connexion with the transaction of pledge.' The ornament was certainly not pledged for the debt of Venkataramana which is a completely independent transaction.

Indeed besides the above demand on the part of the accused, there is no other evidence, either documentary or oral, to show that Venkataramana had taken a loan of Rs. 1000 from the accused, but that apart even assuming for the sake of argument that the accused had some dues from Venkatarama the accused is guilty of offence under Section 406, I. P.C. he having kept P. W. 1 out oF her pledged ornament even alter the payment of the entire dues.

It would be pertinent to reproduce Section 405, I. P.C. denning 'Criminal breach of trust'.

'405. Whoever, being in any manner entrusted with property, or with any dominion over property; dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.'

The accused here comes under the clause 'dishonestly uses the property in violation of any legal contract, express or implied, between the parties in respect of the trust in question.'

The manifest position is that it was contracted between P. W. 1 and the accused that the pledged ornament would be returned to P. W. 1 on payment of the entire dues, and if the accused in spite of the payment retains it and uses the ornament as a pledge in respect of a completely independent transaction, that is, the debt of Rs. 1000 of the alleged husband he definitely uses the ornament in violation of the legal contract between the parties creating the trust.

Mr. Mohapatra, however, very strongly urges that it cannot be taken to be a dishonest detention. The act is clearly dishonest in our view inasmuch as the accused intended to make wrongful gain of the ornament by making an additional use of it as a pledge against another independent debt, and further he has caused wrongful loss to P. W. 1 in keeping her out of the ornament in spite of her payment of the entire dues.

8. Mr. Mohapatra has relied upon a Bench decision of the Patna High Court in -- 'Hit Narain v. Bed Narain',' AIR 1946 Pat 125 (A). In that case the facts found were that the complainant executed a handnote in favour of the accused for a sum of Rs, 106 and odd. The same day the complainant also pawned with the accused a silver ornament of Rs. 18/-. The Punches appointed by the parties settled the dues at Rs. 155 which was paid by the complainant, but nevertheless the accused did not return the handnote or the silver ornament. Their Lordships found that the accused was not guilty of offence under Section 406, I. P.C.

The most striking difference in that case is that the charge was for misappropriation of a sum of Bs. 155 entrusted to the accused. It is a clear case where such a charge was bound to fail, because Rs. 155 was certainly the dues of the accused and in having appropriated that amount he did not commit any offence of criminal misappropriation.

Now on the question of not returning the hand-note or the ornament, their Lordships observed as follows:

'It is, however, argued for the opposite party that there was misappropriation and conversion to his own use of the ornaments. But here the difficulty is that the petitioner was not charged with that. Secondly, it cannot he said that the petitioner has converted the ornaments to his own use, because he does not deny that the ornaments were pledged with him, and on his own case, he is still holding them in trust against the time when what he claims is paid off '

It is transparent that their Lordships were very much impressed with the petition that the accused in that case was not charged with misappropriating the ornament. With great respect, we would observe that the second observation on this point

does not appear to be very clear to us. In the present case, wo are definitely of the view that the debts being two independent transactions with two different persons altogether and as the pledge was only in respect of one of them, the creditor has committed an offence under Section 406, I. P. C., when in spite of the payment of his entire dues in respect of the transaction of the pledge he retains the ornament and dishonestly uses the ornament as a pledge against a completely independent transaction with a different person.

Mr. Mohapatra has put in a petition in this court for accepting additional evidence on behalf of his client the additional evidence being the Station Diary entry made by the complainant on 7-7-52 regarding the occurrence on 6-7-52. It transpires from the cross-examination of P. W. 1 herself that the accused was aware of the Station Diary entry even at the trial stage.

There is no satisfactory explanation why it was not produced in the trial stage. The explanation given in the petition is 'That thereafter I could come to know from the hotel of the complainant Venkataratnamma talking to her customers in the hotel saying 'I taught a good lesson to Narasingulu. Had I cited the Police records not only I would have lost the case, I would have been gone to jail; God saved me and my husband'. This story seems to be absurd and unacceptable.

If we accept the additional evidence, the entry has got to be proved by the Police Officer who wilt have to be cross-examined by the prosecution and further P. W. 1 will have to be further examined to explain the statement made therein. Moreover we have confirmed the findings of the Courts below on a careful examination of the entire evidence on record. This Station Diary entry does not seem to be at all material to affect the decision. We would therefore reject the petition for adding additional evidence.

9. Regarding the ornament itself the trial Court, in spite of having accepted the story of the prosecution as true and having convicted the accused, passed an order not to return the ornament to P. W. 1; but the lower appellate Court has rightly passed an order for return of the ornament to P. W. 1 in exercise of his appellate powers in an appeal filed under Section 520, Cr. P.C. by P. W. 1. We confirm the finding of the lower appellate Court that the ornament should be

returned to P. W, 1 Venakataratnamma.

10. On the question of enhancement of sentence, after a careful examination of the entire evidence on record, we are of the view that in the circumstances oi the case the sentence awarded by the Courts below is sufficient to meet the ends of justice, and, therefore, we do not propose to enhan.ce the sentence.

11. In conclusion, therefore, the revision filed by Sankri Narasingulu is dismissed. The conviction and sentence passed by the Court below are confirmed. We also confirm the order that Rs. 100 (rupees one-hundred) out of the fine, if realised, should be paid to P. W. 1 Venkataratnamma. The ornament M. O. I (gold necklace) weighing 12 or 12% tolas of gold should be returned to P. W. 1 Venkataratnamma. The rule, for enhancement of sentence is discharged.

Misra J.

12. I agree.