State Vs. Jugal Kishore Nanda

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Court : Orissa

Decided On : Aug-13-1957

Reported in : AIR1957Ori268; 23(1957)CLT410; 1957CriLJ1431

Judge : Mohapatra and ;Balakrishna Rao, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 405, 409 and 477A; Code of Criminal Procedure (CrPC) , 1898 - Sections 403

Appeal No. : Govt. Appeal No. 13 of 1955

Appellant : State

Respondent : Jugal Kishore Nanda

Advocate for Def. : P.C. Chatterji, Adv.

Advocate for Pet/Ap. : Asst. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Balakrisiina Rao, J.

1. This appeal by the Government is filed again, at the acquittal of the respondent Jugal Kishore Nanda who was tried by the Assistant Sessions Judge. Bhawani Patna on charges under Sections 409. 477A and 467 of the Indian Penal Code.

2. The respondent was the money order is sue clerk of Bhawani patana Sub-Post Office in the month of May 1952. According to the prosecution case, the total amount of money orders collected by the respondent on 5-5-52 in his capacity as the money order issue clerk at the counter was Rs. 5310/9/-, but he gave credit of only Rs. 5207/1/7 and misappropriated the balance of Rs. 103/8/-. It is stated that with a view to conceal this misappropriation the respondent forced the head office copy of the original money order receipt No. 4179 (Ext. 15a) which was prepared in pen carbon process in triplicate by the respondent by mentioning therein receipt of Rs. 300/- for remittance, though the original receipt No. 4179 (Ext'. 13) which is in the hand of the respondent and which relates to Behara Branch Office money order receipt No. 13 dated 3-5-52 mentions the amount received for remittance as Rs. 400/-. The respondent is alleged to have altered and falsified the audit office copy, the head office copy and the office copy of money order issue journal of that date relating to relevant money order receipt No. 4179 which were prepared by the respondent' under the rules in triplicate by mentioning that the amount received for remittance was Rs. 300/-(exts. 16a. 18a and 17a). It is also stated that he altered and falsified the last pages of the head office copy (Ext. 17) and the office copy (Ext. 18) of money order issue journal of that date, namely,5-5-52 by showing the total amount of money order received by him at the counter to be Rs. 5207/1/- though in fact the total amount received was Rs. 5310/9/-. Next it is alleged that on 22-5-62 the respondent received at the counter Rs. 1018/4/- but credited only an amount of Rs. 1008/4/- thus misappropriating the balance of Rs. 10/~ and that with a view to conceal this misappropriation he forged the head office copy of the money order receipts Nos. 3657 and 3658 dated 22-5-52 (Exts. 9 and 9a) showing receipt of Rs. 120/- for remittance under each, though as a matter of fact the original receipts (Exts. 7 and 7a) which are in the hand of the respondent and relate respectively to Kesinga Branch Office money order receipts Nos. 30 and 31 dated 21-5-52, show receipt of Rs. 125/- under each for remitance. As a consequential step, the respondent is alleged to have altered and falsifled the head office copy, the office copy and the audit 'office copy of money order issue journal of that date relating to the relevant money order recipts Nos. 3657 and 3658 (Exts. 11a and 11b in the head office copy' of the money order issue journal, Exts. 12a and 12b in the office copy of the money order issue journal and Exts.

10a and 10b in the audit office copy of the money order issue journal).

In both the head office copy and the audit office copy of the money order issue journal of that date relating to the two relevant money order receipts Nos. 3657 and 3658 the amount mentioned to have been received under each for remittance is Rs. 120/- while in the audit office copy the amount mentioned to have been received under each is Rs. 125/-.

3. These offences, it is stated, came to light when the payees of the money orders issued from Behara Branch Office and Kesinga Branch Office did not receive the money order amounts and consequently complaints were made by the remitters of the said money orders. P. W. 4, the Inspector of Post Offices enquired into the master and loded the F. I. R. at Bhawanipatna Police Station (Ext. 19). The chargesheet was submited on 26-11-52 against the respondent under Section 409 I. P. C. and he was tried by a Magistrate, First Class. Shri P. G. Mchanty. After framing charges against the respondent under Sections 468 and 409 I. P. C., the trying Magistrate convicted the respondent under. both the sections and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 100 with rigorous imprisonment for one month in default, under Section 409 I. P. C and no separate sentence was passed under Section 468 I. P. C.

The respondent appealed against this conviction and sentence to the Sessions Judge of Balangir-Patna who pet aside the convictions of the respondent on both the charges under Sections 468 and 409 I. P. C. and remanded the case to the trying Magistrate with directions fo the effect that a charge under Section 477A I. P. C. should be framed; that the prosecution should be given a chance to prove, if possible, whether the accused with intent to defraud falsified account papers; and that the accused also should be given an opportunity to explain his conduct after footing into the original documents. After remand the case came up before another Magistrate who converted the proceeding to one of enquiry under Chapter XVIII of the Criminal Procedure Code and commited the case to sessions. The respondent pleaded not guilty to all the charges.

4. On all the five charges framed against the accused., the learned Assistant Sessions Judgerecorded a finding of not guilty and acquitted the accused. The first

charge was under Section 409 I. P. C. for having committed criminal breach of trust in his capacity as a public servant with respect to a sum of Rs. 113/87- entrusted to him on 5-5-52 and 22-5-52 respectively; the second and third charges were under 5. 477-A I. P. C. for having, wilfully and with intent to defraud, altered and falsified the money order issue journal of the respective dates; and the 4th and 5th charges were under Section 467 I. P. C. for having forged carbon copies of the three money order receipts of 5-5-52 and 22-5-52 respectively.

On the first charge, the learned Assistant Sessions Judge held that the prosecution failed to prove that the respondent was entrusted with the respective sums alleged, On 5-5-52 and 22-5-52 and that the prosecution filed only the mere books of accounts which could not be sustantive evidence to prove the alleged entrustment. With regard to the 4th and 5th charges of forgery of the head office copies of the money order receipts, the learned Assistant Sessions Judge held that the making of such receipt dots not amount to the mating of a false document within the mean ng of clause (2) of Section 464 I. P. C. The learned Assistant Sessions Judge came to the conclusion that the prosecution failed to prove that the respondent altered and falsified the accounts.

He also held that the trial of the respondent on charges under Sections 409 and 477A I. P. C. is barred on the principle of autre fois acquit under Section. 403 of the Criminal Procedure Code.

5. Mr. B. M. Patnaik, the learned Assistant Government Advocate strongly contented that the findings of the learned Assistant Sessons Judge are wrong in law. His first contention is that the learned Assistant Sessions Judge erred in saying that the prosecution filed only the books of accounts to prove the entrustment; and that the learned Judge omitted to take into consideration the evidence of P. Ws. 2, 5, 6 and 7.

He next contended that the learned Assistant Sessions Judge erred in holding that the prosecution of the respondent under Sections 409 and 477A I. P. C. was barred under Section 403 Cr. P. C. He also contended that the learned Judge is wrong in saying that the respondent has not brought into existence any false document and lastly he contended that the prosecution has clearly made out a case under Section 477A, I. P. C.

6. Before taking up the several contentions of the learned Assistant Government Advocate, It is necessary to briefly note the practice prevailing in the post office under the rules with regard to the duties of the money order issue clerks and the Post Masters. According to the evidence of P. W. 4 the then Inspector of post Offices Titlagarh, it is the duty of the respondent as the money order issue clerk to issue money orders tendered at the counter, to issue money orders received at the counter, to issue money orders received from all Branch Offices, to issue money orders in respect of V. p. articles delivered and to make over the amount received by him at the counter to the Post Master at the end of each day after closing of accounts by taking the signature of the Post Master in the hand to hand receipt book which according to the rules remains in the custody of the money order issue clerk. The respondent as the money order issue clerk is to prepare money order receipts in pen carbon process in triplicate, to make up over the first copy to the remitters at the counter and in cases of branch office money orders to make over the first copy to the Sub-accounts clerk for forwarding to the concerned branch offices, the second copy was to be made over by him to the Sub Post Master for sending to the head office, that is, Sambalpur Post Office and the third copy is to be retained by the respondent as the office copy.

He is also to number the money orders in eluding those of branch offices, that is, to write the number of the money order receipts at the toe of concerned filled up money order forms, the amount of money order in words and figures, office of payment and put his signature. The respondent is to prepare money order issue journals of each date in triplicate in which serial number, data of issue, number of money order i.e. putting money order receipt number, office of payment, value of money order and the commission are to be noted.

In the money order issue Journal which is prepared in triplicate in pen carbon process all the above particulars were to be mentioned by the respondent in respect of money orders, received from branch offices including V. P. money orders in respect of V. P. articles delivered, to make over the first copy or the audit office copy as also the second copy to the Post Master, the former for purpose of forwarding to the head office, and to retain the third copy as the office copy which under the rules is kept in the custody of the money order issue clerk.

The audit office copies are sent once a fortnight while the second or the head office copies of money order issue journals are sent immediately along with the second copy and the third copies of money order issue journals are to be signed by the Sub Post Master. After this, it is also the duty of the money order issue 'clerk to go with all the aforesaid papers to the Sub Post Master, take oblong money order stamp, stamp the filled up money orders in presence of the Post Master and place all the money order forms thus stamped with the book of money order receipts, money order issue journals duly filled up hand to hand receipt book before the Post Master, who is to sign the money order forms after check.

The cash collected at the counter is then made over by the money order issue clerk to the Post Master who takes the cash on putting his signature in the hand to hand receipt boot. These forms are then folded by the money order issue clerk and enclosed, addressed to different offices mentioning the total number of money orders sent at the top of the covers which are then made over by the money order issue clerk to the registration clerk for despatch who in token of having received the covers puts his signature in the hand to hand receipt book. The procedure adopted by branch offices when a money order Is tendered for remittance is that on receipt of duly filled up money order form and the value of money order amount including commission, the branch post office prepares receipts in counterfoils, the foils being made over to the remitters concerned and the counterfoils retained in the branch office. Branch offices do not directly Issue money orders to the office of payment, but it is the account office of the branch office that formally issues them.

The branch post offices then send the filled up money order forms to the Sub Offices including the daily account of the branch office duly crediting money order amount received mentioning among other details the numbers and amounts In respect of separate money orders. These things Including the cash are sent to the account office In bag the cash being put In a separate leatherbag duly locked and sealed and put inside a bigger bag.

The bag containing the cash, on arrival all Sub Office, is opened by the Sub-accounts clerk who checks its contents and makes over the cash bag to the Sub Post Master and after checking, the contents makes over the filled up money order forms received from the branch offices to money order issue clerk of the Sub Office for re-issue in the manner as stated above. Kesinga Branch Office and Behara Branch office, the money orders received at which offices form part of the case against the respondent, were under the Bhawanipatna Sub Office at the relevant time.

7. With regard to the charge under Section 409 I. P. C. (he prosecution case is that on 5-5-52 the respondent as the money order issue clerk collected at the counter a total amount of Rs. 5310/9/-including the money order commission, but he gave credit of only Rs. 5207/1/- to the Post Master and misappropriated the balance of Rs. 103/8/-. Similarly on 22-5-52 the respondent as the money order issue clerk received at the counter Rs. 1018/4/- including the money order commission for remittance but gave credit of only Rs. 1008/4/-, thus misappropriating the balance of Rs. 10/-

The amounts of the money order received- at the Behara Branch Office on 5-5-52 and the money orders received at the Kesinga Branch Office on 22-5-52 are not by themselves the subject matter of the charge of criminal breach of trust. But, the case for the prosecution is that the respondent in order to conceal the misappropriations, altered certain documents relating to these three money orders. If the amounts mentioned in Ext. 14 series, book of money order receipts of 5-5-52 are totalled up, it comes to Rs. 5310/9/- but the total alleged to be shown by the respondent in Exts. 17 and 18, the head office and the office copies respectively of money order issue journals of that date amounts to Rs. 5207/1/-. Similarly ths amounts appearing in Ext. 8b, book of money order receipts of 22-5-52 on total show total amount of Rs. 1018/4/- but Exs. 11 and 12, the head office and the office copies respectively of money order issue journals of that date show the total amount collected at the counter to be Rs. 1008/4/- and it is incorrect to that extent. Ext. 20 the copy of entries in the hand to hand receipt book of those two dates indicates that the respondent on those two dates made over only Rs. 5207/1A and Rs. 1008/4/. as being the total collection at the counter to P. W. 5 the Sub Post

Master.

The learned Assistant Sessions Judge observes that though these books show misappropriations, they are merely books of account and the same, cannot be substantive evidence to prove the alleged entrustment. In coming to this conclusion, the learned Assistant Sessions Judge has not taken into account the evidence of some of the prosecution witnesses. P. W. 2 is the Branch post Master of Kesinga Post Office. He deposed that on 21-5-52 Ramkrishna whom he knows sent two money orders each for Rs. 125/- for remittance to one Biswambar Mal Benwnrilal and that he had also tendered two duly filled up money-order forms & also paid Rs. 1/14/. as M. O.commission for each of the said remittances and proved the counter foils of M. O, receipts.

He also deposed that the said M. O. forms relating to the said two M. O. counterfoils were Eent by him on the very same day to the account office, that is, the Sub Post Office at Bhawani patna. P. W. 5, the Sub Post Master of Bhawani patna Sub Post Office gives evidence with regardto the several account books relevant to the case, P. W. 6 an accountant of the office of the Superintendent of Police, Bhawanipatna gave evidence that on 5-5-52, twenty money orders were remitted from the Superintendent's office through Bhawanipatna District Treasury by book transfer and that the amounts which were remitted were the pay of the employees of the police department. All these money orders were received by the payees and the acknowledgments were received in the Superintendent's office.

His evidence corroborates the correctness of the money order receipt book dated 5-5-52 as these entries are there in that book. P. W. 7 deposed that he sent a money order of Rs. 200/- by T. M. . O. through Bhawanipatna Sub Post Office on 22-5-52 and he paid or tendered the amount of money order at the counter.

This evidence of the money order receipt books corroborate by the oral evidence of the above witnesses clearly shows that the respondent was entrusted with a sum of Rs. 5310/9/- on 5-5-52 and with Rs. 1018/4/- on 22-5-1952, in his capacity as the money order issue clerk of post office. The learned Assistant Sessions Judge is therefore wrong in saying that the entrustment is not proved by the prosecution.

But this is not enough to convict the respondent under Section 409, I. P. C. The dishonest misappropriation should also be made out. The case for the prosecution with regard to this aspect was that the misappropriation was made by altering and falsifying the concerned money order receipt of Behara Branch Post Office dated 5-5-52 and the concerned money order receipts of Kesing a Branch Post Office dated 22-5-52, the money order issue journals and the hand to hand receipt book.

The prosecution attempted to prove that the entries in these respective documents are in the handwriting of the respondent. The learned Assistant Sessions Judge in great detail discussed the documents and the oral evidence relating to the several entries and came to the conclusion that the money order issue journals were not in the custody of the respondent till they were seized; that though there are some alterations in the same tt is not proved that they are in the handwriting of the respondent and the difference in the money order issue journals of the amount actually entrusted to him at the counter does not consequently make out a case of misappropriation.

We have looked into the documents and we are not satisfied that the alterations made in the money order issue journals are proved to have, been made by the respondent on the respective dates. With regard to the hand to hand receipt book which is a conclusive piece of evidence of misappropriation, it is regrettable that the original is not filed in the case. Ext. 20 is only a copy of the entries in the hand to hand receipt book. The hand to hand receipt book, according to the evidence of P. W. 4 clearly shows the amount actually handed over by the respondent on each date to the Post Master in acknowledgment of which the Post Master signs the book.

If that book which after his signature remains in the custody of the respondent shows that on 5-5-52 only an amount of Rs. 5207/1/- was made over to the Post Master, then misappropriation of the balance by the respondent could be inferred. But curiously enough this book in original is not before the Court. Ext. 20 is only a copyprepared by the Inspector of Post office. In his evidence P. W. 4 stated,

'The hand to hand receipt book of Bhawanipatna Sub Post Office relating to some portions of 1951 and 1952 had been filed in a case against the accused in the

Court of Sri P. C. Mohanty, Magistrate 1st Class, Bhawanipatna. The said book had been proved by me in that Court. Subsequently it was found missing when the case on remand was tried by Mr. B. V. Mohanty, Magistrate 1st Class, Bhawanipatna. In the Court of Mr. p. C. Mohanty, I got twelve true copies of the same prepared and had it verified with original under directions of the said Magistrate who wanted the same since there were several cases Pending against the accused. Subsequently in Mr. B. V. Mohanty's Court, when I deposed, I came to know about the missing of the original hand to hand receipt book. This is a true copy of the said hand to hand receipt book which I got prepared by postal clerk whose name I do not recollect and which I myself compared with the original and gave certificate to that effect and filed the same in Court and Ex. 20 is the said copy'.

The learned Assistant Sessions Judge made a note in his deposition that this was objected to by the defence and that the original was not on record and that it would appear from the letter No. 486 dated 18-10-54 of the committal court which is on record of Sessions Case Nos. 6 & 7 of 1954 of the Assistant Sessions Judge's Court that the original was missing. No enquiry seems to have been made either by the concerned Magistrate or by the Sessions Judge who heard some appeals in the cases against the respondent of the Assistant Sessions Judge who tried this case as to the loss of the original document in the courts.

The learned Assistant Government Adovcate Informed us that on a reference being made to.the Magistrate, it was stated t^at the record was sent to the sessions court along with the documents, It is unfortunate that even though the original documents in the Courts after they were filed and exhibited in the case are lost, no officer responsible for the custody of the documents ever thinks of making an enquiry in order to bring the offender to book.

But the Magistrate as well as even the Sessions Judge & the Assistant Sessions Judge calmly passed over the matter without ever realising that it is a serious matter to be enquired into and disposed of the case. It is absolutely necessary in the inteiests of justice that any Court whether it be a Magistrate's Court or a Sessions Court as soon as it becomes to know or is brought to its knowledge that an original document filed in the case is missing should realise it is the bounden duty of the concerned Magistrate or Judge to at once make .an enquiry into the matter failure of which, in my opinion, is a serious neglect of duty.

A look at Ext. 20 also shows that it is not a true copy of the hand to hand register. The second item dated 22-5-52 appears first at the top and the second item dated 5-5-52 appears next. Further the copy is not a certified copy issued by the Court in which the original was filed in some case bus is a copy prepared by a postal clerk under the instructions of the Postal Inspector.

In view of the finding of the learned Assistant Sessions Judge that the money order issue journals and the several' copies of the same either retained in the post office or sent to the auditoffice do not show the alterations to be in the handwriting of the respondent and the criminal of Ex. 20 the hand to hand receipt bock is not before the Court, it cannot be held beyond all possibility of reasonable doubt that the respondent misappropriated the said amounts on the respective dates. For these reasons, I am of opinion that the prosecution, though it succeeded in proving the entrustment, has failed to bring home the guilt under Section 409, I. P. C. to the respondent.

8. With regard to the second and third Items of charges under Section 477A, I. P. C., the learned Assistant Sessions Judge has given cogent reasons as to why the alterations made in the money order issue journals and the copies of the same as also in the copy of the hand to hand receipt book cannot be held to have been made in the handwriting of the respondent. The charge under Section 409, I. P. C, also is not held to have been proved. Therefore, in my opinion, the learned Assistant Sessions Judge is correct in not convicting the respondent under Section 477A, I. P. C.

9. With regard to the charges under Sections 409 and 477A, I. P. C., the learned Assistant Government Advocate also contended that the learned Assistant Sessions Judge is wrong in coming to the conclusion that the respondent cannot he tried on these two charges by virtue of the provisions contained in Section 403, Cr. P. C. Having held that the charges under Sections 409 and 477A, I. P. C. are not proved.

It is not necessary to go into the question if the trial is barred on the principle of autre fois acquit, but raking into consideration the learned argument advanced by the learned Assistant Government Advocate and the mistake committed by the learned Assistant Sessions Judge, I would briefly notice the points arising on this question. The charge-sheet in this case was filed on 26-11- 52 under Section 409. I. P. C. The case Was transferred to the file of Shri P. C. Mohanty, Magistrate 1st Class. Bhawanipatna, who framed charges against the accused under Sections 468 and 409, I. P. C. and convicted the accused under both the sections and sentenced him to rigorous imprisonment and fine. On appeal, the said convictions were set aside by Shri I. C. Misra, the then Sessions Judge of Balangir-Patna and the case was remanded to the trying Magistrate with a direction to the effect that a charge under Section 477A, I. P. C., should be framed and the prosecution Should be given a chance to prove, if possible, whether the accused with intent to defraud falsified the account papers and that the accused should also be given an opportunity to explain his conduct after looking into the original documents.

Then the case after remand was converted Into a committal proceeding and was ultimately committed to the Sessions Judge. The learned Assistant Sessions Judge in his judgment observes :

'I am however unable to agree. I have carefully gone through the copy of the judgment passed by the learned Sessions Judge in the aforesaid criminal appeal as also of the original judgment in Criminal Appeal No. 3-K of 1953 which has been referred to the former. So far PS I have been able to follow, it is clear that the learned Sessions Judge has recorded a clear finding of acauittal with reference to the charge under Section409, I. P. C., against the accused '

The Judgment in Criminal Appeal No. 3-K of 1953 is a judgment in another case though againstthe same respondent. We have read the judgment of the learned Sessions Judge in the Criminal Appeal which is pleaded as a bar to the present prosscution. In the whole judgment, it is nowhere stated by the learned Sessions Judge that the appellant before him was acquitted. He simply set aside the convictions and sentences and remanded the case with the observations already noted above.

The learned Assistant Sessions Judge committed a glaring error in holding that it is clearthat the learned Sessions Judge had recorded aclear finding of acquittal with reference to the charge under Section 409, I. P, C. against the respondent. He having read the judgment in CriminalAppeal No. 3-K of 1953 in which there was afinding of acquittal noted, perhaps was under theimpression that in the criminal appeal which ispleaded as a bar to this case, it was noted thatthere was an acquittal. The finding of the learned Assistant Sessions Judge that the prosecutionis barred under Section 403, Cr. P. C. is therefore vitiated by an error of record.

10. Section 403, Cr. P. C., clearly says:

'(1) A person who has once been tried by aCourt of competent jurisdiction for an offenceand convicted or acquitted of such offence shall,while such conviction or acquittal remains inforce, not be lieble to be tried again for the sameoffence nor on the same facts for any other offence for which a different charge from the onemade against him might have been made under Section 236 or for which he might have been convicted under Section 237.

(2) A person acquitted or convicted of any . offence may be aftei-wards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235. Sub-section (1).x x x x'

Clauses (3) and (4) contemplate certain other cases when a person can again be tried. The learned counsel appearing for the respondent tried to make out that the effect of the judgment should be taken into consideration and that judgment which is pleaded as a bar is a judgment of acquittal and cited several cases in support of his contention.

The learned Assistant Government Advocatecontended that the trial for the offence under Section 477A. I. p. C. is not barred as it is a distinctoffence and that unless the first judgment showsthat it is one of acquittal, the bar cannot ariseand cited several cases in support of his contention. The judgment, in my opinion, may not beconstrued as a judgment of acquittal for theoffence under Section 409. I. P. C. The judgment onlysays that the conviction and sentence are setaside and the cese remanded for trial. The appellate Court also directed that a charge under Section 477A. I. P. C. should be framed and the accused given an opportunity to explain the same.But, as already stated, in view of my findingthat the prosecution foiled to prove the case onthe charges under Sections 409 and 477A, I. P, C., itis not necessary for me to discuss the variousauthorities placed before us on this question andrecord our opinion on the same.

11. The last contention urged by the learned Assistant Government Advocate is that the learned Assistant Sessions Judge erred in acquitting the respondent of the offence of forgery on the 4th and 5th charges, by which the respondent was charged with forging the carbon copy of M. O. receipt No. 4179 dated 5-5-52 showing receiptof Rs. 300/- and M. O. commission of Rs, 4/8/-whereap the original was for Rs. 400/- and M. O. commission for Rs. 6/- and that on 22-5-62 forging two carbon copies of M. O. receipts Nos. 3657 and 3658 showing receipt of Rs. 120/- and M. O. commission of Rs. 1/14/- instead of Rs. 125/- in each money order.

With regard to the forgery of these copies of the money order receipts, the prosecution case is that the respondent forged the documents which are carbon copies of the M. O. receipts. According to the prosecution, the money order receipts are prepared by pen carbon process in triplicate and the copies are forged showing- a lesser amount than the amount of money orders. The respondent admitted that all these documents are in his hand. Exhibit 13 is the original money order receipt and Exts. 15 and 15a are the copies. Admittedly they are in the hand writing of the respondent and according to the prosecution they are prepared by pen carbon process. Exhibit 13 shows receipt of Rs. 400/- both in words and figures and receipt of Rs. 6/- as M. O. commission while Exts l5a and 15 show Rs. 300/- as the amount of the money order and Rs. 4/8/ as the commission.

There are no signs of erasure. Exhibits 9 and 9a the head office copies of the money order receipts Nos. 3657 and 3658 dated 22-5-52 relate to Kesinga Branch Post Office. Exhibits 7 and 7a are the original money order receipts which show receipt of Rs. 125/- both in words and figures and Rs. 1/14/- in figures as M. O. commission. The prosecution case is that these receipts are prepared in pen carbon process, in triplicate On the contention of the learned Public Prosecutor that the action of the respondent amounts to making of a false document under Clause (2) of Section 464. I. P. C., the learned Assistant Sessions Judge . came to the conclusion that as the clause requires that in order to make a false document the person without lawful authority, dishonestly or fraudulently, by cancellation or otherwise should alter a document in any material part thereof after it has been made or executed either by himself or by any other person, the respondent cannot be said to have made a false document as there is no alteration of any land an, the copies of the money order receipts.

The learned Assistant Government Advocate, however, contended that the respondent first made the original money order receipt without placing the carbon papers for the triplicate copies, then must have made the two carbon copies required by writing on a separate piece of paper In order to get the impression on the carbon copies and such a process would amount to making of a false document. We examined the originals as well as the carbon copies of the money order receipts concerned. It is clear that at the time the original receipt was made, the carbon papers were not there for the purpose of having the copies. It is afterwards that the two copies were prepared by carbon process. This is clear on a view of the several receipts, berause in the copies the words and figures do not appear at the particular places at which they should appear if ail the three are made at the same time by pen carbon process. The learned Assistant Government Advocate also contended that the learned Public Prosecutor before the Sessions Court committed an error in contending that the making Of a false document in this case was under Clause(2) of Section 464, I. P. C. The learned counsel contends that it is a case which comes under Clause (1) of Section 464. I. P. C. Section 464, I. P. C. says:

'A person is said to make a false document--First.--Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person, by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed.....'

The respondent made the copies of the money order receipts. The copies were made for a lesser sum than the amount entered in the original money order receipt with the Intention of causing it to be believed by the head office that the money order was only for Rs. 300/- whereas actually it was for Rs. 400/- and it was so done in order to lessen the amount actually collected at the counter. According to the contention of that learned Assistant Government Advocate, the making of a copy of a document fraudulently also amounts to the making of a false document under certain circumstances. In Mayne's Criminal Law. 4th Edition; at page 761 it is stated: .

'The fabrication of that which purports to be a true copy, and which is intended to be used as such, but which is really a false copy, is a forgery within the meaning of Section 463.''

In the case of Essan Chunder Dutta v. Baboo Prannath Chowdry. reported in Marsh. 270 (A), it was observed by Sri B, Peacock C, J. as follows:

'We regard the forgery of a copy clearly to come within the purview of the section Just cited. Forgery of a copy which was no true copy, would be the offence there rendered penal; and the criminal intention to make a false document serve the purpose of a true one, would be clear by such act a forgery.'

Here the respondent fabricated the head office copies of the money order receipts which purport to be true copies and which he intended to be used as such and they are really false copies. Consequently the respondent is said to have made a false document with intent to commit fraud and it is clearly an offence under Section 463, 1 P. O. I therefore accept the contention of the learned Assistant Government Advocate as correct. But the case against the respondent) in the trial was not as put forward before us by the learned Assistant Government Advocate.

The case against the respondent was definitely that all these three copies of the money order receipts were taken by pen carbon process. In the examination under Section 342, Cr. P. C., the learned Assistant Sessions Judge also put the case before the respondent in that way. The learned Public Prosecutor before the Court below therefore contended that the case would fall under Clause (2) of Section 464, I. P. C. The respondent had no opportunity to explain the case as now put forward before us by the learned Assistant Government Advocate. On account of these reasons, it is not just that the respondent should be convicted of forgery on a case not put forward by the prosecution at the trial. I would therefore confirm the acquittal of the respondent on these charges also.

12. The result Is that the appeal filed by the Government against the acquittal of the respondent fails and is dismissed.

13. As already observed by me in the judgment an important document in the case, namely, the hand to hand receipt book of the money order issue clerk was lost when it was in the custody of a Court. It is not known in which Court it was actually lost. It must be either in the Court of the Magistrate before whom the cases against the respondent were tried or in the Court of the Sessions Judge who heard the appeals against the convictions of the respondent in some cases by the Magistrate. The loss of an import ant document in the custody of Courts cannot be tolerated. The Sessions Judge would therefore Immediately make an enquiry and report to this Court if the document was lost in his Court. The District Magistrate also is directed to make an enquiry forthwith if the document was lost in the Court of the Magistrate who tried there postal cases against the respondent and submit his report to this Court.

Mohapatra, J.

14. I agree,