

State of Orissa Vs. Sapneswar Thappa

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Court : Orissa

Decided On : Sep-30-1986

Reported in : 63(1987)CLT722; 1987CriLJ612

Judge : G.B. Patnaik, J.

Appellant : State of Orissa

Respondent : Sapneswar Thappa

Judgement :

G.B. Patnaik, J.

1. The respondent was charged Under Section 409, IPC for misappropriation of a sum of Rs. 881/- by fraudulently withdrawing the same from the 1 Savings Bank Account of Artatrana Behera (P.W. 1) while the respondent was working in the Sub-Post Office at Rourkela, Sector 19. He was also charged Under Section 467, IPC for forging the withdrawal application and warrant of payment and Under Section 471, IPC for using fraudulently and dishonestly those withdrawal applications and warrant of payment as genuine knowing them to be forged. The respondent was further charged Under Section 477A, IPC for making false entries in the records maintained at the Sub-Post Office. The learned Additional Chief Judicial Magistrate has acquitted the respondent of all the charges and hence the present appeal has been directed against the order of acquittal.

2. The prosecution case, briefly stated, is that the Inspector of Police, CBI, drew up an FIR on 1-2-1977 at 4.30 P.M. under orders of the Superintendent of Police, S.P.E, C.B.I., Bhubaneswar, alleging that while the accused-respondent was working as sub-Postmaster, Rourkela Sub-Post office, Sector-19, from March, 1970 to 1973, he forged several withdrawal applications and withdrew different amounts from the Savings Pass Book Accounts of Artatrana Behera and Birabhadra Giri on different dates and had misappropriated the same. The FIR is Ext 37. After registering a case, the C.B.I. took up investigation and in course of investigation examined several witnesses and seized large number of documents and registers and obtained the specimen writings and signatures of the accused and sent those signatures to the Government Examiner of Questioned Documents. The said Examiner gave his opinion that the withdrawal applications purported to have been written and signed by Artatran aad Birabhadra were in the hand of the accused who had also forged their signatures. On completion of investigation, three separate charge-sheets were filed against the accused since the transactions related to three different periods. So far as the present case is concerned, the charge-sheet indicated that on 20-3-1971, a sum of Rs. 350/- and again on 21-12-1971, a sum of Rs. 531/- were withdrawn from the Pass Book of Artatran Behera (P.W. 1) by the accused and the said sum had been misappropriated by the accused. The accused accordingly faced his trial for the aforesaid charges.

3. The plea of the accused is one of denial His positive defence is that the depositor himself made the withdrawal applications and has withdrawn the amount and a false case has been foisted against him.

4. The prosecution examined as many as 11 witnesses and the defence examined only one witness. On behalf of the prosecution, large number of documents were also produced. Of the 11 prosecution witnesses, P.W. 1 is the depositor, and P.W. 8 is his brother; P.Ws. 2 and 3 were working as Accounts clerks in the Post Office and they in their evidence stated that the withdrawal applications (Exts. 10 and 11) were in the handwriting of the accused; P.W. 4 is the Public Relations Officer who deposed as to the procedure for withdrawal; P.W. 5 was working as a clerk in the Head Post Office during the relevant time; P.W. 6 was the Sub-Postmaster of

Rourkela, Sector-19, who produced the Savings Bank Ledger (Ext. 29); P.W. 7 was working as Inspector of Post Office from 1970 to 1973 and he also proved that the withdrawal applications (Exts. 10 and 11) bearing the initials and red-ink entries were in the handwriting of the accused; P.W. 9 was the Handwriting Expert; P.W. 10 was the Superintendent of Post Offices in whose presence the Investigating Officer took the specimen writings of the accused which are Exts. 31 to 31/67 and P.W. 11 was the Investigating Officer.

5. From the pass book (Ext. 1), it appears that a sum of Rs. 350/- was withdrawn on 20-3-1971 and another sum of Rs. 531/- was withdrawn on 27-12-1971. Both these transactions have been duly entered by the accused in Exts. 23 and 24. The accused also admitted that he was maintaining the log book and the cash book of the Post Office and he had reflected the withdrawals of the aforesaid amounts on those two dates from the savings bank account and made necessary entries under Exts. 25, 26, 27/1 and 27/2. The Ledger-Card which is maintained at the Head Office (Ext. 28) also indicates that the two sums of money stated earlier, were withdrawn on the dates as mentioned from the savings bank account of P.W. 1. The accused also in his statement Under Section 313 of the Cr.P.C. admitted that he passed the orders as per warrant of payment on the withdrawal applications (Exts. 10 and 11) but stated that excepting passing those withdrawal applications he had not written anything on the said applications. The procedure for withdrawal, as has been discussed by the learned trial Judge, is that the depositor will deliver the pass book along with the withdrawal application to the counter clerk who shall satisfy himself that the application for withdrawal has been correctly filled in and the signature of the depositor on the application agrees with the specimen signature on record. The counter clerk will then mention the amount specified in the withdrawal application in the pass book and then the warrant of payment should be filled in by him. The pass book and the warrant should be stamped and then the concerned clerk should make an entry in the ledger and sign in the relevant column. He would then place the same form as well as the ledger before the Sub-Postmaster who will verify the signature of the depositor in case of withdrawal of Rs. 250/- or more and he will also satisfy himself with reference to the ledger that the amount that is being withdrawn is at the credit of the depositor. Then the Sub-Postmaster will sign the warrant of payment and note the balance in

the ledger. He will also make a note in the log book and initial the document and send the withdrawal form, warrant of payment to the counter clerk who would require the depositor to sign the order of payment in acknowledgement of receipt of the amount and then the amount specified should be paid and the pass book returned to the depositor. This procedure has been narrated by P.W. 4, a postal employee. The depositor (P.W. 1) stated in his evidence that his pass book account (Ext. 1) states in his evidence that his some time past and when he went to the post office, he found that his co-villager, the accused, was working as Sub-Postmaster (sic). The depositor wanted to revive the account and accused, therefore, instructed him to leave the pass book so that he would do the needful. On the instructions of the accused, he deposited a sum of Rs. 11 on 17-1-1970 and a sum of Rs. 205/- on 16-2-1970. These two deposits are actually available in the pass book (Ext. 1). It is the further evidence of the depositor that after he deposited the sum of Rs. 205/-, the accused asked him to leave the pass book so that he will get the interest thereon calculated and accordingly the pass book was left with the accused. Thereafter, though on several occasions, he had gone to get back the pass book, but on some plea or the other, the accused did not return him the same till 1973, when P.W. 1 was transferred to Athamallik. On the next occasion, when he met the accused and asked him about the pass book the accused replied that the pass book had been sent to Athamallik Post Office by post, but as the depositor could not find the same at Athamallik, he requested his brother (P.W. 8) to find out from the accused as to what had happened. It is only in the last part of 1974 that P.W. 8 collected the pass book from the accused and sent the same to P.W. 1. But sometime before that, postal officers had enquired from him: as to whether he had received the pass book or not to which P.W. 1 had denied. P.W. 1 in his evidence categorically denied to have withdrawn the money contained in Exts. 10 and 11 and also stated that neither he had filled up that form nor had he signed the same. The learned trial Judge did not accept the case of the depositor that he would leave the pass book with the accused for such a long time. But the plea of the depositor was that, the accused was his co-villager and in good faith he had left the pass book on the suggestion of the accused with him so that interest on the balance amount would be calculated. But the reasonings of the learned trial Judge given in para 12 of the impugned judgment and the ultimate

conclusion that it is difficult to believe the explanation given by P.Ws. 1 and 8 regarding non-receipt of pass book from the accused throwing blame on him, cannot be said to be perverse and, therefore, I do not find any compelling reason to alter the said conclusion.

6. But to prove the charge in the present case, the aforesaid conclusion is not of any material consequence, though the learned trial Judge has totally been swayed away because of the aforesaid conclusion reached by him earlier. The sole question for consideration is as to who had filled in the application forms for withdrawal (Exts. 10 and 11) and signed the same. Was it the accused, or the depositor (P.W. 1), or any body else If the conclusion from the evidence is that it was the accused who had filled in the forms as well as signed the same, then the accused must be held to be liable for the offence alleged against him. The accused has admitted that he has entered in Exts. 10 and 11 the pass order and further Jie has made the corresponding entries in the list of transactions in Exts. 23 and 24, as well as the log book under Exts. 25 and 26, and so also the cash books (Exts. 27 and 28). In all these documents corresponding entries as to the withdrawals contained in Exts. 10 and 11 have been made by the accused. P.W. 3 in his evidence states that Exts. 10 and 11 did not pass through him and on account of pressure of work sometimes, the postmaster himself was also doing the job of P.W. 3. Even the learned trial Judge himself has believed this part of the evidence of P.W. 3 and has come to the conclusion that due to heavy pressure of work in the seat of the counter clerk (P.W. 3), the accused as Postmaster might have personally dealt with the withdrawal applications (Exts. 10 and 1.1). In the aforesaid context, one will have to examine the evidence of the Handwriting Expert (P.W. 9), who has categorically opined that it is the accused who has filled in the forms in Exts. 10 and 11 and also made the signatures purporting to be those of the depositor, Artratan Behera. After comparing the admitted writings of the accused with the disputed ones, the Handwriting Expert has categorically opined that the writings marked as Q-3, CM 5 and Q-21 are in the handwriting of the accused. Q-3 is the portion contained in red-mark which has been filled up by writing, Q-15 is the filling up of the form on the backside which is nomenclatured as 'warrant of payment'. Q-21 is the blank portion contained on the same form which has been filled up indicating receipt of payment. The Expert has further

opined that Q-9 which is the purported signature of the depositor on the application for withdrawal and Q-27 which is the purported signature of the said depositor in token of receipt of payment on Ext. 10 are not the signatures of the depositor (P.W. 1) and this he has opined by comparing the same with the admitted writings of the depositor in Exts. 3 to 9. Similarly, the Expert has also opined in respect of the writings on Ext. 11. The learned trial Judge has lightly brushed aside the aforesaid evidence of the Expert on the ground that there is no corroboration to the said evidence and in my opinion, he has committed gross error in rejecting the evidence of the Expert. Apart from the evidence of the Expert (P.W. 9), P.Ws. 3 and 7 who are the co-employees of the post office also state that the writings on Exts. 10 and 11 were those of the accused.

7. In the case of Murarilal v. State of M.P. AIR 1980 SC 531 : 1980 Cri LJ 396, it has been held:

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, 'unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. Inappropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be Any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight...

Applying the aforesaid test in the present case to the evidence of P.W. 9,1 do not find any reliable evidence which throws a doubt on the expert's evidence. If the reasons for the opinion of the Expert are probed, nothing has been elicited in the cross-examination of P.VV. 9 to throw any doubt on his testimony. That apart, I find sufficient corroboration in the present case from the evidence of P.Ws. 3 and 7 and again from the statement of the accused himself. This being the evidence, I hold that the prosecution has been able to satisfactorily prove that it is the accused

who has filled up the withdrawal application (Exts. 10 and 11) in the name of P.W. 1 and has also forged his signatures thereon. Thus, the charges Under Sections 467 and 471 of the I.P.C. have been fully established against the accused.

8. So far as the charge Under Section 477A of the I.P.C. is concerned, it consists of falsifying entries in certain book. There has been no falsification of any entries in any book. On the other hand, on the basis of Exts. 10 and 11 corresponding entries have been made. In my opinion, therefore, the charge Under Section 477A, I.P.C, is not established.

9. Coming to the question of the charge Under Section 409, I.P.C, it consists of withdrawal of money and non-accounting for the same. It is clear that by virtue of Exts. 10 and 11, a sum of Rs. 881/- has been withdrawn from the account of the depositor. The accused himself also has admitted that he has passed the necessary pay order and the corresponding entries from different registers and cash books indicate the withdrawal of the said amount. The prosecution has further established that Exts. 10 and 11 have been filled up not by the depositor (P.W. 1) but by the accused, which has been discussed earlier. In that view of the matter, since the accused has failed to give any other explanation, it must be held that the accused himself has withdrawn the said money and misappropriated the same. Accordingly, the accused is convicted Under Section 409, I.P.C.

10. Mr. Ghose, the learned Counsel for the respondent, however, has urged that this being an appeal against an order of acquittal and the learned trial Judge having considered the evidence, the High Court should not interfere with the same. In my opinion, the contention is wholly misconceived. The Cr.P.C. does not make any difference between the ambit of an appeal from a conviction and that from an appeal against acquittal. The procedure for dealing with the two kinds of appeals is identical and the powers of the appellate Court in disposing of the appeals are in essence the same. In the case of *Radha Kishan v. State of Uttar Pradesh* : (1963) IILLJ667SC , it was held by their Lordships that an appeal from acquittal need not be treated differently from an appeal from conviction and if the High Court in appeal finds that the acquittal is not justified by the evidence on record, it can set aside the acquittal without coming to the conclusion that there

were compelling reasons for doing so.

In the case of *Salim Zia v. State of Uttar Pradesh* 1979 SCC (Cri) 568 : 1979 Cri U . 323, it was also held:

The High Court in an appeal against an order of acquittal Under Section 417 of the Cr.P.C, 1898, has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that, upon the evidence, the order of acquittal should be reversed.

The different phraseology used in the judgments of this Court such as:

(a) 'substantial and compelling reasons';

(b) good and sufficiently cogent reasons';

(c) 'strong reasons';

are not intended to curtail or place any limitation on the undoubted power of an Appellate Court in an appeal against acquittal to review the entire evidence and to come to its own conclusion as stated above, but in doing so it should give proper consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (iii) the right of the accused to the benefit, of any real and reasonable doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

The Supreme Court also took a similar view in the case of *Babu v. State of Uttar Pradesh* : 1983 CriLJ334 .

Bearing in mind the principles evolved in the aforesaid cases, I have examined the evidence and have come to the conclusion as stated earlier. I do not find any force in the contention of Mr. Ghose, the learned Counsel for the respondent.

11. Another contention of Mr. Ghose, the learned Counsel for the respondent, also need be noted. Mr. Ghose submits that the investigation in the present case being

done by the C.B.I, authorities and the prosecution having been launched-on the complaint of the C.B.I. people against the order of acquittal, the State is not the competent authority to file the appeal, and therefore, the appeal is incompetent. This question no longer remains *res integra*. It has already been held by the Supreme Court in the case of *Khemraj v. State of Madhya Pradesh* : 1976 CriLJ192 that no objection can be taken about the competence of the appeal against an order of acquittal in a case by the Establishment being filed by the Public Prosecutor under the direction of the State Government. The relevant passages of the aforesaid Supreme Court decision may be extracted hereunder:

13. This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure when the Central Government decides to appeal, it requests the State Government to do the needful through the public prosecutor appointed under the Code.

14. The word 'also' in Sub-section (2) of Section 417 is very significant. This word seems not to bar the jurisdiction of the State Government to direct the public prosecutor to present an appeal even in cases investigated by the Establishment. Sub-section (1) of Section 417 is in general terms and would take in its purview all types of cases since the expression used in that sub-section is 'in any case'. We do not see any limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases. Sub-section (1) of Section 417 being in general terms is as such of wider amplitude. Sub-section (2) advisedly uses the word 'also' when power is given to the Central Government in addition to direct the public prosecutor to appeal.

12. Coming to the question of sentence, for the conviction Under Section 409, I.P.C., the accused is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- (five hundred), in default, to undergo further rigorous imprisonment for three months and for his conviction Under Section 467, Penal

Code, the accused is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- (five hundred), in default, to undergo further rigorous imprisonment for three months, the sentences to run concurrently. No separate sentence is being awarded for the conviction Under Section 471, Penal Code. The order of acquittal is accordingly set aside and this Government Appeal is allowed. The accused-respondent must now surrender to serve the sentence.

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