

**Amar Nath Vs. State**

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**Court :** Delhi

**Decided On :** Mar-15-1971

**Reported in :** 1971CriLJ1335

**Judge :** Pritam Singh Safeer, J.

**Appellant :** Amar Nath

**Respondent :** State

**Judgement :**

ORDER

**Pritam Singh Safeer, J.**

1. The prosecution case against the petitioner is best disclosed by the statement of P.W. 3, Khushal Chand Wadhwa. His mother Ishwari Devi, who appeared as P.W. 4, had an account with the New Bank of India, Limited. She owned property in respect of which house-tax was to be paid. Khushal Chand P.W. 3 deposed that he had gone to the Municipal Corporation Officer, Karol Bagh Zone, in the month of April, 1965, with a cheque book belonging to his mother. She had signed one of the cheques. Her admitted signatures appear on Exhibit P. 2. The amount was not filled in. The payee's name was also to be filled in by P.W. 3. As to why the amount was not filled in P.W. 3 stated:

The amount was to be filled by me in the office, after making enquiry.' The deposition excites a little surprise. The Municipal Corporation of Delhi issues bills for house-tax. It is then that the amounts are to be paid. It cannot be understood as to why the amount was to be enquired about. The cheque was not to be left blank regarding the payee. The Municipal Corporation of Delhi was obviously to be the payee. No Explanationn is furnished by P.W. 3 as to why the name of the payee was not filled in by him and the cheque book was carried in that particular situation to the Corporation office. This aspect assumes importance because of the deposition by him that on the second day of his visit to the Corporation office, when he was going to leave for his office, he searched his pocket and found the cheque-book missing. That very evening he searched again for the cheque book. He did not find it. He searched for it on the next day also and then informed the Bank that the cheque book belonging to his mother had been lost. Again it is a matter for surprise that no information given in writing to the Bank has been produced in this case. Exhibit P. 2 was a blank cheque bearing the signatures of Smt. Ishwari Devi P.W. 4. Written information ought to have been given to the New Bank disclosing that a cheque so signed had been lost and that its payment was being stopped.

2. According to P.W. 3, after about a fortnight of the loss of the cheque-book his brother's wife went to the Bank to find out the balance in the account of his mother and came to know that two of the missing cheques had been encased by the Bank.

3. To start with, P.W. 3 appears to have prevaricated on the question of his having informed the Bank. Had the Bank been really informed about the loss of the cheque-book, no cheques from the said cheque-book may have been encashed. There was, in any case, no information given to the Bank that the cheques, which may purport to have been issued by Smt. Ishwari Devi, should not be encashed.

4. Khushal Chand deposed that he went to the Bank on being informed by his brother's wife and there he saw the cheques Exhibits P.1 and P. 2. The amounts covered by the cheques had been credited in favor of the Municipal Corporation of Delhi, and then after getting the letter Exhibit P.W. 2/B signed by his mother

Ishwari Devi, addressed to the Commissioner Municipal Corporation of Delhi, he delivered the same at the office of the addressee and there from went to the office of the Corporation, made enquiries and found out the names of the persons who had been benefited by the encashment of the said cheques. After contacting those persons, namely, Shri Kirpa Ram and Shri Nanak Chand Chopra, P.W. 3, according to his statement, went to the Corporation Office again. He alleged:

Then I again went to the office of the Municipal Corporation, Delhi, and came to know that Amar Nath accused had dealt with these cheques.

Who told him about Amar Nath accused? Why is it that the informant's name has been kept by P.W. 3 to himself? The informant was an important link in the chain of circumstances. His deposition, as it proceeds further, is of significance in this case because the same has been relied upon by the courts below in order to come to the conclusion that the petitioner had committed the offences for which he stands convicted. That deposition is:

Then I contacted Amar Nath accused. He met me in the Karol Bagh office. He told me that the cheque-book was with him and that he had written on the body of two cheques Exhibits P.1 and P. 2 and got them credited in favor of the Corporation. He promised to return the amount to me and also the remaining cheques. The accused Amar Nath came to my house the same evening and paid me the amount of those cheques as well as the cheque book Exhibit P.W. 3/1.

It cannot be appreciated why the cheque book was not immediately taken by Khushal Chand from Amar Nath when it had been told to him that the same was with the petitioner. It is not stated as to at what hour P.W. 3 had met the petitioner. If the cheque-book was not with the petitioner at the time when P.W. 3 met him, he could have asked' him to accompany him to any place where the same was lying. Why was it that the cheque-book was returned so easily by the petitioner to P.W. 3 and the amounts covered by the two cheques allegedly forged by him, were also paid out? There is no Explanation furnished by the prosecution in this respect. The cheque-book was produced before the police by P.W. 3. He deposed:

The police came into possession of cheque-book from me vide recovery memo Exhibit P.W. 3/2, which bears my signatures.

5. As to the alleged forgeries in Exhibits P.1 and P. 2 (the cheques in question), it is appropriate to notice his statement:

I cannot identify the signatures of my mother with certainty.

The body writing of cheques Exhibits P.1 and P. 2 were not written by my mother or me.

6. It is obvious that the prosecution was to prove that it was the accused alone who had forged the body writings in Exhibits P.1 and P. 2 and the signatures of P.W. 4, Ishwari Devi on Exhibit P.1. If the prosecution was not to succeed in doing that it was to fail in proving any of the four charges, which were:

Firstly: That you on 23rd of April 1965 near Corporation Office, Karol Bagh, Delhi, committed theft of cheque book containing cheques Nos. 227037 to 227040 belonging to Ishwari Devi by removing from the person of Kaushal Chand and thereby committed an offence punishable Under Section 379, IPC and within the cognizance of this Court. Secondly, that you in the month of April, 1965, at Delhi forged cheques Nos. 227037 and 227038 both dated 6-4-1965 drawn on the New Bank of India, Ltd., purporting to be a valuable security by writing the name of the payee 'Municipal Corporation of Delhi' on both the cheques and by writing the amount i.e. 'Rs. 66.75 np. only' on cheque No. 227037 and 'Rs. 27.50 np. only' on cheque No. 227038 and by writing Ishwari Devi as drawer on cheque No. 227038, with intent to cheat the said New Bank of India Ltd. and thereby committed the offence under Section 467, IPC and within the cognizance of this Court.

Thirdly, that you in the month of April 1965 cheated the New Bank of India Ltd. by drawing Rs. 94.25 P. through cheques No. 227038 dated 6-4-1965 for Rs. 27.50. and cheque No. 227037 dated 6-4-1965 for Rs. 66.75 P. and thereby committed an offence Under Section 420, IPC and within the cognizance of this Court.

Fourthly, that you in the same month of April 1965 dishonestly used the above said cheques knowing and having reason to believe the same to be forged one

and thereby committed an offence Under Section 471, IPC and within the cognizance of this Court.

7. As has been mentioned earlier, those who had benefited by the encashment of the cheques Exhibits P.1 and P. 2 were P.W. 10, Kirpa Ram and P.W. 19. Nanak Chand Chopra. While Kirpa Ram benefited out of Exhibit P.1 Nanak Chand Chopra benefited because of the payment which purported to have been made through Exhibit P. 2. It was the prosecution's own case that Exhibit P. 2 had been signed by Ishwari Devi P.W. 4. The prosecution struggled to prove that the body writings in the two cheques were also made by the petitioner. So far as the payment purporting to have been made for the benefit of Nanak Chand was concerned, it had to rely on the statement of the said witness read with that of P.W. 1, Shri M. R. Prabhu, Assistant Government Examiner of Questioned Documents. Nanak Chand's own deposition sufficiently displaces the prosecution case. The prosecution had relied upon a letter proved as Exhibit P.W. 19/A addressed by P.W. 19, Nanak Chand Chopra to the Municipal Corporation of Delhi. According to the said letter he had paid the amount of Rs. 66.75 through cheque No. DF 466451 drawn on the Central Commercial Bank. In the presence of the said document the trial court found that the prosecution had failed to prove that the amount covered by Exhibit P. 2 was deposited towards the payment of the bill Exhibit P.W. 19/C, which P.W. 19 had received, and in respect of the payment whereof he had issued the cheque drawn on the Central Commercial Bank. The evidence of P.W. 12 that cheques Exhibits P.1 and P. 2 were received by him and they bore his signatures on their back did not indicate as to how and on whose account had he received the cheques. He clearly stated:

I do not know in whose account these cheques were received.

The circumstantial evidence furnished by P.W. 12 along with the register Exhibit P.W. 12/A produced by him containing certain entries did not make out as to who had filled in the body writings in Exhibits P.1 and P. 2. The evidence furnished by his opinion by P.W. 1 fails to establish that the body writing in Exhibit P. 2 was necessarily made by the petitioner. If that is the situation regarding that body writing, after a thorough appraisal of the circumstantial evidence including that of

P.W. 12 and the evidence of P.W. 1, then it cannot be any better regarding the body writing in Exhibit P.1. Mere forging of body writing in any cheque would not by itself make it available for being used for the purpose of cheating anyone. It is to be seen whether the prosecution has established that the signatures of P.W. 4. Smt. Ishwari Devi on the cheque Exhibit P. 2 were forged by the petitioner and none else. It may be mentioned that the trial court did not record any conviction in respect of Exhibit P. 2.

8. As mentioned earlier P.W. 10 Kirpa Ram had allegedly benefited by the encashment of Exhibit P.1. Apart from him the prosecution has examined Tirath Lai P.W. 8 and Din Dayal Sharma P.W. 9, in order to furnish circumstantial evidence connecting the petitioner with the crimes. P.W. 10, Kirpa Ram deposed that he had to pay house-tax in respect of his house in village Khanpur, and he gave the bill which he had received for depositing the house-tax amount to Din Dayal P, W. 9, who was his neighbour. That had happened about three and a half years prior to his deposition in court on the 19th of July, 1968. He gave an amount of Rs. 25/- to Din Dayal. He did not get the receipt for 2-3 months and demanded the same from Din Dayal. He got the receipt after the said period and then during the investigation of the case against the petitioner he produced the same which was taken from his possession vide recovery memo Exhibit P.W. 10/A.

9. His deposition did not mention the petitioner. P.W. 9, Din Dayal Sharma stated that having taken the sum of Rs. 25/- from Kirpa Ram he went to the office of Tirath Lai, P.W. 8, who was an employee in the Corporation office there and handed over the bill and the money to him. After some time Tirath Lai is alleged to have told P.W. 9 that scavenging tax could not be deleted but water tax was deleted and that he had paid the amount to Amar Nath petitioner and that Amar Nath would give the receipt in a day or two. Din Dayal did not get the receipt for about a month or two and then he went alone to the accused for getting the receipt. He deposed:

He told me that he had paid the amount and that the receipt was lying at his house. After some time I told the accused either to give the receipt or I would take up the matter with the Zonal Commissioner. After 8-10 days, Tirath Lai gave me

receipt Exhibit P.W. 8/A, which is on the bill itself. Exhibit P.W. 8/A is not the same bill which Kirpa Ram originally gave to me. In the original bill, water tax was included while it was not so in this bill.

10. I have seen Exhibit P.W. 8/A. It bears the payment stamp showing that the amount of Rs. 27.50 had been received on the 6th of April, 1965-It is quite intriguing that no water tax is shown in the bill. The name of Kirpa Ram and the house number are correctly stated. It is significant that P.W. 9 admitted that Exhibit P.W. 8/A was the bill which he had given to Tirath Lai. It is no doubt true that P.W. 9 did state at the trial that he had himself contacted Amar Nath but then he received Exhibit P.W. 8/A from Tirath Lai and not from Amar Nath. If a reference is made to charge No. 1 it cannot be appreciated as to how the Corporation had received the payment of Rs. 27.50 as shown by the endorsement on Exhibit P.W. 8/A on the 6th of April, 1965. That is so because the first charge related to an alleged offence of theft and started by the allegation that the accused had on 23rd of April, 1965, near Corporation Office Karol Bagh, Delhi, committed the theft of the cheque book containing the concerned cheques. If the cheque book had not been stolen or lost by P.W. 3 before the 6th of April, 1965, the endorsement on Exhibit P.W. 8/A would remain disconnected with cheque Exhibit P.I. It is nowhere mentioned in Exhibit P.W. 8/A that the payment was received through a cheque and not by cash. The only two witnesses, who furnished the circumstantial evidence, namely, P. Ws. 8 and 9, do not depose either regarding any cheque book or cheques which they may have ever seen. If the payment made through Exhibit P.W. 8/A is taken to have been made through Exhibit P. 2 then it cannot be ruled out that Tirath Lai himself may have been concerned with the cheques in question. It is in fact not the prosecution case that anybody saw the cheque book with Amar Nath petitioner on the 6th of April, 1965, or even till the 12th of April, 1965, on which date the cheques were encased by the Bank.

11. The evidence of Tirath Lai, P.W. 8 is to the effect that in January or February, 1965, Din Dayal Sharma, P.W. 9 gave him a house-tax bill in the name of Kirpa Ram and Rs. 25/- for getting the same deposited. The witness never knew Kirpa Ram. The payment covered by Exhibit P.I is not that of Rs. 25/-. According to P.W. 8 he gave to the petitioner the bill and the amount of Rs. 25/- and after some time

he was allegedly told by ,the petitioner that he had got the water tax deducted but the scavenging tax could not be deducted and the sum due was Rs. 27.50 which was of necessity to be deposited.

12. If this deposition is accepted as correct, then the original bill was for a bigger amount than Rs. 27.50 and included an amount towards the water-tax as well. If the depositions of P. Ws. 8 and 9 were to be accepted then Kirpa Ram had given Rs. 25/- towards the payment of a bill the original amount whereof was above Rs. 27.50. Why was that? The exact amount for which Kirpa Ram had received the bill is not mentioned in his deposition. It was further deposed by P.W. 8 that at the time when the petitioner told him that the amount to be deposited was Rs. 27.50 one Hira Singh Overseer was standing near him and the witness (P.W. 8) took Rs. 2.50 from the said Hira Singh Overseer and paid them to the accused. It is surprising that P.W. 8 did not have even the paltry amount of Rs. 2.50 with him and had to borrow it from Hira Singh. Why did he do that? Why did he not contact Din Dayal Sharma. another employee in the Corporation Office and tell him that an additional amount of Rs. 2.50 was required? The amount was really to be paid for Kirpa Ram, whom P.W. 8 never knew, The 'testimony of P.W. 8 further proceeds:

In April 1965 I told the accused that a sufficient time had already passed and I asked him either to deposit the amount or I would make a report against him. The accused told me that he had made arrangements and would deposit the amount soon.

According to the witness the accused had received the amount in cash. Why was he to make any arrangements? According to the said witness Din Dayal had also told him that he had met the accused. The depositions of P. Ws. 8 and 9 display anxiety to corroborate each other. It is affirmed in the statement of P.W. 8:

The accused then gave me receipt in the first week of April, 1965. That receipt is Exhibit P.W. 8/A. The receipt is given on the bill itself. Tins bill was not the same which was given to the accused by me. On enquiry he told me that he had lost the original bill and he got the duplicate prepared.

13. The prosecution has produced no independent evidence to the effect that P.W. 8/A is a duplicate bill. In the circumstances of this case it cannot be ruled out that the cheque book belonging to P.W. 4, which P.W. 3 had lost and which was never stolen, may have fallen into the hands of Tirath Lai himself. Inferences apart, the convictions can be allowed to stand only if it can be concluded that the prosecution has established that the petitioner made the alleged forgeries. It is indeed intriguing that P.W. 1 has nowhere deposed that on comparison of any specimen writings he has been able to give any opinion that the signatures of Ishwari Devi on Exhibit P.I had been made by Amar Nath. Why did the courts below not take this aspect into consideration? The prosecution omitted to lead any expert evidence to establish that the signatures of Ishwari Devi on Exhibit P.I had been made by the petitioner. As to the body-writing the statement of P.W. 1 cannot be categorised as being any the better in respect of P. 2. than what it is in respect of P.I. It is very unsafe to rely on evidence regarding pen lifts, pen pressures and the movements of certain fingers, the wrist and the rest. The expert evidence in every case must receive conclusive corroboration from circumstantial evidence. Wherever the evidence combined unerringly points in the direction of the guilt of a particular person and when it is possible to determine that he alone could have committed the forgery only then the offence defined by Section 463 of the Indian Penal Code can be held to have been proved. The accused can be punished if he falls within the meaning of: 'whoever makes'. The prosecution has, therefore, to establish that only the particular person charged with having committed forgery has committed the offence. In this case the prosecution has hopelessly failed to do so.

14. The courts below have relied upon the deposition of P.W. 3 and have believed him in respect of the admissions allegedly made by Amar Nath. The particular portion of his deposition has been reproduced in an earlier part. When cross-examined regarding those admissions, P.W. 3 stated: -

When I produced the cheque book to the police, I had told the police that the same had been given to me by the accused. My statement was recorded by the police and I had told that the accused had given me the cheque-book. My statement was recorded on 2/3 occasions by different investigating officers. I do not know their

names. I do not know if any Roshan Lai Sub-Inspector recorded my statement. I do not remember if the police recorded my statement on 26th June, 1965. It is wrong that I had not informed the police that the cheque book was given to me by the accused. I had informed the police that the accused admitted before me that he had used the cheques in question. It is wrong that no such statement was made by me before the police.

15. The learned Counsel for the accused wanted to contradict the witness by his statement made before the police as recorded Under Section 161 of the Code of Criminal Procedure and furnished to the accused petitioner Under Section 173 thereof. The question was disallowed. Section 162 of the Code of Criminal Procedure, interpreting which the question was disallowed, is:

162. Statements to police not to be signed; use of such statements in evidence. (1) No statement made by any person to a police officer in the course of an investigation under this chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly provided may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872, and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

It is urged on behalf of the State that the cross-examination for establishing the contradiction was rightly disallowed because the provision has a legislative limitation contained in it inasmuch as the contradiction can only be established in the manner provided by Section 145 of the Indian Evidence Act. I am clearly of the view that where a court is to disallow a question on the basis that the accused or the prosecution cannot be allowed to cross-examine on account of the limitation

contained in the afrecited proviso, the court must record as speaking order if the court is of the view that the question pertains to an omission. It would not be sufficient merely to express that the objection on behalf of either of the parties was being upheld.

16. A scrutiny of the statement of P.W. 3 discloses that the trial court was of necessity faced with a situation where there being an omission in the statement recorded Under Section 161 the question had to be disallowed. No version having been given by P.W. 3 regarding the production of the cheque book by Amar Nath and the alleged admissions by him, the trial court was faced with a situation where there was no statement Under Section 161 by which the witness could have been contradicted. Admissions, so allegedly made to P.W. 3, could not have been utilised to conclude that the petitioner had ever forged the writings in Exhibits P.I and P. 2 or deposited the cheques, the benefit whereof was to go to P. Ws. 10 and 19. In any case, no amount had been given to the petitioner for the payment covered by Exhibit P.I. The embellishment made by P.W. 3 in his statement in court is unforgivable prevarication. It remains very doubtful if the body writing in Exhibit P.I or the signatures of Ishwari Devi on it at point Q. 1 were made by the petitioner.

17. The prosecution having failed-to prove any case against the petitioner, he was wrongly convicted. All the convictions are set aside. The petitioner is hereby acquitted.

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