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Court : Rajasthan

Decided On : Apr-18-1952

Reported in : AIR1953Raj117

Judge : Wanchoo, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 154 and 342; Indian Penal Code (IPC), 1860 - Sections 405; Evidence Act, 1872 - Sections 167

Appeal No. : Criminal Revn. No. 296 of 1951

Appellant : Jago

Respondent : The State

Advocate for Def. : Sumerdan, Public Prosecutor

Advocate for Pet/Ap. : Kishen Mal, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Wanchoo, J.

1. This is a revision by Jago against his conviction under Section 406, Penal Code. The applicant was convicted by the Sub-divisional Magistrate of Nohar and his

appeal was dismissed by the Sessions Judge of Ganganagar. Hence this revision.

2. The prosecution story was briefly this. One Purkha Jat was approached by one Gyana Jat in village Dhanasar and asked him if he wanted to purchase opium. Purkha agreed to purchase ten seers of opium at Rs. 250 per seer. Gyana thereupon wanted Purkha to pay up the whole price in advance. Purkha refused to do so and gave only Rs. 100 as advance. It was settled that the opium would be delivered after ten days and thereupon the balance of the price would be paid. When the period was over, Purkha wanted Gyana to deliver opium. But Gyana said that he could not do so unless he was paid the entire price in advance. Purkha was not prepared to trust Gyana with such a large amount but agreed that he would deposit the balance with some reliable person. Gyana suggested that the amount might be deposited with Jago applicant of village Hardaswali as he was a reliable man. Consequently, Purkha along with Arjan, Gyana and Jaso went to Jago and Purkha delivered currency notes of the value of Rs. 2,400 to Jago. It was agreed that in case Gyana and Jaso failed to deliver the opium to Purkha, Jago will return the money to Purkha. Jago agreed to this and it was settled that the opium would be delivered after five days.

When that period was over, Gyana took Purkha and Arjan to his house and began to weigh the opium in the dark. Purkha wanted, however, to see the opium and Gyana agreed with difficulty to light a lamp. Purkha then noticed that the thing which was being supplied was not opium but 'rasaut' and he declined to take it and wanted his money back. Gyana then told him that he should get the money from Jago. Purkha then went in search of Jago along with Arjan, Gyana and Jaso. They did not find Jago at home but met him at Kanasar. Jago told them that he was going on some business and would repay the money after a week. Thereafter Purkha asked Jago several times to return the money but Jago put off payment on some excuse or the other. Eventually, Purkha arranged a 'Panchayat' in which Jago admitted that he had received Rs. 2400 on deposit. But Jago explained that he had credited that amount towards the sum due to him from Jago and Gyana and finally refused to return the money to Purkha.

Purkha did not make a complaint immediately because he was afraid that he might be prosecuted as he could not purchase such a large quantity of opium without breaking the law. Eventually, however, he made a complaint to the Superinendent of Police, Suratgarh on 11th February 1948 against Jago. This complaint was enquired into by the police and Jago was prosecuted under Section 406 and Gyana under Section 420, Penal Code. These two, however, had absconded for some time, they were eventually arrested and the prosecution began in June 1949.

3. Gyana compounded the offence with the permission of the Court and paid Purkha the sum of Rs. 100 which he had received in advance. Jago denied having committed any offence and said that he had been implicated an account of enmity. He also denied having ever received any money from Purkha.

4. Both the Courts have found that the prosecution story mentioned above is true and has been proved by the evidence of Purkha and Arjan. There is no reason to disagree with this finding of fact of the Courts below.

The main contention of the applicant is that the complaint which was made to the Superintendent of Police in February 1948 was materially different from the story put in Court and, therefore, the Courts below should not have believed the evidence of witnesses. It is true that in the complaint made to the Superintendent of Police, the applicant Purkha said that he had deposited Rs. 2500/- with Jago for starting a joint business which was never started. He, therefore, wanted his money back but Jago refused to return it. There was no mention of the deal about opium in this complaint and the fact's, which have been given in Court, came out during the police investigation.

This complaint, therefore, differs from the story given in Court in two points, namely, (1) that the amount given in the complaint was Rs. 2500 as against Rs. 2400 deposed to in Court, and (2) that the reason for giving the amount was different. So far as the first point is concerned, it appears that Purkha put down the entire amount of Rs. 2500 as being deposited with Jago though Rs. 2400 were deposited with him and the remaining Rs. 100 had been given as advance to Gyana. This discrepancy is, however, not serious and the explanation given is

satisfactory.

As to the other discrepancy, it is undoubted that it is a serious matter. The explanation that has been given is that Purkha was afraid of admitting that he had entered into an illegal deal with Gyana and, therefore, came out with a false reason for the deposit in his complaint to the Superintendent of Police. It was only when the police investigation began that he admitted the true facts. The Sessions Judge has treated the statement made by Purkha to the police during investigation as the first report and it has been marked as Ex. P. 3. To this extent, the Sessions Judge is wrong, for, the complaint made to the Superintendent of Police which is marked Ex. P. 1 is the first report in this case. I, therefore, rule out of consideration Ex. P. 3 altogether.

But considering the circumstances, the explanation given by Purkha for his mentioning a false reason in Ex. P. 1 appears to be satisfactory. The two Courts below have accepted it and I see ho reason to differ from them in revision. The facts, therefore, as found by the Courts below are, in my opinion, correct and in view of the explanation that has been given of the wrong facts mentioned in Ex. P. 1, it must be held that Rs. 2400/-were deposited with Jago and he was to return this amount to Purkha in case Gyana could not supply ten seers of opium to Purkha.

5. The next point that has been urged is that there was no entrustment in this case and reliance has been placed on --'Kanai Lal v. The State', on the complaint of Sisir Kumar De AIR 1951 Cal 206. The question whether there was entrustment in a particular case depends mainly on the facts of each case. In the Calcutta case, a jeweller was instructed to make a gold chain and Rs. 300/- were handed over to him towards the cost of gold and the cost of making it. The jeweller did not deliver the chain, nor did he return the money and was prosecuted under Section 408, Penal Code. It was held in that case that he had not misappropriated the money because the money was not entrusted to him, but became his as soon as it was paid to him as advance for making the gold chain.

The facts in the present case are, however, different. The evidence shows that the money was not paid to Jago as advance price of opium. The opium was to be

supplied by Gyana and the sum of Rs. 100 was paid to him as advance price. The remaining sum of Rs. 2400 was kept in trust with Jago and it was to be paid to Gyana in case he supplied the opium and it was to be returned to Purkha in case the opium was not supplied. Jago was not the person who was going to supply the opium. He was merely a reliable man with whom the money was kept till the opium was supplied. Under these circumstances, the Calcutta case has no application and there was clearly an entrustment of the money to Jago.

Before I leave this matter, I should like to say, with all respect, that I find it difficult to agree with the reasoning in the Calcutta case fully. Suppose, the jeweller in that case had been given three tolas of gold instead of Rs. 300 and been asked to make the chain. The gold would clearly have been entrusted to him. It is rather difficult to see what difference it makes if the customer instead of giving gold paid the price of gold and asked the jeweller to make the chain. However, the facts in the present case being different, it is not necessary to pursue the matter further.

6. The next point that has been urged is that the prosecution has failed to prove misappropriation or conversion of the money to his own use by Jago. Section 405, Penal Code which defines 'criminal breach of trust' says that whoever being in any manner entrusted with property dishonestly misappropriates or converts to his own use that property commits 'criminal breach of trust'.

In this case, it has been proved that Rs. 2400/-were entrusted to the applicant and it was settled that if Gyana supplied the opium, the money would be paid to Gyana and that if Gyana did not supply the opium, the money would be returned to Purkha. It has also been proved that Gyana did not supply the opium. The evidence further is that Gyana himself went with' Purkha and asked Jago to return the money. Jago is said to have put off payment for sometime and eventually denied having received the money at all. His statement in the Magistrate's Court was that Purkha never entrusted the sum of Rs. 2400/-to him. It is true that the prosecution has not proved what Jago did with the money. But, in the nature of things, it was not possible for the prosecution to prove how Jago had actually used the money. It is well settled that once it has been proved that the money was entrusted to a person, the burden shifts on him to show what he did with the

money, and if he completely denies having received the money, the presumption is that he misappropriated it or converted it to his own use. If that was not so, there is no reason why such a person should not admit that he had received the money and account for it. Learned counsel for the applicant relies on --'Rex v. V. Krishnan', AIR 1940 Mad 329. That was, however, a case of principal and agent and it was held that even when an agent had no claim against the principal, and retained the money received on behalf of the principal but did not do anything else with it, there was no criminal breach of trust. In that case, however, the accused had admitted the receipt of the money and the question then arose whether his dealing with it after the receipt amounted to criminal breach of trust. It was in those circumstances that it was said that it was the duty of the prosecution to prove the guilt of the accused. But where, as in this case, the accused denies ever having received the money, the presumption is clear, if the entrustment is proved, that the money has been misappropriated.

I may in this connection refer to --'Emperor v. Chaturbhuj Narain', 15 Pat 108. That was a case under Section 409, Penal Code. The accused was an agent of Maharajadhiraj of Darbhanga & was charged with committing criminal breach of trust of certain monies which he had received for his master. It was observed in that case that,

'it was not necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused because under the law even temporary retention is an offence provided that it is dishonest. The essential thing to be proved in such cases is whether the accused was actuated by dishonest intention or not. The failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. The mental act or intent to deprive the master of his property is the gist of the offence of criminal breach of trust.'

Where, therefore, the accused completely denies having received the money and it is proved that the money was received by him, that is the strongest possible circumstance to show that the accused has misappropriated the money or

converted it to his own use. I have no doubt, therefore, that the applicant in this case has misappropriated the money or converted it to his own use.

7. The last point that has been urged is that the Courts below have relied on an extra-judicial confession supposed to have been made by the applicant before the 'Panchayat' and on certain 'bahies' though no question was put to the applicant with respect to these matters and he was not asked to explain those circumstances appearing against him as should have been done under Section 342, Criminal P. C. Reliance in this connection has been placed on --'Abdul Kadir v. The State', 1951 RLW 457.

In that case it was held that

'it was of utmost necessity that any circumstance which, in the opinion of the court, might go against the accused if unexplained, should be clearly placed before the accused in his examination under Section 342. If the attention of the accused is not focussed on such circumstance by way of question under Section 342, advantage cannot be taken of it against the accused in recording his conviction.'

There is no doubt that the attention of the accused should have been drawn to these circumstances appearing against him and he should have been questioned with respect to them. But the result of failure to do so is that advantage cannot be taken of these circumstances against him. In this case, however, if one leaves the extra-judicial confession and the 'bahies' out of consideration, there is sufficient evidence in the statements of Purkha and Arjan in particular to prove the case against the applicant to the hilt. Under these circumstances, there is no necessity for a retrial. (8) There is no force, therefore, in this revision and it is hereby dismissed.