

## SUPREME COURT OF INDIA

Narayan Tewary

Vs.

State of W.B.

Crl.A.No.48 of 1953

(N. H. Bhagwati, B. Jagannadhadas and T. L. Venkatarama Ayyar, JJ.)

13.01.1954

### JUDGEMENT

#### **VENKATARAMA AYYAR, J.:**

1. This is an appeal by special leave against the order of the High Court of Calcutta in Criminal Revision Case No. 36 of 1952 affirming the conviction of the appellant by Additional Presidency Magistrate, Calcutta, under Section 406, Indian Penal Code.

2. The case of the prosecution was that Ram Kishore Misra, the owner of the jewels and saris in question, was a native of village Nawhi in Uttar Pradesh and that he was also carrying on business in Calcutta.

The appellant and the second accused Prayag Dutt Dubey, who were also natives of the same village, saw Ram Kishore Misra, who was then in his village on the 18th June 1951 and represented to him that they were going to Puri and on their way back intended to stay in Calcutta for two or three days and asked for a letter of introduction to his brother-in-law, Bal Krishna Bajpai, who was in Calcutta, to accommodate them in his house and help them in sightseeing.

Ram Kishore Misra then gave the letter which is marked as Exhibit I. Therein he also instructed his brother-in-law to obtain a return of certain jewels deposited by him for safe custody with the firm of Ramjidas Jagannath and send them on to him through the appellant, as they were required in connection with a marriage in his house.

The appellant and Prayag Dutt Dubey went to Bal Krishna Bajpai at Calcutta on 21st June 1951 and stayed with him for two or three days. Bal Krishna Bajpai got a return of the jewels from Ramjidas Jagannath and handed them over to the appellant on 23rd June 1951 to be delivered to Ram Kishore Misra at Nawhi. The appellant took the jewels and saris but did not return them to Ram Kishore Misra.

It is on these allegations that Bal Krishna Bajpai filed the present complaint charging both the appellant and Prayag Dutt Dubey with criminal breach of trust.

On this complaint the Magistrate ordered a search, and it was carried out by P. W. 5. While nothing was found in the house of the appellant, among the articles recovered in the house of the second accused there were a ring and a pair a silver chel churi which are claimed to have been among the

articles entrusted to the appellant on the 23rd June 1951.

3. At the trial apart from the evidence of Bal Krishna Bajpai, P. W. 1, and Ram Kishore Misra, P. W. 2, there was in support of the prosecution case the evidence of the cashier of the firm of Ramjidas Jagannath, P. W. 3, who deposed to the deposit of jewels with the firm, the return thereof to P. W.1 on 23rd June 1951 and the entrustment thereof by P. W. 1 to the appellant the same day. P. W. 4 is another witness who speaks to his having been present at the entrustment to the appellant.

4. In his statement the appellant denied the genuineness of Ex. I. He also denied that he went to Calcutta or that he received the jewels and saris in question. He pleaded that there was faction in the village and that the complaint was the result of enmity. Three witnesses were examined for the defence to prove faction and also to establish that the silver chel churi belonged to the second accused. The learned Magistrate held, on a consideration of the entire evidence that the entrustment had been proved and convicted both the accused under Section 406 of the Indian Penal Code.

5. Against this conviction both the accused preferred a revision to High Court, Calcutta, Criminal Revision Case No. 36 of 1952, which was heard by Chakravarti and Sinha.JJ., who, by their order dated the 8th January 1952, dismissed the same as against the appellant but admitted it as regards the second accused on a ground which was permitted to be taken at the hearing, namely, that the evidence of P. W. 3 showed that the entrustment was only with the appellant and not with the second accused and that the latter could be convicted not under Section 406 but for abetment under Section 406 read with Section 114.

The appellant and the second accused filed an application for review of this order on the ground that the Magistrate had failed to refer to Ex. A which showed that there was faction in the village and that further it was

"clear from the order sheet that the petitioner Sree Narayan was present at Bari Maitan on the 19th June 1951 and as such it was not at all possible for him to reach Puri from there and then to come to Calcutta on 21st June 1951."

This ground, however, is based on a mistake. Ex. A shows that the appellant was at Bari Maitan on 12th June 1951, that the case was on that day adjourned to 26th June 1951 on which date the appellant was present at that place. Thus there was sufficient interval of time for the appellant for going to Calcutta and receiving the articles. By their order dated 5th February 1952, the learned Judges of the Calcutta High Court rejected the application for review. The appellant thereafter preferred the present appeal under Article 136(1) of the Constitution.

6. On behalf of the appellant it was contended that the learned Judges of the High Court, Calcutta, had not given any reasons for dismissing the revision application and that they had not recorded any findings on the several matters which arose for consideration, that there was a material discrepancy between the description of the chel churi in the complaint and in the search list, that there was on proper proof of the search, that the complaint was the result of a faction in the village and that the prosecution evidence was interested and unreliable.

There is no substance in any of these contentions. The search is proved by the Sub-Inspector of Police, P.W.5. It is true that the complaint describes the silver chel churi as weighing 10 bharis and the search list shows that it weighs 20 tolas. But no questions were put to the witness with reference to this matter and it is impossible to say that there is any real discrepancy. Nor is there any force in

the contention that the judgment of the High Court does not record findings. The point for determination was one of fact which depended largely on appreciation of oral evidence. The learned trial Magistrate had dealt with the matter fully. He held that Ex. I, the letter of introduction, was genuine. He found that two of the articles recovered in the house of the second accused belonged to Ram Kishore Misra. He considered that the evidence was not sufficient to establish that Ram Kishore Misra belonged to an opposite faction. On the other hand, he was impressed by the evidence of P.Ws.3 and 4. He also commented on the fact that the accused pleaded that the deposit of the jewels with the firm of Ramjidas Jagannath was not true and summoned Jagannath Prasad, the proprietor of the firm, to give evidence on their side but gave him up. He was satisfied on the evidence that case of the prosecution had been established. The High Court quite rightly declined to interfere in revision with that finding. Even in this Court the argument of the appellant turned on what is essentially a matter of appreciation of oral evidence. Under the circumstances the order of the High Court cannot be said to be erroneous. There are no grounds for interference and this appeal will stand dismissed.

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