

Madan Mohan Lal

Vs

State of Punjab

Criminal Appeal No. 205 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

01.04.1970

JUDGMENT

SHELAT, J. -

1. In July-August, 1963, the appellant, one Kamal Dev and Danesh Kumar, the two other original accused before the additional Sessions Judge, Ferozepur, were working in different capacities in the Treasury in Ferozepur Cantonment. The appellant was the dealing clerk and amongst his other duties he had to scrutinise and pass contingent pay bills of the Central Jail at Ferozepur presented at the Treasury.

2. On July 18, 1963, Roshanlal (P.W. 19), the accountant in the said jail, prepared a contingent bill (Ex. PB), for Rs. 8,273.19p. The drawing authority being the Superintendent of the Jail, the bills as placed before the Superintendent, Teja Singh (P.W. 18), for his signatures. The bill required an endorsement in the nature of a certificate by him, but as similar bills had in the past been objected to by the Treasury on the ground that the certificates therein were not properly worded. Teja Singh left the column blank and signed the bill leaving it to the appropriate clerk in the Treasury, who happened to be the appellant, to fill it in. He also left blank the space where the person carrying the bill, first to the Treasury and then to the State Bank, would sign as the person to whom payment was to be made. On July 19, 1963, Naunit Rai (P.W. 11), the accounts clerk in the jail, took the bill to the Treasury and approached the appellant so that the appellant may fill in the certificate on the bill over the signature of Teja Singh in suitable language. The appellant directed him to go first to Darbara Singh (P.W. 15), who was the token clerk, saying that the bill would come to him in routine and he would then fill in the certificate. Naunit Rai, therefore, handed over the bill to Darbara Singh and obtained a token in acknowledgment of his having handed over the bill in the Treasury. Naunit Rai then returned to the Jail with the token.

3. It was not in dispute that at the time the two blanks where the certificate and the endorsement, Exts. PB/1 and PB/3, would be filled in, were blank. Nor was it in dispute that the signatures purporting to be of one Ram Nath and the words "received payment" were not yet written on that bill. According to the procedure followed in the jail, it would be the person receiving the money under the bill who would pass such receipt in the bill and affix his signatures thereto.

4. On July 20, 1963, Makhu Ram (P.W. 13), the selection warder, went to the Treasury to collect the bill in exchange for the token and cash it in the bank. He was told that the bill could not be traced and that efforts were being made to find it. The Jail authorities sent Makhu Ram on several successive days but on each day he was told in the Treasury that the bill had not yet been found. On August 6, 1963, the Deputy Superintendent of the Jail, B. D. Soni, personally went there when he

learnt that the bill had been presented to the bank on July 20, 1963 and encashed.

5. On the matter being handed over to and investigated by the police, the appellant, the said Kamal Dev, Danesh Kumar and one Ram Lubhaya, an agent in the life Insurance Corporation, were arrested on charges under Sections 409, 467, 471 and 411 of the Penal Code. The said Ram Lubhaya, on agreeing to make a full and true disclosure, was given a conditional pardon and made an approver. During the course of the investigation, the bill Ex. PB, which in due course would be returned by the bank to the Treasury after payment and would therefore be in the Treasury was seized from the possession of accused Kamal Dev together with Government currency notes of Rs. 2,500/-. Similarly, Government currency notes of Rs. 2,000/- were produced by the appellant from among waste papers lying in the store room of which he was in charge. The appellant and the two clerks were charged as aforesaid on the basis of this evidence and brought to trial in the Court of the additional Sessions Judge.

6. The evidence on which the prosecution relied on the Trial Court comprised of the evidence of the approver who narrated how the appellant wrote out the certificate and the endorsement in the bill over the signature of Teja Singh, how the signature of the Treasury Officer was obtained thereon, how the signatures purporting to be those of Ram Nath and the receipt for payment were written out by the approver and how finally the bill was taken by them to the bank and payment received. The evidence of the approver thus clearly showed that all the four of them were involved in the fabrication of the bill, in receiving the money thereunder by using that document as genuine knowing it to be forged, the receipt of the money by them and its division between them. That evidence was sought to be corroborated by the evidence of the handwriting expert and the recoveries or seizures made by the police to the instance of one or the other of the accused. The Trial Court considered the approver's evidences reliable and finding also that it was sufficiently corroborated by other satisfactory evidence convicted and sentenced the three of them. On appeals filed by all the three, the High Court found the conviction and sentence justified by the evidence on record and accordingly dismissed their appeals. The appellant thereupon obtained special leave from this Court and that is how this appeal has come up before us for disposal.

7. The contention urged before us was that on May 14, 1965, when the approver was being cross-examined by the appellant's counsel in the Trial Court, a question was put to him to the effect that he had not mentioned in his statement before the police, dated August 10, 1963, the name of the appellant and Danesh Kumar. The question was put with the object of bringing that omission on record and to show that the approver had made an improvement in his version with view to falsely involve the appellant and Danesh Kumar and thus render his evidence uncreditworthy. But the Trial Judge disallowed that question presumably relying on the decision in *Tahsildar Singh v. State of Uttar Pradesh*, (1959) Supp 2 SCR 875 at p. 903 : (AIR 1959 SC 1012 at p. 1026) that a mere omission in the police statement would not constitute a contradiction, and therefore, observed that "a contradiction means two contradictions" and "a contradiction crops up when there is conflict in two statements". The argument was that the Trial Judge was in error in disallowing the omission to be brought on record, which if allowed, would have rendered the approver's evidence unreliable. Assuming that the Trial Judge was in error and the omission had been brought out, considering the facts and circumstances proved in this case the result, in our opinion would not be that which is contended for.

8. We may mention that the alleged error on the part of the Trial Judge was not relied on before the High Court. There was also nothing to show that the approver in his statement before the Magistrate, who passed the order granting him pardon, had not mentioned the names of the

appellant and the said Danesh Kumar and had not referred to the roles played by them as deposed to by him in the Trial Court. It was possibly because no such omission was found in his statement before the Magistrate that the refusal by the Trial Judge to bring on record the omission in the police statement was not relied on in the High Court. It may be that when the approver gave his police statement he did not know that he would be granted pardon and possibly for that reason had not come out with all the facts known to him and he did so while he was making his statement before the magistrate as he knew by then that he would be tendered pardon on condition that he would disclose all the facts known to him. The omission in the police statement, therefore, by itself would not necessarily have rendered his evidence unreliable. In considering whether the approver's evidence passed the test of reliability, the Court would have to consider whether taken as a whole and in the light of the facts and circumstances of the case it was a credible version or not. Taking all the facts and circumstances of the case proved before the Trial Court, we think that despite the said omission, the approver's version was credible.

9. But, quite apart from that consideration, there is, in our judgment, over and above the evidence of the approver, there is sufficient material on record, by way of circumstantial evidence, to justify the conviction of the appellant.

10. There is no dispute that (a) the bill, Ex. PB, was prepared in the jail on July 19, 1963 and sent to the Treasury for its being passed before it could be presented for encashment in the bank; (b) the bill was encashed by some one on July 20, 1963, in the bank and Rupees 8,273.80 p. were paid to a person calling himself Ram Nath; (c) Ram Nath was a fictitious person and no such person was in the employ either of the jail or the Treasury; (d) the bill had come to the appellant after it had been handed over to the token clerk who had issued the token to Naunit Rai; and (e) the appellant had admittedly written on it the certificate, Ex. PB/1. All these things took place in accordance with the practice followed in the Treasury. The question then would be : how did the Bill fall into the hands of the person calling himself Ram Nath and who encashed it in the bank ? As a necessary corollary, the next question would be : how did the bill, after it had been returned by the bank to the Treasury on July 22, 1963, come into the possession of Danesh Kumar who produced it from his possession before the police ?

11. These questions can be answered from the evidence as to the practice followed in the Treasury in relation to such bills, the evidence of the employees there who had dealt with the bill at one stage or the other and the conduct of the appellant as disclosed in the evidence.

12. According to Avtar Singh (P.W. 21), the Treasury Officer, the practice followed in the Treasury was as follows : (a) such a bill would be first presented to the token clerk, i.e., wit. Darbara Singh, who would accept it and issue a token to the person presenting it, in this case wit. Naunit Rai; (b) the token clerk would then pass the bill on to the dealing clerk, i.e., the appellant; (c) the appellant, after scrutinising the bill, would pass it on to the Assistant Superintendent, wit., Ramjidas; (d) the Assistant Superintendent then would pass it on to the Treasury Officer, Avtar Singh; (e) the Treasury Officer then would affix his signature and then pass it on back to the Assistant Superintendent who in his turn would pass it on to the appellant and from the appellant it would go to the token clerk, who would hand over the bill, after it had been passed as aforesaid, to the person who produces the token given earlier.

13. The fact that Darbara Singh had given the token in acknowledgment of its having been tendered to him coupled with the fact of the certificate, Ex. PB/1, having been endorsed on it and the passing of the bill by Ramjidas and by Avtar Singh clearly show that the bill had gone through all the

onward stages described by Avatar Singh. From the practice, as deposed to by the Treasury Officer and the Assistant Superintendent, it is clear that the bill would come back to the dealing clerk, the appellant, for him to pass it on to the token clerk, Darbara Singh. But Darbara Singh's evidence was that he did not receive the bill from the appellant for the purpose of handing it over to the person who would come from the jail with the token. According to him, about 2 or 3 days later when a person from the jail came to him and inquired about the bill, he told him that he had not received it from the appellant after it had been passed and therefore directed him to the appellant. In this respect, he was corroborated by Makhu Ram (P.W. 13) who had been sent by the jail authorities to collect the bill from the Treasury. According to Makhu Ram, he went to Darbara Singh on July 20, 1963, when Darbara Singh directed him to the appellant saying that the bill was still with the appellant. Thereupon he went to the appellant who told him that he was busy with pending bills, that the bill had not yet reached him and that as soon as it came to him he would do the needful. Makhu Ram again went to the appellant on July 22, 1963, when the appellant gave him the same answer assuring him that he would do the needful as soon as the bill came to him. The witness again went to the appellant on July 23 and 24 and as he got the same reply on those days also he complained to the Deputy Superintendent of the Jail that the appellant was delaying the bill and not giving it to him.

14. According to Jagannath (P.W. 16) the incorporation clerk in the Treasury, the bill had come back to him on July 22, 1963, from the bank as the practice was that the bank would return such bills to the Treasury after they had been encashed and paid by the bank. Evidently no one in the Treasury thought that the bill had been handed over to any one so that it could be encashed by such a person. Therefore, no one appears to have inquired from Jagannath whether it had come back to him from the bank. Every one concerned believed that the bill was still lying with the appellant after it had come back to him from Avatar Singh. That is clear from the evidence of Ramjidas, the Assistant Superintendent who stated that about a day or two after July 20, 1963, when an employee from the Jail, presumably Makhu Ram came to him inquiring about the bill he called the appellant and the appellant informed him that there was rush of work with him, and therefore, he had not been able to pass the bill. There can, therefore, be no doubt that the appellant was telling every one concerned that the bill was lying with him and that as he was busy with the old bills he had not yet dealt with and pass the bill.

15. When, despite Makhu Ram's repeated visits to the Treasury for the bill, it was not given to him, Teja Singh personally inquired about it on July 25, 1963. On July 27, 1963, he sent the Assistant Superintendent of the Jail to the Treasury to inquire about the bill. The evidence of Avtar Singh, the Treasury Officer, shows that thereupon he called Ramjidas, the Assistant Superintendent, and told him that he should see that the bill was passed by the appellant. This part of the evidence again shows that every one in the Treasury was till July 27, 1963, under the impression that the bill was still lying with the appellant and he had been delaying it and had not yet passed it.

16. When it ultimately became known that the bill had been presented to the bank and encashed by some one but the Jail authorities had not received the money under it, enquiries were set up in the Treasury. On August 7, 1963, Avatar Singh by his order Ex. PY called upon the appellant, with whom the said bill was believed to be lying, to explain to whom he had handed over the bill. The reply of the appellant, Ex. PY/1, dated August 9, 1963, was significant, for, he then stated that the bill "was never checked and passed for payment by me" and that the officers in the Treasury, contrary to the practice, were "in (the habit of passing the bills direct without getting the same checked and signed by me - ". He added : "under the circumstances - the bills as never passed by me nor handed over to nay other person". According to this explanation, therefore, Darbra Singh had

not handed over the bill to the appellant nor had the appellant death with it or passed it on to the Assistant Superintendent and then to the Treasury Officer. This explanation was obviously false because the bill itself shows the appellant's endorsement and certificate on it which means that he had passed it before it went to Avatar Singh who on the faith of the appellant's certificate passed it for payment. There is no reason to disbelieve Avatar Singh that after he had signed the bill it went, according to the practice, to the appellant through the Assistant superintendent, Ramjidas.

17. An enquiry similar to the one made from the appellant was also made from Darbara Singh, who reported on August 9, 1963, that he had passed on the bill to the appellant and that thereafter it had not come back to him as it should on this return journey. These facts clearly show that after Avatar Singh had signed the bill, the bill went back to the appellant on its return journey to be passed on to Darbara Singh but that the appellant did not pass it on pretending all the time that it was lying pending with him.

18. When, however, he realised that it had become known that the bill had been encashed, he changed his front, thinking that the bill would not be found out and therefore his endorsement on it showing that he had death with it would not be discovered. In that belief he came out with the false allegation that the bill had been directly passed without its having been sent to him for checking or for his certificate.

19. But having realised that the bill, Ex. PB, had been recovered by the police and produced in the Court, he took up a third stand in his statement under Section 342 of the Criminal Procedure Code inconsistent with the stands so far taken up by him. He now admitted that the bill had been sent to him by Darbara Singh and that he had written thereon the payment order but he denied the next step in the prosecution case that it had again come back to him after it had been passed by the Assistant Superintendent and signed by the Treasury Officer. That denial was not accepted by the Trial Court and the High Court and in our view rightly as the evidence of both these officers clearly was that after they had passed the bill it would go back to the appellant in the normal course for him to return to Darbara Singh who would hand it over to the person who surrendered the token earlier given to him.

20. The three contradictory stands taken by the appellant at three different stages indicate that it was he who had been responsible for the bill having gone to the approver on its coming to him after it had been passed by Avatar Singh instead of its being passed on to Darbara Singh. The bill could not have got into the hands of the approver and the other accused except throughout and with the active assistance of the appellant. It cannot, therefore, be gain-said that the appellant was actively involved with the approver and the other accused in the bill going into their hands, their having dishonestly encashed it at the bank and its proceeds misappropriated.

21. As earlier stated, the bill had been returned by the bank to the Treasury after it had been encashed. It had, in accordance with the practice followed at the Treasury and the bank, gone to the clerk Jagannath, from whom, if an inquiry had been at once, made, could have been traced. Such an enquiry was evidently not made because, on account of the false statements made by the appellant to every one concerned, all believed that it was still lying pending with the appellant and had not gone out of the Treasury and encashed. But for those false statements which hoodwinked every one, the first enquiry would have been made with the bank and the bank would have disclosed that the bill had been encashed by some one calling himself Ram Nath and returned as usual to the Treasury, and thereupon Jagannath, would have been the person from whom the bill could have been recovered. That, as we have said, was not done because the appellant by his false statements to Makhu Ram

and others that the bill was still pending with him and had not yet been passed by him had kept every one under an apprehension that the bill was still in the Treasury and had not yet gone out of it for being encashed.

22. Besides the evidence of the approver, there was thus the evidence as to the conduct of the appellant which directly connected him with the conspiracy for fabrication of the bill and its dishonest encashment. That link was further strengthened by the evidence that in July-August, 1963, he was in charge of the store room from which he had produced before the police Government currency notes of Rs. 2,000, presumably his share out of the booty, hidden amongst the waste papers lying in that store room. The pivotal position occupied by him as the dealing clerk, his subsequent conduct in knowingly making false and contradictory statements and thereby creating a false belief that the bill was still with him, his attempts to throw the blame on his other colleagues, and lastly, production by him of the notes of Rs. 2,000, all cumulatively condemn him not only as one of the conspirators but also as an indispensable participator in the successful misappropriation of the moneys.

23. Therefore, even if we were to accept the contention that the Trial Court was in error in not permitting the omission in the statement made by the approver before the police to be brought on record, such an omission at best could have been used for challenging the veracity of the approver's evidence. But there was enough evidence to corroborate the approver's version relating to the appellant. The Trial Court and the High Court, therefore could not be said to have committed any error in relying on the approver's evidence for convicting the appellant.

24. In over view, the appellant was rightly convicted and we find no reason, therefore, to interfere with the order of conviction and sentence passed against him. The appeal, therefore, must be dismissed and we accordingly order it to be so dismissed.

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