

Bali Ram Prasad

Vs

State of Mysore

Criminal Appeal No. 86 of 1969

(P. Jagmohan Reddy, H. R. Khanna JJ)

04.02.1972

JUDGMENT

KHANNA, J.

1. Bali Ram Prasad was convicted by Magistrate 1st Class Shorapur under Section 409, Indian Penal Code and was sentenced to undergo simple imprisonment for a period of 90 days and to pay a fine of Rs. 100/- or in default, to undergo simple imprisonment for a further period of one month. On appeal the Sessions Judge Gulbarga maintained the conviction of the accused but reduced the sentence of imprisonment to the period already undergone. The sentence of fine and of imprisonment in default was maintained. Revision filed by the accused was dismissed by the High Court of Mysore. Bali Ram Prasad has now come up in appeal to this Court by special leave.

2. The prosecution cases is that during the years 1959 and 1960, the accused was posted as Revenue Inspector in Shorapur Tehsil in Gulbarga District. Some amount was due from Bhimsha, excise contractor and in that connection, Rs. 946/- were paid by Bhimsha to the accused on January 22, 1959, as per receipts P-2, P-3 and P-4 for Rs. 730/-, Rs. 106/- and Rs. 110/- respectively. The accused deposited Rs. 810/- out of the amount realised from Bhimsha on January 27, 1959, in the treasury and failed to deposit the balance. Rs. 136/- were thus misappropriated by the accused. Subsequently, it was brought to the notice of Advl Rao (P. W. 1) who was successor of the accused, that Rs. 946/- had been paid to the accused by Bimsha. Advl Rao reported the matter to the higher authorities. Inquiry was thereafter started against the accused. After the commencement of the inquiry Rs. 130/- were deposited in the treasury by Laxman Prasad (D.W.), brother of the accused, on November 9, 1960. Rs. 6/- were also deposited, but the date of deposit is not clear on the record.

3. The accused in his statement under Section 342, Code of Criminal Procedure denied all the prosecution allegations. In defence Laxman Prasad, brother of the accused, was examined as witness. According to Laxman Prasad, he did not deposit Rs. 130/- in the treasury on November 9, 1960.

4. The courts below accepted the prosecution case that the accused had received Rs. 946/- from Bhimsha on January 22, 1959, as per receipts P-2, P-3 and P-4 for Rs. 730/-, Rs. 106/- and Rs. 110/- respectively. It was also found that out of the amount realised by the accused in his capacity as Revenue Inspector, he had deposited a sum of Rs. 810/- only on January 27, 1959. The accused was, thus, found to have misappropriated the balance amount of Rs. 136/-. The deposit of that amount after the commencement of the inquiry, it was held, did not exculpate the accused.

5. We have heard Mr. Tawakley on behalf of the accused appellant and are of the opinion that there

is no merit in the appeal. According to Mr. Tawakley, the accused received Rs. 810/- only on January 22, 1959, from Bhimsha and issued receipt for Rs. 946/- on the representation of Bhimsha that the balance would be paid to the accused subsequently. It is submitted that whatever amount had been realised by the accused from Bhimsha was deposited by him in the treasury and as such there was no criminal misappropriation by him. We find it difficult to accept this contention. The accused admittedly issued receipts P-2, P-3 and P-4 for Rs. 730/-, Rs. 106/- and Rs. 110/- in favour of Bhimsha on January 22, 1959. If the accused had, in fact, received an amount of Rs. 810/- only and not Rs.946/-, this fact would have been mentioned by him in the forefront of his statement under Section 342, Code of Criminal Procedure. The accused, however, made not even the slightest suggestion to that effect in his statement under Section 342, Code of Criminal Procedure. On the contrary, his plea was denial simpliciter.

6. Argument has then been advanced on behalf of the accused appellant that Bhimsha, who was not examined as a witness on the ground of being dead, was alive during the trial of the case in the court of the learned magistrate and that he died subsequently on July 18, 1967. This stand has been controverted by the respondent. No argument was also advanced before the High Court that Bhimsha was alive at the time of the trial. In our opinion, the date of the death of Bhimsha would not materially affect the guilt of the accused. The case depends upon documentary evidence and if for some reason Bhimsha was not examined as a witness, that fact would not introduce an infirmity in the prosecution case. As mentioned earlier, the accused had issued receipts for Rs. 946/-. The explanation furnished by him that he had received Rs. 810/- only even though he had issued the receipts for Rs. 946/- is not at all convincing. The accused was a Revenue Inspector and it is most difficult to believe that he would issue receipts for Rs. 946/- even though he actually received an amount of Rs. 810/-. In any case, the failure of the accused to mention this fact in his statement under Section 342, Code of Criminal Procedure, would go to show that the above plea is the result of an afterthought.

7. Apart from the above, we find that the dishonest intention of the accused is also clear from the fact that in his personal diary, he showed a realisation of Rs. 700/- on January 23, 1959, and Rs. 110/- on January 24, 1959, even though earlier he had issued receipts for Rs. 946/- in favour of Bhimsha. The suggestion which was made in cross-examination on behalf of the accused to Manik Rao Deputy Tehsildar (P.W. 2) was to the effect that the amount realised by the accused had been paid to the witness. The witness denied the suggestion and it subsequently transpired that the amount had, in fact, not been paid to Manik Rao and that Rs. 810/- only were deposited in the treasury by the accused.

8. The appeal consequently fails and is dismissed.

</html