

Surendra Prasad Verma

Vs

State of Bihar

Criminal Appeal No. 282 Of 1968

(G. K. Mitter, P. Jagmohan Reddy JJ)

25.04.1972

JUDGMENT

MITTER, J. -

1. This appeal by special leave is from a judgment of the Patna High Court accepting the State's appeal against acquittal by Sessions Judge and convicting the appellant of an offence under Section 409 of the Indian Penal Code.
2. The appellant who was the cashier and one Ramchander Lal, a lower division clerk in the Engineering School of the Government of Bihar at Purnea were prosecuted for offences of criminal conspiracy and criminal breach of trust in respect of Rs. 11,021.35 alleged to have been entrusted to them and over which they had dominion. The Engineering School was at first located in a building known as Asad Manzil in Purnea City. It was shifted from there in part to Zila school in August 1961. Even after such shifting Asad Manzil continued to be in the occupation of the school and an iron safe embedded in a wall of the office room and some old papers remained there. The cash of the school used to be kept in that iron safe, besides moneys belonging to what is described as the student's fund. The safe had a double locking system. There were two keys to the outer door both of which had to be operated to open the said door. At first one of these keys used to be with the appellant and the other used to be with the principal of the school. The cash however used to be kept in a drawer within the safe of which the key was originally in charge of Ramchander Lal. In order to enable anybody to take out any money from the safe it was necessary to have all three keys to be put into use. The evidence is that after the school shifted from Asad Manzil the Principal entrusted his key of the outer door to the appellant. The two duplicate keys of the outer door and the duplicate key of the drawer used to be kept in a sealed envelope within the drawer. The appellant had gone on leave from May 15, 1961 to June 3 or 4, 1961, during which time Ramchander Lal was in charge of the work of the cashier and had all the three keys in his possession. The documents show that at the time when he went on leave the appellant made over the keys of the outer door to Ramchander Lal. There are no corresponding documents to show that he had taken charge after coming back from leave but the facts make it abundantly clear that he had assumed such charge after he joined duty. It was he who used to maintain the cash book and was in charge of the cash. There used to be periodical verification of the contents of the safe. The evidence shows that there was one such verification on August 31, 1961. According to Arvind Kumar, an Assistant Professor who had been entrusted by the Principal to verify the actual cash in hand with the cash balance according to the register the iron chest and the drawer were opened on that date by the appellant when Ramchander Lal was not there. The verification showed that the cash and the drafts in the bank exceeding Rs. 1 lakh tallied with the amounts entered in the register. The evidence further showed that on September 30, 1961, Arvind Kumar did not verify the cash physically as he had done in August 1961. On

October 9, 1961, the appellant went to open the safe to take out some cash accompanied by Ramchander Lal. They then found that a large amount of cash was missing from the drawer. They reported the matter to the Principal and a first information report was lodged the same night, the report being written out by the Principal at the dictation of the appellant. According to the report the safe which was locked was opened by the appellant with the two outer keys. When the drawer was opened no money was found inside it and the envelope containing the duplicate keys was lying torn there having no keys inside.

3. After investigation the appellant and Ramchander Lal were committed to the Sessions Court to stand their trial. The prosecution examined eight witnesses, the important witnesses being P.W. 3, Arvind Kumar, Assistant Professor, P.W. 4, Bhagwati Saran Sinha, the Head-Clerk, P.W. 6, Brajnandan Prasad Srivastava, the Principal and P.W. 7, Salahuddin Ahmad, the investigating officer. The Sessions Judge arrived at the following findings -

- (1) The arrangement regarding the custody of the keys was that as regards the outer door one was kept by the Principal and the other by the appellant while Ramchander Lal had the custody of the key of the drawer, duplicates of all three keys being kept in the safe itself. On March 28, 1960, the Principal had made over his key to the appellant.
- (2) At the relevant time or near about, i.e. October 9, 1961, the two keys of the outer door were with the appellant Surendra Prasad Verma and the key of the drawer was with the accused Ramchander, the duplicates being in the drawer of the iron safe.
- (3) The prosecution evidence with regard to all the three keys being in the custody of the appellant at the relevant time was "below the mark".
- (4) Ordinarily both the accused persons used to be present at physical verification of cash. According to the Principal this practice was not always followed. On August 31, 1961, Prof. Arvind Kumar had done the physical verification but on September 30, 1961, he had given the certificate in the Zila school itself, i.e. he did not go to Asad Manzil.
- (5) Nobody had opened the safe between October 1, 1961, and October 8, 1961. The possibility of the loss having taken place even before September 30, 1961, could not be ruled out.
- (6) The keys of the iron safe were no doubt in the custody of the accused persons but they individually or collectively could have misappropriated the amount but in that respect it is difficult to say which one alone could have done it. The chance of someone else getting hold of the duplicate keys somehow could not be ruled out. In the result he gave the accused the benefit of doubt.

4. The High Court proceeded on the basis that even if there was no document showing that the appellant had taken charge from Ramchander Lal after coming back from leave, it was his duty to report to the Principal whether the duplicate keys were inside the safe or not at the time. The evidence of P.W. 3 Arvind Kumar established that no embezzlement or theft of the money had taken place before August 31, 1961. Under Rule 122 of the Bihar Treasury Code the whereabouts of the duplicate keys had to be ascertained whenever charge was transferred. This was followed when

the appellant had made over charge to Ramchander Lal before going on leave and there was no reason to hold the same course was not adopted when the latter made over charge to the appellant again. On October 9, 1961, the duplicate keys were found above the safe while the envelope supposed to contain them was lying torn inside the safe. The High Court relied on the statement of the Head-Clerk that when the appellant rejoined after leave in the beginning of June 1961, he took all the three keys from Ramchander Lal. The evidence on record went to show that there was very little amount in the students' fund account at the relevant time and it was the appellant who immediately before that date had to take out and keep money practically every day. Considering the evidence as a whole, the High Court took the view that when the appellant rejoined in June 1961, Ramchander Lal had made over the key of the inner drawer to the appellant. The High Court therefore concluded that it was the appellant who had custody of all three keys between August 31, 1961 and October 9, 1961, when the loss was discovered.

5. In our view the evidence makes it clear that the contents of the safe were intact on August 31, 1961, when the monthly verification by Arvind Kumar took place. At that time the appellant alone was present and consequently it must be held that he then had possession of all the three keys. At least the two keys of the outer door were with him ever since he re-joined duty in June 1961. Whether or not Ramchander Lal ever had possession of the key of the inner drawer after the appellant rejoined his duty is immaterial in the circumstances of the case. The appellant was the cashier; he used to maintain the register of cash. When he took over charge the duplicate keys were inside the safe. Otherwise he would have at once drawn the attention of the Principal to it. Even if Ramchander Lal ever came to have possession of the key of the inner drawer at any time after August 31, 1961, the safe could not have been opened by anybody unless the keys of the outer door were made over by the appellant to the person wishing to open the same. His liability as cashier to account for the contents of the safe cannot be disputed. He was either a party or privy to the extraction of the cash from the safe. In the absence of evidence to show that he had parted with the keys of the outer door between August 31, 1961, and October 9, 1961, he was under a duty to account for the contents of the safe including the cash. The charge under Section 409 was therefore duly brought home to him.

6. In the result we dismiss the appeal and maintain the order of conviction and sentence passed by the High Court.

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