

Ganeshbhai Sankarbhai

Vs

The State of Gujarat

Criminal Appeal No. 247 of 1969

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

03.05.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant was acquitted by the Trial Court of offences under Section 409 and 477-A of the Indian Penal Code. The complainant, Harivallabh, Secretary of the Go-Samvardhan Samiti, where the appellant was working at the time of the alleged commission of the offence, obtained leave and filed an appeal. The High Court allowed the appeal, reversed the acquittal by convicting him of the offences with which he was charged and sentenced him on each count to four months rigorous imprisonment. This appeal is by Special Leave against that judgment.
2. The prosecution case is that it was the duty of the appellant to purchase and sell hides and skins on behalf of the Go-Samvardhan Samiti, maintain kachha and pakka account books, prepare bills and vouchers etc. In the course of his duty, the appellant is alleged to have sold to one Nandram 85 hides at the rate of 26.50 per hide though in fact he purported to sell them at the rate of 24.00 each and thereby misappropriated Rs. 212.50. When the misappropriation came to light, he was questioned and it is said that he wrote a letter Ex. 18 admitting his guilt, which of course he denied. The case of the appellant was that he was appointed only to write account books and not to buy or sell hides, as such he denied both the misappropriation and the falsification of the Bills. According to him, Vrijlal Prekh, Imam and Rathod, employees the Samiti, were in charge of the main centre of the Samiti at Khalipur as also the subcentres thereof since the Samiti was started, suggesting thereby that the misappropriation may have taken place during the management of these persons. The Magistrate held that the accused was appointed as Supervisor his were to be in charge of the business of the Samiti, write account books, bills, vouchers, etc. He was entrusted with the stock-in-trade and the moneys of the Samiti, and that he acted as the agent, wrote letters to Nandram as executive head of the Samiti. The Magistrate, however, held that the appellant had not personal knowledge of the dealings with Nandram, that Nandram wanted to oblige Rathod and Imam, that the complainant had no personal knowledge of the transactions entered into by the accused as he was staying at Gowadi Ashram and that he had no personal knowledge of the hand-writing of Ex. 44 or 47 and the payment made thereunder relating to the dealings with Nandram. He also held that letter Ex. 18 contained an extra-judicial confession which was made the persons in authority but did not give a finding that the confession was the result of a threat, inducement or promise from a person in authority. In the result he acquitted the accused of the charges.
3. The High Court agreed with the Trial Court that the evidence clearly disclosed that the accused had been entrusted with the moneys, stock-in-trade and was in overall charge of the business activities of the Samiti at Khalipur and Karannagar and as a Supervisor was actually handing its

business from day to day as an agent of the Samiti. Though the kachha accounts were not produced, from the pakka accounts it was held that they were written by the accused and the entry in the pakka day book may have been written by Rudrakant at the instance of the accused. It further held that the complainant knew the signatures and hand-writing of the accused that Exs. 44, 45 and 47 were signed by the accused and Nandram, that Imam and Rathod were not at the time when the transaction was entered into by the accused with Nandram, that Satish or Vrijlal were not in charge of the day to day business at Khalipur and that Ex. 18 confession was made by him voluntarily and was true. In this view the High Court reversed the acquittal and convicted the accused.

4. It is unnecessary for us in this case to consider whether the confession made by the appellant in Ex. 18 was written on any inducement given by any person in authority and is therefore not voluntary because there is in our opinion sufficient evidence which brings home to the accused offences with which he is charged. We have already seen that both the Trial Court as well as the High Court have found that the accused as a Supervisor was in charge of the Samiti as an agent, he was transacting business on its behalf, was buying and selling hides, was in charge of the stock-in-trade, was writing accounts and causing them to be written. The only question to be determined is whether the particular transaction in respect of the sale of 85 pieces of hide at the rate 26.50 to Nandram is proved and that he thereby misappropriated Rs. 212.50 by showing them to be sold at the rate of 24.00 Exs. 44, 45, 46 and 47 are important. Ex. 45 is an order form, dated November 11, 1964, which is alleged to have been signed by Nandram and the appellant as evidencing the sale of 85 pieces of hide at the rate of 24.00 per hide amounting to Rs. 2,040.00. A sum of Rs. 19.35 was shown as packing and forwarding charges making a total of Rs. 2,059.35 in respect of which Rs. 559.35 was shown as having been received as deposit. This form is the original bearing the signatures of both - of the man who gave the order - in this case Nandram and of the man who received the order-which is alleged to be that of the appellant. Ex. 46 is the original Bill, dated November 16, 1964, said to have been prepared by the appellant in which 85 pieces of hide been shown to have been sold at the rate of 26.50 making a total of Rs. 2,252.50. To this was added Rs. 19.35 as packing charges and from a total of Rs. 2,271.85 was deducted a deposit alleged to have been made of Rs. 771.85 leaving a balance of Rs. 1,500.00 to be paid by Nandram Ramlal Regar in whose name the bill was prepared. Ex. 47 is a duplicate bill of the same date in which the same number of hides were shown to have been sold at the rate of 24.00 and after deducting Rs. 559.35 said to have been deposited, a sum of Rs. 1,500.00 was shown as being due. The original bill at the rate of 26.50 per hide and the duplicate bill showing the sale at the rate of 24.00 per hide were shown as being negotiated through the Central Co-operative Bank Devli, Rajasthan. Ex. 44 is a kachha bill, dated November 11, 1964, which is in terms of the original bill Ex. 46. As we have seen earlier, the accused denied his signature on the original documents.

5. The only question is whether the signature of the accused on those documents have been satisfactorily proved by the evidence adduced by the prosecution. Harivallabh, the Secretary no doubt admitted that none of the bills produced by him were written in his presence, nor were any transactions mentioned in those bills effected nor was any payment in respect thereof was made in his presence. He however categorically asserted that the accused wrote account books in his presence at Dhanduka and that the kachha account books are in the hand writing of the accused. He further admits that even Ex. 18 which admits his guilt has been signed by the accused in his presence. These assertions have not been seriously challenged and there is no escape from the conclusion that the witness had seen the accused signing in his presence and knew his signatures nor could it be otherwise when it is realised that Harivallabh being the Secretary was in overall control of the affairs of the Samiti, and would have known the signature of the accused. The witness therefore was in a position to identify the signature of the accused in Exs. 45 and 46 the originals of

the Order Form and Original bill.

6. Nandram, the purchaser, admitted that he came to Patna to purchase leather on November 10, 1964 accompanied by one Ramlal who is also a dealer in leather. He admits that he knows how to write in Hindi and he purchased 85 leather hides of bullock from the accused at the rate of 26.50 each when he saw him for the first time, that a writing was drawn up in respect of that transaction and his signature was taken in the Order Book. He also identifies letter Ex. 77 which was sent to him from the office of the Samiti, and denies the suggestion that it was written to him by Imam because he says he knows the hand-writing of Imam. Earlier he was shown Ex. 45 in which he says he signed in blank and also Exs. 44 and 46 which he has signed. He says that Ex. 46 was sent to him through the bank. He also identifies Ex. 76 which is a deed said to have been written by the accused to him on November 16, 1964 and subsequently also he had received a letter from him Ex. 77 Ex. 76 is a letter, dated November 16, 1964, from the Go-Samvardhan Samiti signed by the appellant addressed to Nandram. In that exhibit it is stated as follows :

"85 bullocks in 5 (five) bundles had been sent to Devali via Nazirabad station out Hajansi Railway and bill No. 40549, dated November 16, 1964 has been sent to the centre Co-operative Bank, Devali through Bank of Baroda Patan and with that the bill of No. 168, dated November 16, 1964, of Rs..... has been sent. After paying the amount please accept the goods and on receiving the said goods please inform us as soon as possible."

It is interesting to note that the amount has not been mentioned in the above document but the reference to the bill number would show that it is either Ex. 46 or 47, the former at the rate of 26.50 and the latter shows only Rs. 24.00 as the rate per each hide. The appellant seems to have left the matter vague in anticipation of a possible defence to a charge that might be made against him. The next letter Ex. 77 discloses the modus operandi followed by the appellant in respect of the sale of 85 bullock skins. The letter is addressed to Nandram, the translation of which in English is as follows : "I make to know you by this letter that if you receive the letter, dated December 20, 1964, do not come to Patan, because here I have shown less rates for the bullocks which you took away from Khalipur and that thing has come to the notice of my master and in that matter question of my credit has been arisen and so I request you by this letter that you please do not come to Khalipur. I have also shown less rates of bullocks which were taken by you before this and now my credit is in your hand and so do not tell anybody the rates of bullocks which you took away two times and do not show the bills to anybody also and now the bread of my life is in your hand and so do not write to anybody about the rates of bullocks which you have taken away from Khalipur. Jay Ramjiki. # Yours servant, (Sd.) Vadan of Patel."### There is no doubt whatever that the several documents to which we have referred have been held by the High Court as proved by the evidence of Harivallabh and Nandram. We also do not see any reason to doubt the veracity of either of the witnesses. The Magistrate, however, stated that Nandram wanted to oblige Rathod and Imam and the same was indicated by his demeanor. In what way Nandram's demeanor indicated that he was siding Rathod and Imam and the reason which impelled the Magistrate to come to that conclusion have not been stated. Section 363, Criminal Procedure Code, enjoins that "when a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any), as he thinks material respecting the demeanour of such witness whilst under examination". No doubt the omission to record remarks respecting the demeanour of the witness as provided in Section 363, Cr.P.C., by the trial Judge either during or at the close of the examination of the witness does not mean that the recording of the remarks about the demeanour by him later in the judgment is not to be taken into consideration. The remarks made in the judgment will be given due weight by the

Appellant Court in the appraisal of the witness but in this case the remarks as to demeanour of the witness is directly related to his obliging other employees of the Samiti and how he has by that demeanour obliged them is not obvious and therefore the High Court rightly did not pay much attention to that remark.

7. We have no hesitation in affirming the conviction by the High Court. In so far as the sentence is concerned, we are informed that the appellant had after his acquittal secured employment and is working and since he has served out 19 days of sentence awarded to him, we think that these circumstances would justify us considering the sentence already undergone as sufficient and accordingly direct that the sentence already served should be the sentence in this case. With this variation, the appeal is dismissed.

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