

Shariful Islam

Vs

State of U. P.

Criminal Appeal No. 83 of 1969

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

26.10.1972

JUDGMENT

CHANDRACHUD, J. -

1. The appellant was convicted by the learned Additional Sessions Judge, Rampur under Section 409 of the Indian Penal Code and was sentenced to rigorous imprisonment for four years. The charge against the appellant is that he had committed breach of trust in regard to a sum of Rs. 499.66 P. The High Court of Allahabad confirmed the judgment of the trial court and being aggrieved thereby the appellant has filed this appeal by special leave.
2. The appellant, Shariful Islam, was working as a Collection Amin in Tehsil Shahabad from March 1961 to July 1961. One of his duties was to receive the amounts payable to the Government. On March 26, 1961, he is alleged to have received a sum of Rs. 200/- from one Raghbir Singh and a sum of Rs. 300.41 P. from one Sri Ram Pandey through his brother, Paras Ram Pandey. Instead of crediting these amounts in the Treasury, he credited 0.25 P. and 0.50 P. only, misappropriating the balance, viz., Rs. 499.66 P.
3. The defence of the appellant was that the two persons had only paid 0.25 P. and 0.50 P. respectively and that he was falsely implicated in the charges as the Tehsildar was hostile to him. Having seen the relevant evidence through which learned counsel for the appellant has taken us, we are of the opinion that the High Court was justified in confirming the conviction and sentence of the appellant. It was common ground that a receipt book was issued by the Shahabad Tehsil to the appellant and that he issued two receipts, Nos. 29 and 50, from out of that book to Raghbir Singh and Sri Ram Pandey. Raghbir Singh has stated in his evidence that he owed a sum of Rs. 2,000/- to the Government towards a Taqavi loan and that he had paid Rs. 200/- to the appellant on March 26, 1961, in part payment of that amount. A witness called Roshan Singh says that Raghbir Singh had paid the sum of Rs. 200/- to the appellant in his presence. Similarly the evidence of Paras Ram Pandey shows that he had paid to the appellant, a sum of Rs. 300.41 P., on behalf of his brother, Sri Ram Pandey. An important aspect of the evidence of these witnesses is that the admission by them that they owed a particular sum of money to the Government was against their self-interest. These witnesses have hardly been cross-examined and not even a suggestion has been made to them that they had any reason for implicating the appellant falsely. The appellant says in his statement under Section 342 of the Code of Criminal Procedure that the Tehsildar was inimical to him but of that there is no evidence whatsoever.
4. A receipt which was given by the appellant to Raghbir Singh is on the record of the case at Ex. Ka-3. Habibul Rahman, who was an Assistant Wasil Baqi Navis, has stated in his evidence that the

receipt was in the handwriting of the appellant and that the words, "rupees two hundred" in Hindi were also in the handwriting of the appellant. This witness has not been cross-examined on the question of the identification of the appellant's handwriting. The learned Judicial Magistrate, First Class, Rampur who committed the appellant to the Court of Session has observed in the committal order that the particular receipt was tampered with by the appellant during the pendency of the committal proceedings. This is fully supported by the facts mentioned by the learned Magistrate in his order. The evidence of Ram Chander Gangwar, who was a Naib-Tehsildar at the relevant time shows that he has checked the receipt given by the appellant to Paras Ram Pandey and that he had prepared the coupon Ex. Ka-5 on the basis of that receipt. The amount mentioned in the coupon is Rs. 300.41 P. and not Rs. 0.50 P. If the amount paid to the appellant by Paras Ram was 0.50 P. only, the Naib-Tehsildar would not have made out the coupon for the sum of Rs. 300.41P.

5. It was urged on behalf of the appellant that an adverse inference should be drawn against the prosecution because of its failure to produce the demand notice served on Raghubir Singh and Sri Ram Pandey and the recovery list maintained in the Tehsil. In view of the direct evidence of Raghubir Singh, Roshan Singh and Paras Ram Pandey we do not think that it was necessary for the prosecution to produce these documents. In fact there is nothing to show that any demand notice was issued at all to Raghubir Singh or to Sri Ram Pandey.

6. Learned counsel relied on a decision of the High Court of Allahabad in Surendra Singh v. The State ((1957) 58 Cri LJ 170 : AIR 1957 All 122 : 1957 AWR (IC) 43) in support of his contention that the order of conviction is erroneous, but the facts there were materially different. An excess amount was recovered by the accused therein by making a false representation that the amount was due to the Government. The question was whether in regard to the excess amount the accused could be said to have committed breach of trust. It was held by the High Court that a part of the amount which was recovered by the accused was not due to the Government at all and therefore in regard to that part, he could be said to have committed the offence of cheating but not that of breach of trust. In the instant case, the two particular amounts were paid into the hands of the appellant not only as being due to the Government but the evidence shows that they were in fact due to the Government. The amount, therefore, belonged to the Government and the appellant would be guilty of breach of trust, if he misappropriated that amount.

7. In the result we dismiss the appeal and confirm the order of conviction and sentence.

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