

Kantilal Gandlal Shah

Vs

The State of Gujarat

Civil Appeal No. 74 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

15.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. This is an appeal by special leave against the judgment rendered by the High Court of Gujarat in Criminal Revision Application No. 160 of 1967. The appellant was convicted by the learned Judicial Magistrate, First Class, Dhrangadhra under Section 408 of the Penal code and was sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 700. The order of conviction and sentence was confirmed in appeal by the Session Court and in revision by the High Court.

2. The appellant was making as the Secretary of Co-operative Society which is briefly referred to in the judgment of the High Court as the 'Sangh'. Another society referred to as the 'Mandali' had purchased 100 maunds of manure from the Sangh for Rs. 475. The case of the prosecution is that a sum of Rs. 275 paid by the Mandali to the Sangh on July 13, 1957 towards the price of the manure was misappropriated by the appellant.

3. The appellant denied that the amount was entrusted to him and contended that the Mandali had paid the sum of Rs. 275 to Harshadrai Raval who was working as an accountant of the Sangh.

As observed by the High Court the prosecution led a mass of evidence to prove its case but a large part of that was rejected by the High Court as it was insufficient to establish either the entrustment or the misappropriation. The rejection by the High Court of the bulk of the evidence led by the prosecution has furnished to the appellant an argument that the High Court, after rejecting the evidence of the prosecution, has made out a new case and has confirmed the conviction on an altogether different charge. We are unable to accept this submission.

5. The charge framed against the appellant by the Judicial Magistrate reads thus :

"That you on or about the 13th day of July, 1957 at dhrangadhra being a servant in the employment of Dhrangadhra Taluka Co-operative Sale Purchase Society, as its paid Secretary, and in such capacity entrusted with certain property to wit Rs. 275 Rupees two hundred seventy five only, given to you as such Secretary of the said society Rajgadh Co-operative Society through its then Secretary Manilal Mohanlal Pujara towards the purchase by the said society of mixed manure, committed criminal breach of trust with respect to the said property and thereby committed an offence punishable under Section 408 of the Indian Penal Code and within my

cognizance."

The High Court has found that the appellant had credited the sum of Rs. 275 in the books of the Sangh on June 18, 1957 but that later on June 30, 1957 he made a cross entry showing that the amount was wrongly credited and there by he misappropriated the amount entrusted to him. Learned Counsel for the appellant urges that since the charge mentions that the amount was is appropriated by the appellant on July 13, 1957 it was not open to the High Court to find that the misappropriation took place on June 30, 1957. This, in our opinion is a total misreading of the charge. The charge neither mentions the date of entrustment nor of its misappropriation but refers to July 13, 1957 as the date on which the appellant was in the employment of the Sangh. The implication of the charge is that it is on or about that date that the entrustment and the misappropriation took place.

6. The High Court was right in discarding a large part of the evidence led by the prosecution but it was equally right in coming to the conclusion that the offence was brought home to the appellant. The appellant admitted that Rs. 275 were received by the Sangh on June 18, 1957. The cross entry showing that the credit entry in respect of Rs. 275 was wrong was made by the accountant Harshadrai Raval at the instance of the appellant. That is the concurrent finding recorded by all the Courts. The appellant has made his signature below the cash book entry Ex. 54 showing the receipt of the amount on June 18, 1957 as also below the cross entry Ex. 56 dated June 30, 1957. Bye-law 42 of the Sangh, which is at Ex. 181, provides that the Manager has to deal with the cash and it was an admitted position that at the relevant time the appellant was working as a Manager. As the funds of the Sangh were in the charge of the appellant the instructions given by him to the accountant to make a wrong cross entry are only susceptible of the inference that he wanted to misappropriate the amount. Harshadrai started working with the Sangh on June 12, 1957 and the sum of Rs. 275 was received 6 days thereafter. The High Court is right in observing that it is highly unlikely that almost immediately after his appointment he would take the courage of making a false debit entry, even before he had acquainted himself with the state of the accounts of the Sangh.

7. We therefore confirm the order of conviction and sentence and dismiss the appeal.

</html