

Dadarao

Vs

The State of Maharashtra

Criminal Appeal No. 100, of 1970

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

20.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. The appellant who was accused No. 3 in the Court of the learned Judicial Magistrate, 1st Class, Buldana, was tried along with two others under Section 408 of the Penal Code on the charge that he committed breach of trust in respect of a sum of Rs. 7000. The learned Magistrate convicted all the three accused and sentenced the appellant to rigorous imprisonment for six months. The learned Sessions Judge, Buldana, in appeal, acquitted accused No. 1 but maintained the conviction and sentence of the appellant and of accused No. 2. That order having been confirmed by the High Court, Bombay, Nagpur Bench, accused No. 3 has brought this appeal by special leave.

2. The three accused were employees of the Chikhli Taluka Sahakari Shetki Kharedi Vikri Samiti Ltd., Chikhli. The Samiti had its head office at Chikhli Vikri Samiti Ltd., Chikhli. The Samiti had its head office at Chikhli and a branch office at Buldana. Accused No. 1 was working as an accounts clerk at the Buldana branch accused No. 2 was an accounts clerk usually stationed at Chikhli while the appellant, being the Manager, used to look after the work of both the head office and the branch office, the distance between the two being about 15 miles.

3. The Samiti used to receive large amounts in its Buldana branch office and those amounts used to be carried to the head office by some employee or the other. In the daily cash book maintained at Buldana, debit entries used to be made showing the amount despatched to the head office and mentioning the name of the person through whom the amount was sent. Normally, the head office would send the receipt to the branch office the next day and then the branch office would number such receipts serially. It is in the course of these transactions that seven thousand rupees are alleged to have been entrusted to the appellant on November 10, 1965 and nine thousand five hundred rupees on November 11. The allegation is that the appellant credited the sum of Rs. 9,500 in the books of the head office but misappropriated the sum of Rs. 7,000.

4. The High Court has scrutinised the evidence at some length and normally we would be loathe to interfere with the concurrent findings recorded by the trial Court, the Sessions Court and the High Court. But there are a few circumstances which, in our opinion, render it highly unsafe to accept the case of the prosecution. Those circumstances have a material bearing on the guilt of the appellant and due importance would appear not to have been attached to them by the learned Judges who, at one stage or the other have dealt with the matter.

5. The High Court has rightly observed that there is no direct evidence of entrustment to the

appellant. We have gone through the record in order to find whether there is any indirect evidence of entrustment but we see none. All that the prosecution did was to produce the books of account of the Chikhli head office and of the buldana branch. There is a debit entry in the books of the Buldana branch showing that a sum of Rs. 7,000 was given to the appellant on November 10, 1965 for being taken to the head office but the mere entry, unsupported by any oral evidence cannot prove entrustment. Section 34 of the Evidence Act says that entries in books of account, regularly kept in the course of business are relevant but such statements shall not alone be sufficient evidence to charge any person with liability. The prosecution did not examine anyone even to show that the books of account were regularly kept in the course of business nor indeed was any attempt made to lead evidence apart from the production of books of account to prove the entrustment of the amount to the appellant.

6. The defence of the appellant is that a sum of Rs. 7,000 was given to him on the afternoon of November 10, 1965 and that a further sum of Rs. 2,500 was given to him the same evening. These two amounts, tied in two separate bundles, were taken by him to Chikhli and he handed over the two bundles to Haribhau Mahajan who was working as an accountant at the head office. Thus, according to the appellant he was only paid a total sum of Rs. 9,500 and not two separate sums, one of Rs. 7,000 and the other of Rs. 9,500.

7. In the vague state of the record it seems to us impossible to dismiss the explanation of the appellant as unreasonable. There is no evidence of entrustment, no evidence in regard to the mode and manner of keeping the accounts and not even a suggestion that the cash on hand was at any time tallied or checked either at Chikhli or at Buldana. The High Court observes in its judgment that "the prosecution has conducted this case without placing before the Court the detailed information as to how the working of the Head office and the branch office goes on. No effort is made to ask question, if not to an employee in service, at least to the auditor about the nature of business conducted and the method of maintaining accounts. That would have facilitated the understanding as to why certain credits and debits are made." Absence of evidence on a material and important aspect renders it unsafe to hold that the charge of breach of trust is brought home to the appellant.

8. The High Court has placed preponderating reliance on the circumstance that the appellant has made his signature below the transactions of the day on which a debit entry in the sum of Rs. 9,500 was made in the books of the branch office showing that the amount was handed over to him for being taken to the head office. IN all probability the High Court took a clue from the statement made by the appellant under Section 342 of the Code of Criminal Procedure admitting the particular signature to be his. It may not, however, be overlooked that the admission made by the appellant must read as a whole, for what he has stated is that he had made his signature in the account books of the branch office after an audit objection was raised that he ought to have signed the books at the end of every day in his managerial capacity. The statement of the appellant on this aspect is not capable of dissection because the particular part thereof on which the High Court relies is inextricably connected with the other part which the High Court has not taken into consideration.

9. This is thus a case in which there is no credible evidence in support of the charge leveled against the accused. We therefore allow the appeal and set aside the order of conviction and sentence passed against the appellant. The bail bond furnished by the appellant is discharged.

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