

Dasrathlal Chandulal Joshi

Vs

State of Gujarat

Criminal Appeal No. 141 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

18.01.1979

JUDGMENT

FAZAL ALI, J. -

1. This is an appeal by special leave directed against the judgment of the High Court of Gujarat dated January 19, 1973, by which the High Court reversed the order of the trial Court acquitting two accused persons Manubhai Chhaganbhai Patel and Dasrathlal Chandulal Joshi and convicted them under Sections 420/34 and 471/34. The petition for special leave filed by petitioner 1 Manubhai Chhaganlal Patel, was dismissed by this Court and leave was granted only to the appellant Dasrathlal Chandulal Joshi. A detailed narrative of the prosecution case is to be found in the judgment of the High Court and that of the trial Court and it is not necessary for us to repeat the same all over again. In order to understand the charge against the appellant certain admitted facts may be mentioned : It appears that Sadachar Samiti had printed a number of receipts which were given to different authorised persons for collection of funds on behalf of the Committee in aid of a famine relief fund organised by the Bansakathe Famine Relief Committee. This fund was meant to give relief to the famine-stricken people of Bansakathe district. It was alleged by the prosecution that accused 1 forged a number of receipts starting from series No. 5000 and passed the same as genuine and collected donation from various persons of whom PWs 1 to 8 have been examine as prosecution witnesses. There is absolutely no allegation that either when the receipts were printed by accused 1 or at any other time the appellant was taken into confidence and had any knowledge that the receipts had been actually forged by the accused, nor is there any evidence that the appellant got and money or derived any profits from the amounts realised by accused 1. The only limited role played by the appellant was that he accompanied accused 1 wherever he went for collecting donations. The trial Court after considering the evidence came to a clear finding that there was no evidence to show that the appellant had any knowledge regarding the activity of accused 1. In this connection the trial Court observed as follows :

I may further state that it was stated by all the witnesses that it was accused 1 and accused 2 did not speak anything at all. There is also no evidence to show that accused 2 had knowledge regarding the activity of accused 1. I would have therefore, even if I had come to the conclusion that accused 1 had issued the receipts in question to the witnesses, given benefit of doubt to accused 2 and acquitted him of the charge levelled against him.

2. We have gone through the judgment of the High Court and we find that it has not given any convincing reason for displacing this finding of the learned Sessions Judge which led to the acquittal of the appellant. The High Court seems to have relied on three circumstances in order to

convict the appellant, first that the appellant accompanied accused I wherever he went for collecting donations; second, that accused I had granted receipts which were forged; and, thirdly, that there were certain entries in the Red Book which were contrary to the contents of the receipt granted by accused I and the appellant did not object to the same. These circumstances by themselves were not sufficient to bring home the charge against the appellant. It was the duty of the prosecution, before the appellant could be convicted under Sections 420/34 or 471/34 to prove that the appellant knew from before that the receipts used by accused I were forged. Secondly, it must also be proved that accused I had shared the fraudulent intention with accused 1 in passing as genuine forged receipts and obtaining donations from various persons on false pretexts. There is, however, not an iota of evidence on the record to prove these facts. To begin with, the appellant was an outsider and a stranger and was picked up by accused 1 from a hotel and asked to accompany him. No witness says that at the time when accused 1 made certain representations while collecting the money the appellant endorsed his stand or made any statement to indicate that he was aware that the receipts were not genuine and still supported the activities of accused 1. Under these circumstances, therefore, it will be difficult for the prosecution to substantiate the charge against the appellant merely on the ground that the appellant accompanied accused 1 wherever he went to collect donations. Mr. Sharma appearing for the State frankly conceded that apart from the evidence that the appellant had accompanied accused 1 there was no evidence of any overt act to show that the appellant endorsed the stand of accused 1. It was further argued by Mr. Sharma that in some cross-entries there was a discrepancy between the amount mentioned in the Red Book and the receipt and, therefore, the appellant must be presumed to know that this discrepancy was there. We are, however, unable to accept this argument in the absence of any evidence to show that the appellant had been shown the Red Book previously and had compared it with the receipts so as to have clear knowledge of the discrepancy and still he kept quiet when accused I was collecting donations from various persons. We have gone through the evidence of PWs 1 to 8 and we are unable to find that they in any way show that the appellant was a party to the forgery committed by accused I. For these reasons we are satisfied that there is no legal evidence against the appellant and the High Court was wrong in law in reversing the acquittal of the appellant. We fully agree with the finding and the reasoning of the trial Court, a portion of which has been extracted above by which the trial Court acquitted the appellant. For these reasons, therefore, the appeal is allowed, the convictions and sentences passed on the appellant are set aside and he is acquitted of the charge framed against him. The appellant will not be discharged from his bail bonds.

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