

Chowdikodlu Asuralli Dyavappa and Another

Vs

State of Mysore

Criminal Appeal No. 263 of 1972

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

04.04.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Mysore High Court reversing the judgment of the Magistrate acquitting the appellants of the charge under Section 409 and 420, I.P.C. The High Court after reversing the order of acquittal convicted the appellants under Section 406, I.P.C. and sentenced them to R.I. for two years. It appears that as far back as July 30, 1927, one Kolluriah borrowed a sum of Rs. 1,000 from the Society and mortgaged his land for the loan taken by him. This land was subsequently sold and as no purchasers were available, the Society itself purchased the said lands for a sum of Rs. 350. Thus, in spite of the sale, the debt outstanding in the name of Kolluriah due to the Society was not fully discharged. Thereafter, PWs 6 and 11 repurchased the land from the auction-purchaser. Even in spite of the auction purchase, it appears that the entire money taken by the creditor could not be realised by the Society and thereafter on July 20, 1937, the Society passed a resolution writing off the debt and this resolution was signed by PW 6 who was the son of Kolluriah, the original debtor. Subsequently, however, land acquisition proceedings were started in respect of land including the land in question and the Land Acquisition Officer issued notice to the parties for taking compensation of the land acquired. The Society also put in its claim along with PWs 6 and 11. The Land Acquisition Officer, refused to give the compensation to PWs 6 and 11 until they brought certificates of discharge from the Society showing that the loan has been paid or written off. According to the prosecution, PWs 6 and 11 approached the appellants for giving discharge certificate and the appellants agreed to do so provided they paid dues of the Society which amounted to Rs. 4263. This money was paid by PWs 6 and 11 and accordingly discharge certificates were issued by the appellants. Prosecution case was that in spite of having realised this amount from the complainant, the appellants did not deposit the amount in question with the Society and thus committed criminal breach of trust in respect of this amount. The defence was that the story put forward by the complainant was false and no money at all was paid to the appellants as alleged by the prosecution. Although the occurrence took place on March 16, 1963, the complaint was filed two years later i.e. on May 3, 1965 and no reasonable explanation has been given by the prosecution for the delay in filing the complaint. This is an important aspect which appears to have been completely overlooked by the High Court. The trial magistrate, after examining the evidence, disbelieved the prosecution case and found that there was no evidence to show that the appellants have been paid any money as alleged by them. The sheet-anchor of the prosecution case appears to be the three documents Exs. P 12, 13 and 14, viz., the discharge certificates where the factum of the payment appears to have been mentioned. The learned Magistrate on a careful perusal of these documents found that there was interpolation in these documents particularly on the part relating to the receipt of the money. The Magistrate accordingly,

rejected the prosecution case and acquitted the appellants. Thereafter, the State of Mysore filed an appeal to the High Court against the order of acquittal passed by the Magistrate which was accepted by the High Court and the appellants were convicted as indicated above.

2. Mr. V. C. Mahajan, appearing for the appellants has raised two short points before us. In the first place he submitted that in view of the clear findings of the Magistrate Exs. P 12, 13 and 14 contained interpolations, hence there is no reliable evidence to show that the money was actually paid by PWs 6 and 11 to the appellants and, therefore, the question of entrustment does not arise. It was next argued that even if the money was paid to the complainant, as debt had been written off long ago, there is nothing to show that the payment was made towards the dues of the Society and it may be that the appellants may have extorted the money by way of bribe, and as there was no charge under Section 161, the appellants could not be convicted.

3. We have gone through the judgment of the High Court and that of the Magistrate and have also perused the evidence. We find that the prosecution case suffers from several inherent improbabilities. In the first place, admittedly the case of parties being that the debt of the Society having been written off, and there was nothing to show that it was ever revised, there was absolutely no occasion for PWs 6 and 11 to have paid the money to the appellants. Even so, the witnesses examined by the prosecution to prove the payment of the money viz. PWs 6, 7, 8 and 11, have deposed purely from their memory without maintaining any record of the fact of the payment. Reliance was placed by the High Court as also by the learned counsel for the State on the evidence of the Land Acquisition Officer, PW 5. The evidence of this witness does not help the prosecution case as money was not paid in his presence. It is difficult to believe his statement that he was told that the money was paid. He would have passed orders in thousands of cases and it would indeed be difficult for any person like him to remember how much money was paid in each individual case.

4. It was then contended that the learned Magistrate was wrong in saying that there were interpolations in the receipts of discharge Exs. P 12, 13 and 14. We have examined these documents ourselves and we entirely agree with the Magistrate that there are interpolations in the three documents as some additional writing appears to have been typed by converting the full-stop into comma. The over-writings have been established by the additional typed material which contains items of receipt of the money, which runs into the signature made by the appellants. The High Court does not appear to have examined the documents so closely and has brushed aside the weighty comments made by the Magistrate with respect to these documents. In these circumstances, therefore, we do not find any legal evidence to support the conviction of the appellants. We may, however, like to observe that as the appellants had been acquitted by the trial Magistrate, the High Court could have reversed the acquittal only after displacing the circumstances relied upon by the Magistrate and not merely because the High Court took a different view of the matter on the same evidence. Even if the view taken by the High Court be reasonably possible, that will not justify the reversal of the order of acquittal if the view taken by the Magistrate was equally possible. The result is that this appeal is allowed. Conviction and sentence passed on the appellants are set aside and the appellants will now be discharged from their bail bonds.

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