

State of Andhra Pradesh

Vs

Y. Basavadevudu and Another

Criminal Appeal Nos. 384-385 of 1982

(Kuldip Singh, N. M. Kasliwal JJ)

26.03.1992

JUDGMENT

KASLIWAL, J. –

1. These appeals by grant of special leave are directed against the judgment of the Andhra Pradesh High Court dated July 11, 1980 in Criminal Appeal Nos. 459 and 700 of 1978.
2. Y. Basavadevudu (in short 'A-1') and S. Subba Rao (in short 'A-2') accused-respondents were tried for offences under Sections 409, 467, 471 and 477-A of the I.P.C. The learned Assistant Sessions Judge, Khammam found both the accused persons guilty for the above offences and awarded various terms of imprisonment and fine for the aforesaid offences. The accused persons aggrieved against their conviction and sentence filed appeals before the High Court. The High Court by its judgment dated July 11, 1980 gave benefit of doubt and acquitted the accused persons of all the charges levelled against them. Fine, if paid, was directed to be returned to the accused persons. The State of Andhra Pradesh aggrieved against the order of acquittal has come before this Court by grant of special leave.
3. The prosecution story is that A-1 was Sub-Treasury Officer (hereinafter referred to as the 'S.T.O.') and A-2 was working as Shroff in the non-banking Sub-Treasury at Venkatapuram. The said non-banking Sub-Treasury was converted into a banking Sub-Treasury from June 18, 1973 by an order of the Finance Department dated June 14, 1973. A-1 who was working as S.T.O. reported to the then District Treasury Officer (PW 14) that the key was stuck up in the Reserve Bank of India chest and as such it was not possible to convert the Sub-Treasury into a banking Sub-Treasury on the above date. The Government, therefore, issued another order and the Sub-Treasury Venkatapuram was converted into a banking Sub-Treasury in the afternoon of July 17, 1973. After some time the Accountant-General of Andhra Pradesh at Hyderabad as well as the Reserve Bank of India office at Madras detected that seven demand drafts alleged to have been issue by the Reserve Bank of India were encashed on July 16, 1973 and July 17, 1973 in the Sub-Treasury of Venkatapuram. It was found that no such demand drafts had at all been issued by the Reserve Bank of India office Madras for being encashed at the Sub-Treasury at Venkatapuram. In fact, altogether different drafts were issued relating to other places outside the State of Andhra Pradesh and except the serial numbers, all other particulars, namely, the date, amount, name of the payee etc., were not at all tallying with the payment certificate set by the then Sub-Treasury Officer (A-1). It was found that there was an embezzlement to the tune of Rs. 1,22,500 out of the cash of the Sub-Treasury and all entries with regard to the payment of such amount and the signatures of the payees in token of receipts of money were all fake and forged by the accused persons. It may be stated that PW 18 Shri N. Venkata Swamy who was working as Upper Division Accountant-cum-Double Lock Officer, in the Sub-

Treasury Venkatapuram at the relevant time was granted pardon and declared an approver by the District Magistrate.

4. The prosecution examined 27 witnesses and produced 113 documents in support of its case. The accused persons denied the charges but did not lead any evidence in defence. During the course of their explanation recorded under Section 313 CrPC, A-1 stated that there was no embezzlement of any public funds and the payments made of the drafts on July 16, 1973 and July 17, 1973 were genuine payments and there was no falsification of accounts nor defalcation of any amounts. A-1 also stated that he sent the said demand drafts to the Accountant-General of Andhra Pradesh directly and he later also sent payment certificates. As he did not know the payees of such demand drafts, they were got identified by a person known to him. A-2 also took a similar stand. Thus, the main defence of the accused persons was that the payments or encashment of the demand drafts on the respective-dates as found in Exs. P-2 and P-3 were genuine. The relevant entries in the Reserve Bank of India remittance register (Ex. P-1), relevant entries in Exs. P-5 and P-6 in the Sub-Treasury office number book (Ex. P-4) and also the entries in Exs. P-8 and P-9 in the shroff chitta book (Ex. P-7) were all correct and it may be that fake or spurious demand drafts of R.B.I. might have been presented by the payees, but the accused persons did not embezzle any public funds on any dates, much less on July 16 and 17, 1973.

5. The learned Assistant Session Judge after elaborate discussion of the oral and documentary evidence arrived at the conclusion that the prosecution had proved beyond all reasonable doubt that A-1 and A-2 and PW 18 together made falsification of the accounts by writing false entries in the relevant registers as if some payments were made on July 16 and 17, 1973 to the fictitious persons whose names were mentioned in the payment register and other registers. It was also found that both the accused persons and PW 18 connived in making false entries with dishonest intention of covering up of misappropriation of the public funds committed by them to the tune of Rs. 1,22,500. Hence the learned Assistant Sessions Judge found both the accused persons guilty for the offences under Sections 409, 467, 471 and 477-A IPC. The learned Assistant Sessions Judge also held that after having gone through the evidence of PW 18 it was quite clear that he had not violated any of the conditions of pardon given to him and as such he acquitted the approver of all the charges levelled against him.

6. The High Court as regards PW 1, who was deputed by the Reserve Bank of India Madras to enquire into the matter, observed that PW 1 had stated that he identified the signature of A-1 in Exs. P-2 and P-3. But, having regard to the provisions of Section 47 of the Indian Evidence Act, unless and until foundation was laid with regard to the capacity of this witness to identify the signatures of the Sub-Treasury Officer, his statement was of no consequences. It was further observed by the High Court that even the accused in their statements stated that they received these drafts and after complying with the formalities they were encashed and amounts paid to the respective payees and those drafts were sent as would be evident from the despatch register. Even Reserve Bank of India Form No. 11 was sent to the office of the Accountant-General and as such they had not committed any offences. The High Court held that from the evidence of PW 1 alone, it could not be said that the prosecution had proved all these entries in the various books to be in the handwriting of either A-1, A-2 or the approver. As regards the evidence of the handwriting expert PW 24 the High Court observed that in the cross-examination PW 24 stated "As the blue enclosures in Exs. P-8 and P-9 are different from the received writing, I did not compare them at all". From the above statement the High Court observed that so far as column 5 of Exs. P-8 and P-9 was concerned, it can safely be said that the prosecution had not proved the handwriting therein. It was the duty of the prosecution to have asked PW 24 to verify the signatures in Exs. P-8 and P-9 column 5 to find out as to whether

the handwriting in that column in those Exhibits was actually handwriting of the accused. According to the High Court column 5 meant for the signatures of the payees had not been proved by the prosecution to be in the handwriting of either A-1 or A-2 to show that such signatures were of bogus persons. It was further observed by the High Court that even the Investigation Officer (PW 26) stated that "the investigation did not reveal that any amount is misappropriated by A-2 or PW 18 at all". The High Court ultimately arrived at the conclusion that the prosecution failed to prove the case beyond reasonable doubt. Though a huge amount has been embezzled, nevertheless it would not be proper to convict the accused when doubt is cast and benefit of such doubt will have to be given to the accused.

7. We have heard learned counsel for the parties and have thoroughly perused the record. In our view the High Court totally misdirected itself and did not go deep into the matter, nor analysed the clinching oral and documentary evidence produced by the prosecution and gave the benefit of doubt to the accused persons in a superficial manner. The High Court did not deal with the detailed reasons given by the trial Judge and ignored the almost admitted facts and circumstances of the case.

8. Admitted facts of the case are that A-1 was working as S.T.O. A-2 as shroff and PW 18 the approver as Upper Division Accountant-cum-Double Lock Officer in the Sub-Treasury Venkatapuram at the relevant time. The Government vide order dated June 14, 1973 ordered for the conversion of the non-banking Sub-Treasury into a Banking Sub-Treasury by handing over cash business to the local State Bank of Hyderabad on June 18, 1973. This was delayed on the report of the accused A-1 to the effect that the cash chest was working as the key was stuck-up in the chest and it was possible to do so on the above date. The Government, therefore, issued another order and the conversion process materialised on July 17, 1973. The accused A-1 and A-2 handed over the cash balance of R.B.I. chest as per records on July 17, 1973. After some time the Accountant-General of Andhra Pradesh at Hyderabad as well as the Reserve Bank of India Office at Madras detected that 7 fake demand drafts alleged to have been issued by the Reserve Bank of India were shown to have been encashed and paid on July 16, 1973 and July 17, 1973 in the records of the Sub-Treasury of Venkatapuram.

9. The details of the seven drafts in all amounting to Rs. 1,22,500 alleged to have been encashed and paid on July 16 and 17, 1973 from the Sub-Treasury of Venkatapuram are mentioned as under :

#Ex.P. 2 July 1973 16.7.1973 R.B.I. 2.7.73 B.D Sri C.659307 20,328.00 IId/16.7. 73
Madras Edara Ramaiah 16.7.1973 -do- 3.7.73 Sri C.659308 21,785.00 IId/16.7. 73
B.D. Koth- apalli Veraju 16.7.1973 -do- 3.7.73 Sri C.659309 18,891.50 IId/16.7. 73
B.D. Dasari Venkata Rao 16.7.1973 -do- 3.7.73 Sri C.659310 18,236.00 IId/16.7. 73
B.D. Botigam Suryanar ayana Rao 79,240.50 Rupees Seventy-nine thousand two
hundred and forty and paise fifty. Ex.P. 317.7.1973 R.B.I. 7.7.73 Sri C.659311
14,430.50 Id/17.7.73 Madras B.D. Veer anna 17.7.1973 -do- 7.7.73 Sri C.659312
13,260.00 IId/17.7. 73 B.D. Gatt- ala Satyam 17.7.1973 -do- 7.7.73 Sri C.659313
15,569.00 IId/17.7 73 B.D. Vanga Sani Raju Total 43,259.50 Monthly Total
1,22,500.00##

10. The payment of the above drafts is admitted to have been made by the accused persons and signatures or thumb impressions of the payees have been shown in the record of the Sub-Treasury. It has however been proved on record by the prosecution that no such drafts were at all issued from the Reserve Bank of India, Madras. Neither, the dates, nor amount, nor the name of the payees tally with the genuine drafts issued from the Reserve Bank of India, Madras. The drafts issued by the

R.B.I., Madras were not even payable by Sub-Treasury Venkatapuram, rather the same did not belong to any place in the State of Andhra Pradesh. The details of such drafts are given as under :

#Ex.P. 82/dt. 28.6.73 D.D. No. C. 659307 for Rs. 3,106 issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Keernur.Ex.P. 83/dt. 29.6.73 D.D. No. C. 659308 for Rs. 875.96 issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Car-Nicobar.Ex.P. 84/dt. 3.7.73 D.D. No. C. 659309 for Rs. 1,261.65 ps issued by P. Manager, R.B.I. to the Sub-Treasury Officer, Denkanikottah.Ex.P. 85/dt. 6.7.73 D.D. No. C. 659310 for Rs. 153.55 ps issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Denkanikottah.Ex.P. 86/dt. 6.7.73 D.D. No. C. 659311 for Rs. 2,800, issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Denkanikottah.Ex.P. 87/dt. 9.7.73 D.D. No. C. 659312 for Rs. 52.00 issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Car-Nicobar.Ex.P. 88/dt. 12.7.73 D.D. No. C. 659313 for Rs. 315.12 ps issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Vayithiri.##

The learned Assistant Sessions Judge after analysing the oral and documentary evidence produced by the prosecution considered the explanation given by the accused persons recorded under Section 313 of the Code of Criminal Procedure, 1973. According to the learned Assistant Sessions Judge A-1 had stated that the drafts were presented by the parties on July 16 and 17, 1973 and their signatures were identified by some well known persons on the drafts themselves and they had drawn Rs. 1,22,500 from the R.B.I. currency on July 16 and 17, 1973 and the entries were made in the relevant books and the same were withdrawn in the presence of the approver (PW 18). They sent R.B.I. Form No. 11 along with the paid drafts to the Accountant-General, Hyderabad. A-1 further stated that the initials in Ex. P-3 were to himself, Ex. P-14 was in his handwriting and the initials in Exs. P-12 and P-13 were also made by him. A-2 also stated that no amounts were embezzled by him or A-1 or anybody and they had sent the paid drafts directly to Accountant-General of Andhra Pradesh. The payments mentioned in the payment register and other registers on July 16 and 17, 1973 were true and correct. He further stated that the writings in Exs. P-101, P-100, P-102, P-103, 10, 8, 9, 13 were made by himself. The main contention of the accused persons made before the trial court was that the payments or encashment of the demand drafts on the respective dates as found in Exs. P-2 and P-3 which are the relevant entries in the Reserve Bank of India remittance register (Ex. P-1) and the relevant entries in Ex. P-5 and Ex. P-6 in the Sub-Treasury Office number book (Ex. P-4) and also the entries in Ex. P-8 and Ex. P-9 in the shroff 'chitta' book (Ex. P-7) were all correct and it may be that fake or spurious or boggus Reserve Bank of India demand might have been presented by the payees, but the accused did not defalcate any public funds on any dates much less, on July 16, and 17, 1973. The trial court considers the statement of PW 18, according to which the entries with regard to the payments of the Reserve Bank of India drafts said to have been made on July 16 and 17, 1973 in all the relevant books of the Sub-Treasury were made only on July 17, 1973 at the instance and suggestion of accused 1. It was also stated by him that there were no persons as those mentioned on July 16 and 17, 1973 in Ex. P-2 and P-3 as well as Exs. P-5, P-6, P-8 and P-9, they were all fictitious and bogus persons names were mentioned in order to give a show of payments made to certain persons so as to cover up the shortage of cash found in R.B.I. chest on July 17, 1973. The trial court has observed that it was admitted fact that whenever a demand draft is issued by the Reserve Bank of India to particular persons drawn on a particular Sub-Treasury, the Reserve Bank of concerned will send advises in advance and when the demand draft is presented by the bearer, it has to be verified whether the advices from the concerned bank is received or not and the payee has to be identified by the Sub-Treasury Officer and it is the responsibility of the S.T.O. for payment of the money to the payee and if the payee is not personally known to the S.T.O., such

payee has to bring an attestor, who is known to the S.T.O. It is also in the evidence of PW 1, PW 14 and PW 18 that whenever advices are received, they should be carefully examined and observed. When there is no advice, the draft cannot be encashed except under special circumstances or on the satisfaction of the genuineness of the drafts presented for encashment. The S.T.O. has to identify the payee also. If the S.T.O. pays without the advices, he should write immediately to the issuing authority for sending the advices. In the case of payee being illiterate, the S.T.O. should satisfy himself by asking the payee to bring a person known to the S.T.O. for his or her identification before actual payment is made and after payments are made at the end of the same day, the S.T.O. should enter the paid drafts in the Reserve Bank of India Form No. 11 and despatch such certificate under certificate of posting to the Accountant-General directly, sending copy of the same to the District Treasurer. In the present case according to Ex. P-12 it is mentioned that the paid drafts along with Reserve Bank of India Form No. 11 were posted to the address of the Accountant-General, but the same were not sent under certificate of posting. The trial court also took notice of the fact that the alleged posting was shown to have been done on the next day. It was also clear from Ex. P-14 a letter written by S.T.O. (A-1) that he mentioned therein that he would trace out the records and submit encashment schedules. It was also clear from the evidence of PW-1 that the denominations of the currency notes found in Ex. P-17, the relevant entry in Ex. P-15 currency chest book Form T.E.T. 1 of the Sub-Treasury Office Venkatapuram were not tallying with the denomination of the currency notes mentioned in the double lock register. The trial court held that it was quite clear that the serial numbers of the drafts mentioned in the relevant records of Sub-Treasury Venkatapuram were not in fact the demand drafts that were issued by the Reserve Bank of India at Madras and the real demand drafts were Exs. P-82 to P-88 which were issued to Sub-Treasury Officers outside the State of Andhra Pradesh. Thus, it was clear from the evidence of PW 2, PW 18, PW 20, PW 21 and PW 22 that the real demand drafts that were issued by the R.B.I. Madras were neither received nor encashed at Sub-Treasury Venkatapuram. Even the accused persons do not say that Exs. P-82 to P-88 were received and got encashed by the payees at the Sub-Treasury Venkatapuram. It was further clear that the entries found mentioned in Exs. P-2, P-3, P-5, P-6, P-8, P-9, P-16 and P-17 were quite incorrect entries and they were made by the concerned persons who were the authors of those entries so as to give colour or show of payments of the amounts to certain persons to cover up the shortage. The trial court thus, held that in the above circumstances, when the payments mentioned on July 16 and 17, 1973 under the alleged Reserve Bank of India demand drafts were proved to be false and bogus and the payees were fictitious persons, it was the bounden duty of accused 1 and 2 and the approver to explain for the shortage of Rs. 1,22,500 from the cash balance of the Reserve Bank of India chest in the Venkatapuram Sub-Treasury. The trial court took into consideration that though the accused 1 had stated in his explanation that a well-known person identified the payees, but he has failed to give his name, much less, examined him to prove or substantiate his contention. The payment register did not show that the payees were identified by a particular person at the time of relevant payments said to have been made to them. It has come in the evidence of PW 18 that there were no such persons whose names were mentioned in the payment register and all those persons were fictitious. It was further held by the trial court that it was quite clear from the documents placed on record that the S.T.O. had nowhere stated that the advices were lost or misplaced. Accused 1 in this regard had given the explanation that the records in the strong room had been shifted and replaced for white washing purposes and the register could not be traced out in spite of diligent searches and after the March accounts are over, necessary efforts will be made to trace out the records. The trial court found that in spite of several letters and reminders sent to A-1 the record was not made available. The learned trial court in the end arrived at the conclusion that in view of the evidence adduced by the prosecution including the evidence of PW 18 approver and also in view of the fact that accused 1

and 2 have admitted that they have made the relevant entries in their own handwriting in the relevant registers, it is proved that accused 1, accused 2 and PW 18 (approver) colluded together and have defalcated an amount of Rs. 1,22,500 from the cash balance of Reserve Bank of India chest in the Sub-Treasury Venkatapuram and made false entries in the relevant registers and brought into existence false accounts so as to cover up the shortage in the cash balance in the Reserve Bank of India chest of the Sub-Treasury Venkatapuram and thus they have committed grave offences punishable under Sections 409, 467, 471 and 477-A IPC.

11. We have considered the arguments made by learned counsel for the parties and have gone through the record. It is clearly proved on record that the real and genuine demand drafts were Exs. P-82 to P-88 issued from the Reserve Bank of India Madras and the same were not drawn to be payable at Sub-Treasury Venkatapuram or at any other Sub-Treasury situated in the State of Andhra Pradesh. The amounts, the dates and the payees were entirely different from those demand drafts which have been entered and shown encashed from the Sub-Treasury at Venkatapuram. The stand taken by the accused persons is that the payments or encashment of the demand drafts and the entries found in Exs. P-2, P-3, P-5, P-6, P-8 and P-9 were all correct and it may be that fake or spurious or bogus Reserve Bank of India demand drafts might have been presented by the payees. In such circumstances it was necessary for the accused persons to disclose the identity of the person who identified the payees at the time of encashment of the fake drafts. It is worthwhile to note that admittedly no advice for payment of the demand drafts had been received before the encashment of the demand drafts even the alleged demands drafts after payment are not available on the record and the accused persons took a false stand that they sent the paid drafts to the office of the Accountant-General. It is no longer in dispute that the amount of Rs. 1,22,500 was withdrawn by the accused persons and the same has been shown to have been paid against fake and spurious demand drafts to unknown persons.

12. We have considered the reasoning given by the High Court and we are clearly of the view that the High Court went wrong in throwing the burden on the prosecution to prove that the entries in column 5 of Exs. P-8 and P-9 containing the signatures or thumb impressions of the payees was made by the accused persons. In our view in the facts and circumstances of this case, it was totally wrong to place such burden on the prosecution. The prosecution has discharged its burden by leading unimpeaching oral and documentary evidence that no demand drafts were issued from the R.B.I., Madras against which payments have been shown on July 16 and 17, 1973 in the record of Sub-Treasury Venkatapuram and the names of the payees were also of unknown and unidentified persons. The entries in column 1 to 4 of Exs. P-8 and P-9 are admitted to be correct by the accused persons. These entries showing the names of the payees and the amount are proved to be false and incorrect beyond any shadow of doubt. In this background, it was no longer the duty of the prosecution to show as to who made the entries in column 5 of Exs. P-8 and P-9. The S.T.O. (A-1) has put his signatures on Exs. P-8 and P-9 and according to him the payments were made after getting the identify of the payees verified by a person well-known to him. When the payment of a huge amount of Rs. 1,22,500 was being made without receiving any advice from Reserve Bank of India, Madras, it was all the more necessary to make thorough enquiry regarding the correct identity and genuineness of the payee. The above facts being in the special knowledge of the accused persons, it was incumbent for them to disclose the names and identity of the person who had identified the payees and to establish their innocence by producing such person or the payees in defence evidence. Section 106 of the Evidence Act clearly provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

13. This leads us to irresistible conclusion that the accused persons had not received any demand

drafts from the R.B.I. Madras and all the entries in the relevant registers at Sub-Treasury Venkatapuram regarding payment of seven demand drafts amounting in all to Rs. 1,22,500 are fake, false and forged and the accused persons were the authors of such entries. We are fully satisfied that the prosecution has discharged its burden of establishing the charges levelled against accused persons beyond any manner of doubt and the findings and conclusion drawn by the trial court are upheld.

14. In the result, we allow these appeals, set aside the judgment of the High Court and affirm the judgment of the Assistant Sessions Judge, Khammam dated March 13, 1978. We uphold the conviction as well as the sentence awarded by the learned Assistant Sessions Judge. The accused-respondents shall surrender to the bail bonds forthwith.

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