KERALA HIGH COURT

Abraham Varghese

Vs

State of Kerala

(Anna Chandy, J.)

17.07.1964

JUDGMENT

Anna Chandy, J.

1. The appellant was convicted by the learned Sessions Judge of Quilon under Sections 409, 463, 467, 471 and 477,A I. P. C. for having misappropriated funds from the Adoor Bank Ltd., while he was the agent of the Bank at Pathanamthitta and was sentenced to a concurrent term of five years' rigorous imprisonment.

2. The prosecution case is as follows: --One Annamma Koshy, P. W. 1 deposited Rs. 8,000/-with the Pathanamthitta Branch of the Adoor Bank Ltd. as fixed deposit in 1951. Sometime in January 1959 the accused who was then the Agent at the Branch forged certain documents to make out that P. W. 1 had applied for and was granted a loan of Ra. 6,000/- on the security of her fixed deposit of Rs. 8.000/- and appropriated this amount for his own use. On 17-8-1959 the Adoor Bank Ltd., was amalgamated with the Bank of New India Ltd. As the accused who continued to be the agent under the new set up, failed in spite of repeated demands, to send a statement regarding the gold loan account of the branch, P. W. 3 the then General Manager 08 the Bank of New India sent two officers of the Bank to look into the accounts of the Pathanamthitta Branch. This resulted in the sending of Ext. P. 15 statement by the accused to P. W. 3 dated 2-1-1960 to the effect that he had taken for his own use some Rs. 40,000/- from the Bank and that he undertakes to return the money in instalments as a security for which he would execute a registered hypothecation bond within fifteen days of the date of the statement. On 11-1-1960 the accused and his father O. W. 1 executed Ext. P. 5 hypothecation bond in favour of the Bank. Also on that day the accused signed Ext. P 16 statement which gives a detailed account of the money he had misappropriates. A demand loan account was opened in the name of the accused He paid in a number of instalments and was continued in the service of the Bank till April 1960 when his services were terminated. The Bank of New India was amalgamated with State Bank of Travancore on 17-6-1961 and as per the instructions of the Reserve Bank of India further investigations were instituted which have resulted in the present case.

3. The accused pleaded not guilty. According to him the admissions of guilt were obtained from him by threats of criminal prosecution.

4. P. W. 1 does not support the prosecution. This witness who had to be declared hostile by the prosecution, has unequivocally supported the defence case that it was she herself who had applied for and received the loan of Rs. 6,000/- on her fixed deposit and that the signatures on the relevant papers were hers. This testimony has practically knocked the bottom out of the prosecution case.

5. The confession of guilt contained in Exts. P. 5, P. 15 and P 16 are also of no help to the prosecution. Under Section 2A of the Evidence Act:

> "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession, appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to mm reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

The learned Sessions Judge refused to accept the accused's plea that the making of the confession was caused by the inducement to withhold criminal prosecution and came to the conclusion that it was voluntary. Evidently the learned Judge has not considered the evidence on the matter much less considered it in the light of the meaning to be given to the word "appears" in Section 24. The Supreme Court has interpreted the term in Pyare Lal v. State of Rajasthan AIR 1963 S. C. 1994. His Lordship Subba Rao, J. who spoke for the court said: --

> "The crucial word is the expression "appears". The appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof."

Elaborating the matter and after adverting to Section 3 of the Evidence Act his Lordship observed: --

> "Therefore, the test of proof is that there is such a high degree of probability that a prudent man would act on the presumption that the thing is true. But under Section 24 of the Evidence Act such a stringent rule is waived but a lesser degree of assurance is laid down as the criterion. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed... ..... A prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. To put it in other words on the evidence and the circumstances in a particular case it may appear to the court that there was a threat, inducement or promise, though, the said fact is not strictly proved. This deviation from the strict standards of proof has to exclude forced or induced concessions which sometimes are extorted and put in when there is a lack of direct evidence."

The learned Sessions Judge's finding that the confession was voluntary and the, result of remorse and penitence is not justifiable in the face of what in my opinion, is the clearest possible indication of inducement that we see in this case. The accused admitted a large misappropriation of funds in his statement dated 2-1-1960. One would expect that such a revelation would result in the immediate suspension of the culprit while investigations were carried on and proper action taken. Instead we find the accused continuing in same position for a further period of over four

months. This unsual behaviour on the part of the management is quite significant. The continuation of the accused in service clearly indicates that in their anxiety to secure the financial interests of the Bank and perhaps to avoid embarrassing publicity the authorities decided to recover the embezzled money rather than send the embezzler to Jail. Immunity from criminal prosecution must have been the bait to induce the accused to own up his guilt and undertake repayment. It is in evidence that the Bank itself advanced the expenses incurred for the registration. Indeed P. W. 3 the General Manager has in so many words admitted that he accepted the advice by the officers he sent for inspection that the Bank's financial interests should be secured without criminal prosecution and that it was in these circumstances that the accused executed Exts. P 5 and P 16. The learned, Prosecutor contends that even if the hypothecation bond and Ext P 10 statement made the same day were obtained by threat or inducement, Ext. P 15 statement made ten days earlier must have been voluntary. This contention also has to fall. The promise to withhold criminal action if restitution is made must have been given before Ext. P 15 because we find in it an undertaking to execute a registered hypothecation bond within fifteen days of the date of Ext. P 15. This Interval was necessary because as admitted by P. Ws. 3 and 4 the accused had no landed property in his name and his father had to be brought in if the hypothecation was to cover the entire amount due to the Bank. As undertaken in Ext. p 15 a registered bond (hypothecation) was executed within fifteen days and as requested by the accused in Ext. P. 15 he was permitted to pay the amount In instalments. For this purpose a demand loan account was opened in the accused's name and he remitted a number of instalments. These, as I noted before, offer ample indication that a clear promise to withhold criminal action was given by the management and accepted by the accused and that both parties carried out their respective parts of the bargain. This inference gains additional strength from the circumstances that even after the accused's dismissal from service, he continued to make payments and the bank authorities desisted from complaining to the police. Indeed criminal prosecution was initiated only after the Bank was amalgamated and a new management stepped in.

6. A point was raised that Section 24 Evidence Act will not be attracted as the appellant was not, at the time he made the confession, an accused person. This position is not tenable for, as pointed out by the Supreme Court in State of U. P. v. Deoman, AIR 1960 SC 1125 :

> "The expression, "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding ....
> .....The adjectival clause "accused of any offence" is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban."

It therefore follows that Exts; P. 5, P. 15 and P. 16 are irrelevant. That being so there can also be
NO question of any corroboration of these documents nor of corroboration offered by them.

7. Yet another contention of the learned Prosecutor was that an inference of guilt can be drawn from the circumstances that the accused has no valid explanation why a demand loan account was opened in his name and that the Bank had later paid P. W. 1 the full amount of her fixed

deposit which would not have been done if there was a loan outstanding in her name. True these are highly suspicious circumstances but in the absence of expert evidence to show that the signatures in question were made by the accused and in view of the? claim by P. W, 1 that there had been no forgery of her signatures and that she had taken a loan on her deposit, they cannot be held to be conclusive enough, to sustain a positive finding that the accused forged the documents and misappropriated the Bank's money as charged.

8. To sum up the legally admissible evidence in the case is insufficient to uphold the conviction entered by the trial court.

9. In the result the appeal is allowed and the conviction and sentence are set aside.