
(1970) 04 SC CK 0023

In the Supreme Court Of India

Case No : Criminal Appeal No. 187 Of 1969

Amrut Sakharam Sanap

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-04-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409, 467, 471

Citation : (1971) 3 SCC 918 : (1972) SCC(Cri) 166

Hon'ble Judges : I. D. Dua, J;A. N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.N. Ray, J.—This is an appeal by special leave against the judgment dated 18 September, 1968 of the High Court of Bombay confirming the order of conviction of the appellant u/s 409 of the Indian Penal Code to a sentence of rigorous imprisonment for a period of three years.

2. The appellant and four other accused were charged with offences under Sections 120B, 409, 467 and 471 of the Indian Penal Code. The Sessions Judge acquitted three of the accused Nos. 3, 4 and 5. The Sessions Judge acquitted accused No. 1 Dattatraya Nathu Sonar of the charge of conspiracy u/s 120B of the Indian Penal Code but convicted him of offences under Sections 409, 467 and 471 of the Indian Penal Code and sentenced him to rigorous imprisonment for a period of three years for each of the offences and the sentences were to run concurrently. The Sessions Judge convicted the appellant of the offence u/s 409 of the Indian Penal Code and sentenced him to rigorous imprisonment for three years. The appellant was however acquitted of the charges under Sections 120B, 467 and 471 of the Indian Penal Code.

3. Dattatrya Nathu Sonal and the appeallant preferred appeal to the High Court at Bombay. The High Court set aside the order of conviction and sentence passed against accused No. 1 Dattataya Nathu sonal and confirmed the order of

conviction and sentence passed against the Appellant.

4. The prosecution case was as follows. There was a Sub-Treasury at Parola which is a Taluka place in the District of Jalgaon in the State of Maharashtra. The Sub-Treasury was attached to the office of the Mamlatdar of that place. It was a non-banking Sub-Treasury. One Awal Karkun was in charge as the Sub-Treasury Officer. One Shroff, one clerk and one peon worked under him. The armed police party attached to the Sub-Treasury consisted of a head constable and three constables all of whom guarded the Treasury by rotation. There were four boxes in the Treasury. One box had a single lock. It was meant for daily transactions and cash upto Rs. 100/- was kept there. There was a double lock box for keeping cash belong to State Revenue. A double lock currency chest called 'currency chest No. 1' was maintained for keeping currency notes of the denomination of Rs. 1/- and Rs. 2/- A second double lock currency chest No. 2 was used for keeping the currency notes of the denominations of Rs. 5/- Rs. 10/- and Rs. 100/-. Besides these four boxes there was a Godrej safe in which loose currency notes of Rs. 10000/- and other loose currency notes were kept. All the boxes were kept in the strong room. There was only one entrance to the strong room. The strong room had two locks, the Sub-Treasury officer closed one lock and the other was closed by the Shreff. When the Treasury was closed at the end of the day a seal was put every day by the Sub-Treasury Officer on the lock. The strong room was placed in charge of the sentry The strong room was opened by the Sub-Treasury Officer and the Shroff after ascertaining that the seal was intact. At the material time there was more than Rs. 17,00,000/-lying in deposit in the Treasury. The amount was kept in the said chests according to the denomination of the currency notes.

5. At the relevant time accused No. 1 Dattatraya Nathu Sonal was the awal Karkun or the Sub-Treasury Officer. The appellant accused No. 2 was Extra Awal Karkun. The other three accused worked as clerks and accused No. 3 Pathak was the Shroff.

6. In the month of July, 1965 accused No. 1 Sonar took charge of the Treasury from one Warn during his absence. On 16 July, 1965 accused No. 1 Sonar who was working as Treasury Awal Karkun received a summons from the Court of the Mamlatdar at Janner to appear in the Court on 17 July, 1965 for the purpose of giving evidence. Accused No. 1 Sonar approached the Mamlatdar of Parola for necessary directions, The Mamlatdar ordered the appellant accused No. 2 to take charge of the Sub-Treasury from accused No. 1 Sonar. On the evening of 16 July, 1965 during the absence of accused No. 1 Sonar. The appellant took over charge of the Sub-Treasury on the evening of 16 July, 1965 and he worked as Treasury Awal Karkum on 17 July, 1965 which was a Saturday. Though accused No. 1 Sonar was relieved of his charge of the Sub-Treasury on 16 July, 1965 he cancelled his departure to Janner because some urgent official work was entrusted to him by Mamlatdar. Accused No. 1 Sonar was therefore at Parola on 17 July 1965 which was a Saturday and also on 18 July, 1965 which was a

Sunday. On 19 July, 1965 there was a conference of all the Mamlatdars at the office of the Collector at Jalgaon. The appellant during the absence of accused No. 1 Sonar remained in charge of the Sub-Treasury and was to hand over charge to accused No. 1 Sonar on his return either on the evening of 17 July, 1965 or on the morning of 18 July, 1965. That was the arrangement when accused No. 1 Sonar was to have gone to Janner. The appellant handed over the keys of the Sub-Treasury to accused No. 1 Sonar on Sunday 18 July, 1965 which was a holiday but the Treasury was not at all opened on that day.

7. On 19 July, 1965 accused No. 1 Sonar went to the office and opened the Treasury along with the Shroff. They opened the currency chest and took out Rs. 50,000/-. At the end of the day the strong room was opened by accused No. 1 and accused No. 5 to close the accounts. At that time they opened currency chest No. 2 which contained notes of the denominations of Rs. 5/-, Rs. 10/- and Rs. 100/- accused No. 5 noticed that the string tied around one of the bundles of the currency notes of the denomination of Rs. 100/- was loose. He brought that fact to the notice of accused No. 1 Sonar. They thereafter took out the bundles and counted the packets and found that there were 9 instead of 10 packets of Rs. 100/- notes. Accused No. 1 Sonar sent a currency slip No. 76 to the authorities without noting the shortage. On the following morning both accused Nos. 1 and 5 went to the Treasury and counted the entire cash balance and a shortage of Rs. 10,000/- was discovered. Wani from whom accused No. 1 Sonar took over charge returned to work on 20 July, 1965 and made enquiries. Wani then found that accused No. 1 Sonar and accused No. 5 Babulal Dagadu Shroff were verifying the cash. Accused No. 1 Sonar informed Wani of the Shortage of Rs. 10,000/-. Accused No. 1 Sonar accompanied by Wani went to the Mamlatdar. The Mamlatdar Verified that there was a shortage of Rs. 10,000/- and found that one packet of currency notes of the denomination of Rs. 100/- was missing. The Mamlatdar made an endorsement in the chest register below the accounts of 19 July, 1965. The Mamlatdar gave information to the police.

8. As a result of police investigation the five accused were charged with conspiracy to commit criminal breach of trust. Accused No. 1 Sonar and the appellant were also charged with the offence of forgoing a valuable security and using a forged on evidence that accused No. 1 Sonar and the appellant were entrusted with the cash at the Treasury at the relevant time and both of them were responsible for the loss and guilty u/s 409 of the Indian Penal Code.

9. The High Court held that the finding of the Sessions Judge that the charge of conspiracy was not proved against accused No. 1 Sonar and the appellant, would render it difficult to accept that both of them committed the breach of trust with respect to the same amount. The High Court acquitted accused No. 1 Sonar and came to the conclusion that the appellant was guilty of the offence u/s 409 of the Indian Penal Code.

10. Counsel on behalf of the appellant contended that the charge of the Treasury was not given to the appellant, and, therefore, the appellant was not a public

servant. The High Court found that there was an order by the Mamlatdar requiring accused No. 1 Sonar to give charge to the appellant. The cash was also actually handled by the appellant. The Appellant took charge and signed Exhibit 69, the currency chest slip as the Sub-Treasury Officer. The appellant was at the relevant time a public servant. The giving of keys on Sunday to accused No. 1 Sonar could not be said to amount to giving charge to Sonar because the Sub-Treasury was closed on that day.

11. The High Court also found as a fact that on the morning of 19 July, 1965 accused No. 1 Sonar accompanied by accused No. 5 the Shroff opened the strong room and took out cash for payment to Jalgaon District Central Co-operative Bank, when 350 pieces of currency notes of the denomination of Rs. 100/- each, 1000 pieces of currency notes the of denomination of Rs. 10/- each and 1000 peices of currency notes of the denomination of Rs. 5/- each aggregating Rs. 50,000/- were taken out from the chest by accused No. 1 Sonar in the presence of accused No. 5 the Shroff and a peon Suka pandu, P. W. 24. Rs. 50,000/- was then paid to the clerk of the Jalgaon District Central Co-operative Bank. The Treasury was thereafter locked in the morning of 19 July, 1965. On the evening of 19 July, 1965 the strong room was opened by accused No. 1 Sonar and the Shroff accused No. 5 to close the accounts. Accused No. 5 Shroff noticed at the time of opening the currency chest No. 2 that the string tied around one of the bundles of currency notes of the denomination of Rs. 100/- was loose. It is in evidence that 100 pieces of currency notes of the denomination of Rs. 100/- each were contained in each packet and 10 such packets were tied together in a bundle. Notice of accused No. 1 Sonar was brought to it. The evidence is that some search was then made but it was not possible to verify the accounts. The boxes were locked and the strong room was closed and sealed. The following morning on 20 July, 1965 accused No. 1 Sonar accompanied by accused No. 5 Shroff opened the strong room and they took out the bundles, counted the packets and found that there were instead of 10 packets of Rs. 100/- notes. The Treasury Awal Karkun Wani took over charge of the Sub-Treasury on 20 July 1965. When he came he found that accused No. 1 and accused No. 5 Sonar informed Wani of the shortage of the Rs. 10,000/- Want weni to the Mamlatdar. The Mamlatdar asked Wani and accused No. 1 to proceed to the office. The Mamlatdar arrived. The shortage of Rs. 10,000/- from currency chest No. 2 was found. The Mamlatdar gave information to the local police.

12. The appellant denied to have misappropriated any amount. The appellant stated that he took over charge from accused No. 1 Sonar on the evening of 16 July, 1965 after counting the cash in the baxes with single and double locks. The appellant also said that he counted the bundles in the two currency chests. On Sunday 18 July, 1965 the appellant simply handed over the key of the Sub-Treasury to accused No. 1 Sonar. It being a Sunday however the charge was not taken by accused No. 1 Sonar.

13. The sessions Judge found as a fact that there was a shortage of Rs. 10,000/-

in the cash balance in currency chest No. 2 and he found both accused No. 1 Sonar and the appellant guilty of the offence. The charge of conspiracy was not accepted against accused No. 1 Sonar and the appellant.

14. Accused No. 1 Sonar has been acquitted. The question therefore is whether the appellant is guilty. The evidence establishes first that when the appellant on 16 July, 1965 took charge from accused No. 1 Sonar the appellant verified the boxes as well as the currency chest and did not find and report anything to be missing. Secondly, on Saturday 17 July, 1965 the appellant was in charge and signed Exhibit 68 which was the currency chest slip No. 75 of 17 July, 1965. The closing balance on 16 July 1965 was Rs. 17,94,000/- and on 17 July, 1965 the opening balance was Rs. 17,94,000/- on 17 July, 1965 the deposit was Rs. 8000/- and there was a withdrawal of Rs. 3000/- with the result that at the end of the day there was again the closing balance of Rs. 17,94,000/-. On 19 (July, 1965 the opening balance was again Rs. 17,94,000/-. The appellant at one stage said that he had taken out and kept only Rs. 3000/- in the Godrej safe for the purpose of transactions on Saturday. It was on 19 July, 1965 that the loss of Rs. 10,000/- in Rs. 100/- currency notes was discovered. The disappearance of Rs. 10,000/- occurred after charge had given by accused No. 1 Sonar to the appellant on 16 July, 1965 and before accused No. 1 Sonar took charge from the appellant. During this period, namely, from the evening of 16 July, 1965 till the morning of 19 July, 1965 when accused No. 1 Sonar came to the Sub-Treasury, the appellant was in charge and had access to the currency chests and currency notes. It is true that accused No. 1 Sonar got the key of the Treasury on Sunday 18 July, 1965. But the evidence is that he did not come to the Treasury at all on Sunday and he came for the first time on the morning of Monday 19 July, 1965. The appellant suggested that he dealt with only Rs. 3000/- on 17 July, 1965. It is in this background that a most significant thing is noticeable that on Sunday 18 July, 1965 the appellant gave the key to accused No. 1 Sonar. Mere giving of the key does not amount to giving charge of the Treasury. It is in evidence that accused No. 1 Sonar did not take charge of the Treasury on Sunday, 18 July, 1965 though the key was given by the appellant to accused No. 1 Sonar on Sunday. The further evidence is that the appellant opened the currency chest on the 17 July, 1965 and dealt with cash and currency notes. The appellant's case that he had taken out only Rs. 3000/- was rightly disbelieved by the High Court. This conduct of the appellant is to be judged in the facts and circumstances of the case referred to hereinbefore. The appellant took charge of the Treasury with the amount and thereafter Rs. 10,000/- was missing. One of the packets of Rs. 100/- currency notes was missing and the string of the bundle of 10 packets was found loose. The High Court rightly found the appellant to be guilty of the offence u/s 409 of the Indian Penal Code.

The appeal fails and is dismissed. The appellant will surrender to him bail if he is on bail.