

(1976) 04 SC CK 0052

In the Supreme Court Of India

Case No : Criminal Appeal No. 265 of 1971

Bhagwan Singh Rana

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 30-04-1976

Acts Referred:

Post Office Act, 1898 — Section 52

Citation : AIR 1976 SC 1797 : (1976) CriLJ 1379 : (1976) 3 SCC 101 : (1976) SCC(Cri) 373 : (1976) 8 UJ 644

Hon'ble Judges : R. S. Sarkaria, J;P. N. Shingal, J

Bench : Division Bench

Advocate : Harbabs Singh Marwah and R. N. Sachthey, for the Appellant; B.Sen Sr. Advocate, for the Respondent

Final Decision : dismissed

Judgement

P.N. Shinghal, J.—This appeal of Bhagwan Singh Rana is directed against the appellate judgment of the High Court of Punjab and Haryana dated February 5, 1971, upholding the judgment of Additional Sessions Judge, Gurgaon, dated November 4, 1970, convicting him of an offence u/s 52 of the post Office Act but reducing the sentence in rigorous imprisonment for one year.

2. The appellant was working as Sub-Post Master in Sohna Adda Post Office, in the leave vacancy of Raghu Ram (P.W. 6) on March 21, 1967. Navtej Singh (PW. 5) who was a student of the Junior Technical School Gurgaon, delivered a parcel containing a lady's wrist watch (Wx. 1) addressed to R.L Bhardwaj (P.W. 3), to the appellant on March 21, 1967, at the Sub-Post office. It was an unregistered parcel. The watch did not reach the addressee. R.L. Bhardwaj (P.W 3) went to Gurgaon in May, 1967, and contacted Navtej Singh (P.W 5) for obtaining the watch from him. Navtej Singh informed him that he had already sent the watch by post on March 21, 1967. Navtej Singh and R.L. Bhardwaj then went to Sohna Adda Sub Post Office and made inquiries about the parcel. Raghu Ram (P.W. 6) who had, in the mean time, resumed his duties as Sub-Postmaster, told them

that he was on leave on March 21, 1967, and that it was appellant Bhagwan Singh Rana who was working for him on that day. He also informed them that he had seen a tin plate lying in the post office. Navtej Singh (P.W. 5) saw that the plate and identified it to be the same in which he had packed the watch. R.L. Bhardwaj (P.W. 3) thereupon filed a complaint with the postal authorities, and the inquiry was entrusted to A.P. Bhatnagar (P.W. 1) Inspector of Post Office. It is alleged that during the course of inquiry the appellant recorded statement in his own handwriting on May 25, 1967, in the Post Office at Parliament Street, New Delhi, where he was working on that date, making some admissions. That statement is on the record on Ex. P.B. It is alleged further that the appellant undertook to produce the watch the next day and that he appeared before Inspector A.P. Bhatnagar (P.W. 1) on May 26, 1967, in his office at Gurgaon, and produced (Ex. P. 1) and also wrote a further statement Ex. PC. The matter was however not reported to the Police until September 15, 1969. It was then that the police registered a case against the appellant and charge-sheeted him for the commission of an offence u/s 52 of the Post Office Act. The case was tried by Additional Sessions Judge, Gurgaon, who convicted the appellant and sentenced him to rigorous imprisonment for two years. As has been stated, his conviction has been upheld by the High Court but the sentence has been reduced to one year.

3. It has been argued by Mr. Ramamurthi on behalf of the appellant that Exs. PB and PC which were produced in the Trial court as an extra judicial confessions of the appellant, had not been made voluntarily, and should not have formed the basis of the appellant's conviction as they were not true, were not corroborated, and were retracted by the appellant.

4. We have gone through the documents Exs. PB and PC. It has not been controverted, and has in fact admitted, that they are in the handwriting of the appellant. Ex. PB was recorded by the appellant on May 26, 1967 in the presence of Joginder Singh (P.W. 11) Deputy Post Master of the Parliament Street Post Office, and Inspector A.P. Bhatnagar (P.W. 1) both of whom have recorded that fact in their respective endorsements and have stated that the document was written by the appellant in his handwriting without any dictation and was given by him to Inspector A.P. Bhatnagar (P.W. 1) then and there. Inspector A. P. Bhatnagar has denied that there was any pressure, influence or inducement when the appellant wrote and gave Ex. PB to him, and nothing has been elicited in the cross-examination to show that the statement in Ex. PB was not voluntary. So far as Joginder Singh (P.W. 11) is concerned, all that was asked in the cross-examination was whether Ex. PB was written by the appellant in his own handwriting, without any dictation, and the witness stated that that was so. There was no further cross-examination. and we are satisfied that there is no justification for the argument that Ex. PB was not a voluntary statement. As has been stated, Ex. PB was written by the appellant on May 25, 1967, and he stated therein that he would deliver the watch (Ex. P1) to the Inspector the next day. The appellant did so, and recorded the other statement Ex. PC on May 26, 1967.

He made a mention of the earlier statement Ex. PB in his statement Ex. PC, and did not venture to state that the earlier statement was not voluntary. On the other hand, the appellant stuck to what had been stated in Ex. PB and delivered the watch also, in the presence of S.C Jain (P.W. 4) Post master Gurgaon Head Post Office. He was cross-examined on the point whether the document was directed the appellant and he denied that suggestion Nothing was elicited in the cross-examination of S.C. Jain to show that Ex. PC was not a voluntary documents It is therefore futile to contend that Exs. P.B and P.C should have been rejected by the courts below as they were not recorded by the appellant voluntarily.

5. It is true that the appellant went back on what he had stated in his own handwriting Exs. PB and PC. The main contention of the appellant in Ex. PB was that the watch (Ex P1) was in his possession as it had been given to him by Tej Ram, who was the packer in the post office, by opening the unregistered postal parcel which had been delivered to the appellant by Navtej singh (P.W. 5). Navtej Singh and R.L Bhardwaj P.W. 3 have identified the watch and the appellant and Tej Ram never claimed the watch to be their own property, The prosecution of the watch, which had been stolen from the postal parcel is also a satisfactory evidence to corroborate the statements which had been made by the appellant in Exs. P.B.X and PC, and there is no real justification for the contention that those retracted statements should have been rejected for want of corroboration. We have gone through the judgment in Haroon Haji Andulla v. State of Maharashtra, (1) cited by Mr. Ramamurthy, but that was a case which related to the confession of a co accused and the extent to which it could be used against an accomplice, and cannot avail the appellant.

6. It has also been argued by Mr. Ramamurthy that the courts below erred in accepting those parts of the statements of the appellant in Exs. PB and PC which were inculpatory and in rejecting those parts which were ex-culpatory, and that, in doing so, the courts lost sight of the requirement of the law that such statements should either be accepted as a whole, or not at all. For this proposition our attention has been invited to Hanuman v. The State of Madhya Pradesh etc. (2) and Palvinder Kaur v. The State of Punjab. (3) The law on the point has however been laid down by this Court in Nishi Kant Jha v. State of Bihar (4) in which the two cases cited by Mr. Ramamurthy have been considered. After referring to Taylor's law of Evidence and Roscoe's Criminal Evidence this Court has held that it is permissible to believe one part of a confessional statement, and to disbelieve another, and that it is enough if the whole of the confession is tendered in evidence so that it may be open to the Court to reject the exculpatory part and to take inculpatory part into consideration if there is other evidence to prove its correctness. An examination of Exs. PB and PC shows that the appellant admitted that he was working as Sub-Post Master at Sohna Adda Post Office on March 21, 1967 when a Sikh by (Navtej Singh, (P.W. 5) came to the post office and delivered a parcel under postal certificate. The appellant also admitted that the parcel was opened by Tej Ram in his presence,

and that he (Tej Ram) took out a lady's wrist Watch (Ex. P 1) and from it and gave it to him. The appellant however stated that he had asked Tej Ram not to open the parcel but he opened it without his consent. The exculpatory part may therefore be of not much consequence for the rest of the statement goes to establish beyond any doubt that the postal parcel was delivered to the appellant by Navtej Singh (P.W. 5) it was opened by the post office packer Tej Ram in the presence of the appellant, Tej Ram took out the watch (Ex. P 1) from the parcel and gave it to the appellant, who kept it with him. The appellant wrote out Ex. PC the next day in continuation of his statement Ex. PB and presented the watch (Ex. P1) to Inspector A.P. Bhatnagar, as aforesaid. He clearly stated in Ex. PC. that the watch was the same which Tej Ram has given to him by opening the parcel which was delivered at the Post Office on March 21, 1967. It may be that the appellant tried to show in Exs. PB and PC that the parcel was not opened by packer Tej Ram with his consent, but the fact nonetheless remains that the parcel was, according to the appellant's own admission, opened in his presence, in an unauthorised manner, the watch was removed from it and the appellant kept the watch with him for a period of more than two months without accounting for it. As has been stated, these admissions of the appellant have been corroborated by other satisfactory evidence on the record in material particulars. There is therefore no reason to doubt that the appellant committed the offence u/s 52 of the Post Office Act and has rightly been convicted and sentenced as aforesaid.

7. The appeal fails and is dismissed.