

(1974) 01 GUJ CK 0001
In the Gujarat High Court

Jayantilal Purshottamdas Patel

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 16-01-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 381

Citation : (1975) CriLJ 1345 : (1975) GLR 253

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—The appellant was a poor employee who was being paid Rupees 125/- per month by his employer who was engaged in the business of manufacturing Exercise Books, 15 days before his wife delivered a child, he is alleged to have committed a theft of rolls of paper worth Rs. 104/- from the shop. He was prosecuted in this connection. The learned trial Magistrate found him guilty, convicted him u/s 381 of the Indian Penal Code, and sentenced him to suffer rigorous imprisonment for one month and to pay a fine of Rs. 200/-. The sentence in default of payment of fine was of the order of 15 days" rigorous imprisonment. The appellant has challenged the order of conviction and sentence rendered by the learned trial Magistrate.

2. So far as the finding of guilt is concerned, no exception can be taken thereto having regard to the evidence at length on record. It is not necessary to discuss the evidence as I concur with the view of the learned trial Magistrate and as, in my opinion, the evidence of one single witness is sufficient to uphold the order of conviction. The witness who is in my mind is P. W. 4 Chandrakant Hasmukhlal, a 19 year old boy who was working gratis as an apprentice at the shop. He has implicated the appellant. Nothing has been elicited in the cross-examination. His presence at the shop is not disputed. No animus is assigned to him. If his evidence is accepted, as T must, the order of conviction must be sustained.

3. The Court is now confronted with the delicate question of sentence. The question of sentence must be resolved in the fact-situation of every case. The

Judge who is entrusted with the task of imposing a sentence has to give anxious thought to the penological dimension of the matter. In the present case the appellant was employed by a private shopkeeper. He was being paid Rs. 125/- per month. Judicial notice can be taken of the fact that the cost of living index for Ahmedabad in November 1973 was 815. A mill worker in Ahmedabad was entitled to claim Rs. 307/31 by way of dearness allowance over and above his basic salary. It is, therefore, clear that the employer of the appellant was paying to the appellant Rs. 200/- less per month than what the employee would have required to maintain himself as a human being having regard to the spiralling price-index. In essence therefore the petitioner has deprived his employer of about Rs. 100/- when the employer was in effect depriving him of Rs. 200/- per month. Both were doing something anti-social. Of course there was no legal obligation on the employer to pay the employee a minimum need based wage (ought it not to be imposed?) to enable him to live as a human being. It is also no doubt true that the anti-social act of the employee constitutes an offence under the Indian Penal Code whereas that of the employer does not. It is also true that under the law as at-present ethical conduct on the part of the employer is not a pre-requisite, for insisting on ethical conduct on the part of the employee. This dimension, however, cannot be altogether overlooked when faced with the question of sentence. Therefore, over much importance need not be attached to the deprivation of a small sum of Rs. 104/- particularly having regard to the circumstances in which the appellant was placed. The appellant's wife was pregnant and she was about to deliver a child. The evidence shows that she delivered a child within 15 days of the incident. The appellant had to go to his native town in connection with the illness of his wife. Under these circumstances if he was tempted to commit this offence (and it cannot be overlooked that the temptation arose by reason of the fault of the employer himself who was depriving the appellant of Rs. 200/- per month) it cannot be treated as a very serious criminal offence. The Court must consider what objective is to be attained by sending such a person to jail. Will a sentence of imprisonment operate as a deterrent to him or to the society? Any one placed in the situation of the appellant and treated like the appellant might have been tempted under similar circumstances to commit the offence. Would it reform the appellant? Obviously not. It was not on account of any aberration or want of character that the act was committed by the appellant. It was the suffocating compulsion of circumstances that obliged him to commit the act at the risk too well known to him. Therefore the reformatory purpose of the punishment will not be served either. In fact it is more necessary to inculcate a sense of economic justice in the mind of the employer and to reform him for in reality it was his mentality of exploiting the appellant by paying him a niggardly sum of Rs. 125/- per month which bears no relationship with the needs of the employee to exist as a human being which has occasioned this incident. And retributive theory which has now become obsolete cannot also be called into aid. A society which tolerates such great disparity of wealth and income and which countenances the employer paying one-third of what is necessary to maintain the employee as a human

being can scarcely speak of the retributive aspect. There is also another circumstance which must be taken into account, namely, that the clumsy effort of the appellant has failed and the goods in question have already been restored to the complainant. In fact he has not suffered any loss whatsoever. The appellant has also lost his employment in these times of wide-spread unemployment. Under the circumstances, a substantive sentence of imprisonment would constitute a crime in itself rather than a just punishment meted out by the Court acting on behalf of the society. So also the sentence of fine of Rs. 200/- imposed by the trial Court will work great injustice. The poor appellant was driven to this extreme because of his economic distress. The situation will only be compounded by imposing a financial penalty and thereby adding insult to injury. The remedy will be worse than the disease. Under the circumstances the only sentence which can be imposed without shocking one's conscience is a token fine of Re. 1/-.

4. The appeal is, therefore, allowed partly. The order of conviction of the appellant is confirmed. The substantive sentence of one month's imprisonment is set aside. The sentence of fine is modified by reducing the fine from Rs. 200/- to Re. 1/-. The bail bond of the Appellant shall stand cancelled.