(2005) 11 AP CK 0096

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1597 of 1997

Public Prosecutor, High Court of A.P. APPELLANT

Vs

P. Hanumantha Rao RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471

Citation : (2006) 1 ALD(Cri) 332 : (2006) 1 ALT(Cri) 368 : (2006) CriLJ 1675

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; K. Srinivas Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—This appeal, by the State, is directed against the judgment, dated 21-5-1997 in C.C. No. 98 of 1994 on the file of XXI Metropolitan Magistrate, Hyderabad, by which, the accused i.e. the respondent herein was acquitted of the charges punishable under Sections 409, 471, 420, 468 and 474(a) I.P.C.

2. The case of the prosecution in brief is that the respondent herein was working as Special Assistant at the relevant point of time in Syndicate Bank of Bolaram Branch whose Branch Manager filed a complaint before the Sub-Inspector of Police, Team-IV, CCS, DD, Hyderabad which was registered as Crime No. 83 of 1989 for the alleged offences punishable under Sections 409, 471, 420, 468 and 474(a) IPC. The allegation of the complaint is that the respondent herein abused his official position and misappropriated various amounts by manipulating and destroying the records on various occasions. On the basis of the complaint, the criminal law is set into motion, and after conducting a thorough investigation, the police filed charge sheet, which was numbered as C.C. No. 98 of 1994.

3. In order to bring home the guilt of the accused, the prosecution pressed into

service the evidence of PWs. 1 to 10 and also got exhibited Exs. P1 to P 218. The allegations against the respondent herein are as follows:

1) One S.F. Barge opened S.B. Account No. 1715 and he was also authorized to operate current Account No. 173 of M/s. Pereira Poultry Farms and current account No. 111 of M/s. Pereira Farms. On 7-9-1988, he tendered a cheque for Rs. 15,000/- to the accused who issued counter folio in the name of S.F. Borgee, S.B. Account No. 1715. Both the cheques were given for credit to M/s. Periar Poultry Farms. But the accused diverted the amount to current account No. 165 of M/s. Venkateshwara General Merchants and made fictitious entries in the pass book of S.B. Account No. 173. He also made entry on 13-9-1988, showing that the amount was credited and debited to the account of M/s. Pereira Poultry Farms. He destroyed the ledger folio of current account No. 165 and sub-day ledger folio and cheque for Rs. 15,000/- and caused undue loss of Rs. 15,000/- to the Bank.

2) On 12-1-1989, the accused prepared two credit vouchers for Rs. 10,000/- and Rs. 15000/- to SB Account No. 301 and Rs. 4,500/- presented two cheques for the said amounts, passed them and received cash payment as per the S.B. Sub Day book. The amounts were aggregated to Rs. 1,05,355.10. But, he authenticated the deposit in SB Account credited to Rs. 1,30,355.10 and compensated credit of Rs. 25,000/-. He also destroyed the S.B. Ledger folio and on 9-2-1989, he informed the same to Vigilance Manager.

3) On 23-1-1988, Sainikpuri Branch received a cheque for Rs. 13,600/- drawn on Bollaram branch and the C.A.O. debited the said amount which was issued in Joint Account of S.B. Account No. 23 in the name of P.N. Veerasham, brother of the accused. The balance in S.B. Account No. 23, was shown only Rs. 9.31. The cheque was to be returned, but he did not respond and the cheque was not traced.

4) On 18-2-1988, a cheque amounting to Rs. 1,44,308.75 was received from the C.A.O. to Bollaram branch, but the accused credited Rs. 18,908.75 and did not account for Rs. 1,25,400/- and on verification, it is found that it belongs to the account of M.S. Chatwal through Hanumanth Rao and his account shows only credit balance of Rs. 75,010/- only. But the accused ought to have returned the cheque, but failed to do so and made a loss of Rs. 1,25,400/-.

5) On 16-4-1988, the C.A.O. debited Rs. 76,942.60, but the accused prepared various slips for Rs. 61,942.60 and there was a shortage of Rs. 15,000/- relating to M/s. Poorna. Trading Company belonging to his brother Poornachander Rao. The cheque has to be returned, but the same was not accounted for and was destroyed.

6) On 23-4-1988, Alwal branch, presented a cheque for Rs. 13.600/- which was debited by C.A.O., but the accused did not respond the same and on perusal, it is said that the cheque belongs to P.S. Indira Devi, wife of the accused and the balance in the account is Rs. 197.45. But the accused did not respond nor return

the cheque.

7) On 27-4-1988, the C.A.O. debited Rs. 41,956.50 to Bollaram branch, but the accused responded for Rs. 26,956.50 only and there was a shortage of Rs. 15,000/- which belongs to two cheques of Rs. 8000/- and Rs. 7000/- issued to M/s. Poorna Trading Company and Veeresham, his brother''s firm and his brother. But the accused did not respond nor return the cheques.

8) On 28-4-1988, the C.A.O. debited Rs. 44,213/-, but the accused authorized Rs. 39,213/- and there was a shortage of Rs. 5000/- and on verification, he did not account for a cheque for Rs. 20,000/- of M/s. Poorna Trading Company and has not returned the cheque but adjusted Rs. 15,000/- mentioned in the above case and passed cheques for Rs. 15,000/-, dated 28-4-1988, leaving the cheque of Rs. 20,000/- to be accounted for and destroyed the said cheque.

9) On 4-7-1988, the C.A.O. has debited to Bollaram Branch Rs. 33,000/-, but the accused authorized credit of Rs. 18,390/- to C.A.O. account and showed a short credit of Rs. 15,000/- relating to M/s. Poorna Trading Company which was neither returned nor responded and the cheque was destroyed.

10) On 2-7-1988, the C.A.O. credited to Bollaram Branch Rs. 79,884.24, but the accused authorized an amount of Rs. 54,886.50 and showed a short credit of Rs. 24,997.74 which was returned by the Bank of India as excess arrangement drawn by Venkateshwara General Stores belonging to Veeresham, favouring M/s. Poorna Trading Company. The said cheque was withdrawn through M/s. Poorna Trading Company and was destroyed.

11) The C.A.O. has debited to the Bollaram branch account for Rs. 68,018.10 on 23-7-1988, but the accused credited Rs. 48,000/- with a shortage of Rs. 20,017.60 pertaining to M/s. Poorna Trading Company. The cheque was not returned but was destroyed.

12) On 27-7-1988, the C.A.O. has debited Rs. 72,036.07 but the accused authorized Rs. 57,036.07 only and shown a shortage of Rs. 15,000/- pertaining to M/s. Poorna Trading Company, which was withdrawn and destroyed the said cheque.

13) On 30-7-1988, the C.A.O. has debited Rs. 58.608/-. But the accused authorized only for RS. 25,608/- and a shortage of Rs. 33,000/- relating to P.N. Veeresham, his brother and received cash and destroyed the cheques.

14) On 20-8-1988, the C.A.O. has raised a debit of Rs. 21,670.60 but the accused authorized Rs. 3,545.60 only and short credited Rs. 18.125/- relating to M/s. Venkateshwara General Stores, his brother and destroyed the said cheque.

15) On 23-8-1988, the C.A.O. has debited Rs. 1,07,622.05 on Bollaram branch, taut the accused authorized only Rs. 82,624.55 only and short credited Rs. 24,997.50 which reveals that it pertains to A/c. No. 2010 of Prakash Chand Jain and the cheque was destroyed by the accused.

16) On 17-9-1988, the C.A.O. debited Rs. 70,682/- on Bollaram branch. But the accused authorized Rs. 25,682/- only for credit of C.A.O. account and showed a shortage of Rs. 45,000/-. Originally, he presented a cheque for Rs. 45,000/- in the account of Venkateshwara General Merchants and withdrew the said cheque signed by P.N. Veeresham passed by the accused and received the cash, but did not make relevant entries in ledger and the cheque was returned and he did not present the cheque and destroyed the said cheque.

17) On 14-10-1988, the C.A.O. has debited Rs. 65,446.75 on Bollaram branch and two cheques relating to P.C. Jain, and one cheque relating to Venkateshwara General Merchants, and the accused failed to return the cheques resulting a loss of Rs. 65,446.75 to the bank.

18) On 16-1-1989, the C.A.O., has debited Rs. 50,796.45 on Bollaram Branch, but the accused authorized Rs. 5,796.45 only short credited Rs. 25.000/- which is relating to two cheques for Rs. 10,000/- and Rs. 15,000/- each, which was returned by Punjab National Bank for want of funds and credited to the account of B.R. Madhav and Y.L. B. Rao and B. R. Madhav for Rs. 10.000/-, Rs. 5,000/- and Rs. 10.000/- respectively. Regarding SB A/c. No. 5816, he credited Rs. 15,000/- and also Rs. 10.000/- and withdrawn the said amount and received the amount. Thus, in total Rs. 4,74,184.59 after short credited.

19) The accused''s wife, Indira Devi, got S.B. Account No. 6227. On 9-1-1989, the accused debited Rs. 2,31,961.68, but the C.A.O. credited Rs. 1,91,961.68 and excess debit of Rs. 40,000/- was found and on verification, two cheques for Rs. 20,000/- and Rs. 20,000/- were credited to the account of Indira Devi his wife, and R. Shanta Kumari and withdrawn Rs. 20,000/- through his wife''s account by Shanta Kumari.

20) He Shanta Kumari maintained S.B. Account No. 6573 of Bollaram Branch and she gave complaint that she deposited Rs. 40,000/-, through her son and the credit voucher was initialized by the accused. He has signed on the account of Shanta Kumari, but adjusted the amount in M/s. T.P. Rattaiah, and sons of Alwal Branch and utilized the said amount for his use, made entries in the pass book of Shanta Kumari and misappropriated the amount.

21) M.S. Chatwal and his wife, opened Account No. 6523 with the influence of the accused and availed loan of Rs. 80,000/- under L.D. No. 193/97 against V.C.C. deposits, but the amounts were adjusted to Rs. 60,000/- to the account of the accused and his brother Veeresham, Rs. 9,391.10 to the account of Chatwal and Rs. 10,668.90 in cash. Part payments were received and there is outstanding of Rs. 56,955/- which was closed as full settlement. It was explained differently by the accused. But, Chatwal lodged a complaint and submitted counterfoils signed by the accused, but there is no corresponding credit entry. M.S. Chatwal also alleged that he handed over Rs. 35,000/- and Rs. 5,000/-, to credit in the account of his father, but the same were not accounted for. On verification, the amount was found adjusted in the current account of T.V. Rattaiah and sons and

got withdrawn the said amount instead of crediting to the account of Chatwal. He also issued counterfoil to Chatwal for amount of Rs. 1,480/- on 26-12-1988, Rs. 23,000/- on 7-1-1989, and utilized Rs. 60,000/- in L.D. Account No. 1193/87 and Rs. 56,975.55 and issued fictitious counterfoils to Chatwal and encashed two cheques.

After scanning the entire evidence of the prosecution witnesses and also perusing the documents, the Court below came to the conclusion that the prosecution has miserably failed to prove the guilt of the respondent herein beyond reasonable doubt, and accordingly, while extending benefit of doubt, acquitted him of the said charges. Hence, the Criminal Appeal has been preferred.

4. Heard the learned Additional Public Prosecutor and the learned Counsel for the respondent.

5. No doubt, the respondent herein was the Special Assistant at the relevant point of time, but it cannot be said that he is responsible for all the 21 charges. In fact, he also performed his duties like any other officer in regular course of banking business and he was never incharge of Clearing Department, and hence, it cannot be said that he is responsible for the alleged commissions and omissions of the other staff members. The prosecution has not established that the respondent destructed or altered the records, The non-examination of the account holders from whose accounts, the respondent alleged to have misappropriated the funds would go against the case of the prosecution and necessarily the Court has to draw an adverse inference against the case of the prosecution,

6. To substantiate 21 charges, the prosecution did not let in any evidence from the Central Accounts and office about the debits made in the Bollaram branch, and even the alleged documents marked as Exs. P1 to P183 were not authorized by any officer. Further, the authors of those documents were also not examined in the Court. It is the duty of the prosecution to produce the relevant ledgers and folios into Court to prove that exactly to which account number the amounts were credited and through which cheques the amounts were received. Further it is the duty of the prosecution to examine the account holders concerned to establish that they had so much of money in their account and it was misappropriated. It is not as if the account holders were not available. Though they are very much available, for obvious reasons, the prosecution did not choose to examine them. There must be positive evidence to establish that the respondent alone is authorized and it is his duty to respond C.A.O. correctly and promptly and he is dealing with Clearing Section and he is alone responsible for not responding for non crediting the accounts correctly or short crediting the accounts and the writings on the credits are only belonging to the respondent alone. All these omissions clearly establish that the prosecution has miserably failed to bring home the guilt of the accused.

7. Further, though the prosecution had pressed into service as many as 216

documents as exhibits, it has failed to file the concerned credit slips, debit slips or cheques, ledger sheets or day accounts or copies of transfer scrolls. In fact, it is for the prosecution to file the above suit documents and also to prove them by examining the staff members, who made entries. No doubt, the prosecution has come up with a theory that those documents were destroyed, but to establish the fact that they were not in existence, there is absolutely no evidence adduced by any of the witnesses. It is only PW1 who deposed that the respondent alone was looking after the Clearing Section and there is no other evidence regarding the same. Though PW1 stated that there are certain written instructions about the duties to be performed in the branch, they were not filed in the Court to fix up the responsibility on the respondent, Though it is the case of the prosecution that the amounts concerned were drawn by the respondent through the accounts of his brother P.N. Veeresham, M/s. Venkateswara General Stores and his wife Indira Devi, nothing could be elicited from the chief-examination of PWs.6 and 7 that there is some iota of truth in what the prosecution has stated. In those circumstances, a duty is caste upon the prosecution to declare such witnesses as hostile in view of their hostility. In the instant case, the said witnesses were not declared as hostile, on account of which, an adverse inference has been drawn against the case of the prosecution. From the record, it is clear that the account holders clearly stated that the amounts alleged to have been received were never received by them, but the said account holders as already stated were never examined to establish the said fact. It is the duty of the prosecution to examine those witnesses to establish that the amounts were not received by them and they were misappropriated by the accused. The confession statement marked as Ex. P184 is a weak piece of evidence and when once it is retracted, it is for the prosecution to establish by other evidence. In the instant case, though the confession statement was recorded by PW4 i.e. Vigilance Officer, it was not signed by him and no panchas were present at the time of recording the confession statement. On account of the said failure and retraction, the confession statement which is in the form of an extra-confession statement cannot be accepted at all. Further, the Vigilance Officer''s report marked as Ex.P 187 was also not signed by the Vigilance Officer i.e. PW4. The expert was examined as PW5 and he gave his opinion in Ex.P 207 and the reasons for his opinion were assigned in Ex. P208, but his opinion was not of any help to the case of the prosecution as he categorically stated that he did not supply some more standards for comparison. In tact, it is for the prosecution to examine the standard writings of the accused to rely on the expert''s opinion. No doubt, the opinion of the expert is that some of the writings belong to the accused as per Exs. S1 to S53, but there is no evidence to prove that the signatures on Exs.S1 to S11 belong to the accused.

8. The cumulative effect of all these aspects discussed as above la that the prosecution has not come up with the true version and has not proved the guilt of the accused i.e. the respondent herein.

9. In the result the Criminal Appeal is dismissed.

