(2005) 08 AHC CK 0179

In the Allahabad High Court

Case No : Government Appeal No. 1184 of 1981

The State of U.P. APPELLANT

Vs

Lakhan Lal Saxena RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 409

Citation : (2005) 08 AHC CK 0179

Hon'ble Judges : M.C. Jain, J;B.B. Agarwal, J

Bench : Division Bench

Advocate : Z.K. Hasan and A.G.A, for the Appellant; H.P. Singh, Virendra Saran, H.L. Pandey and N.K. Saxena, for the Respondent

Final Decision : Allowed

Judgement

B.B. Agarwal, J.—This appeal on behalf of the State of Uttar Pradesh has been filed against the judgment and order dated 19.2.1981 passed by Sri R.S. Maurya, Judicial Magistrate, Mahoba district Hamirpur in Criminal Case No. 900 of 1979 u/s 409 I.P.C. Police Station Ajnar whereby the learned Magistrate acquitted the accused respondent of the charge u/s 409 I.P.C. having found not guilty.

2. The facts of the case are that the accused-respondent Lakhan Lal Saxena was posted as Post Master in post office of village Tikaria at the relevant time. One Uma Shanker Nayak was having a savings Bank Account in the said post office in his name. He is said to have deposited Rs. 1500/- in that account on 20.01.1976 and again Rs. 1500/- on 02.03.1976. The accused-respondent, in his capacity of the Post Master is said to have made. entries of those deposits, on the said dates in the pass book issued from the post office to Uma Shanker Nayak in connection with his account. The said entries were also said to have been initialled by Lakhan Lal and the seal of the post office was also put against both the deposit entries. It is said that Inspector Post Office, Sub Division, Mahoba i.e. Sri H.K. Agarwal, the complainant of this case, made inspection of the post office and he

found certain irregularities in the Saving Bank accounts of the post office. Uma Shanker Nayak, when came to know about such irregularities in the Saving Bank accounts of the Post Office through one Bhagirath Pradhan of the Gaon Sabha, he gave in writing about the irregularities in his account to the Sub Post Master Jaitpur. According to him, he had made the said deposits by paying cash to the then Post Master Lakhan Lal but the Post Master, the accused of this case, did not make such entries in the relevant registers maintained at the post office and returned the Pass Book to him after making entries of the said deposits. The complainant Sri H.K. Agarwal also found irregularities in connection with these deposits as the entries of said deposits were not found by him in the relevant records of the post office. He lodged a report at the Police Station u/s 409 I.P.C. against the accused Lakhan Lal.

3. The police investigated the matter and after investigation charge sheet was submitted against the accused-respondent u/s 409 I.P.C. The learned Magistrate took cognizance. Accused was examined. He did not plead guilty before the Magistrate and claimed trial.

4. The learned Magistrate proceeded with the trial of the case. He recorded prosecution evidence and after considering the entire evidence produced by the prosecution and hearing the counsel for he parties acquitted the accused-respondent vide his judgment and order dated 19.02.1981, as in his opinion, the prosecution had failed to establish the charge u/s 409 I.P.C. against the accused respondent.

5. The said order of the learned Magistrate has been challenged through this appeal by the State of Uttar Pradesh on the ground that the prosecution had been able to prove the entrustment of the amount by oral as well as documentary evidence but the learned trial court did not appreciate the evidence on record in its correct perspective and illegally acquitted the accused of the case on the ground that the written report given by Uma Shanker Nayak to the Sub-Post Master of the Post Office in connection with the entries made by Lakhan Lal in the pass book of Uma Shanker was a material document which was not produced by the prosecution in this case and also on the basis of the lacuna in the investigation of the case by the Investigation Officer in not recording statement of Hardeo Singh and Rama Shanker Tiwari, in whose presence the alleged entries were said to have been made by the accused in the pass book.

6. We have heard Sri Z.K.Hasan, learned A.G.A. from the side of the appellant and Sri Harendra Pratap Singh learned counsel appearing on behalf of the accused-respondent at length.

7. The prosecution in this case has produced not only the complainant, the Sri H.K. Agarwal, Inspector Post Office as P.W. but also Sri Uma Shanker Nayak in whose Savings Bank account the entries were said to have been made by Lakhan Lal. Both these witnesses supported the prosecution case in toto. Sri Uma Shanker Nayak was the material witness and he specifically deposed about the

two deposits on 20.1.1976 and 2.3.1976 at the post office in his Savings Bank Account. He also stated about the fact that the said entries in his passbook were made about those deposits by Lakhan Lal, who had also initialled those entries and put the seal of the post office in front of those entries. Our attention was drawn by the learned counsel for the defence towards the statement in the cross examination of this witness, wherein he admitted that he himself and the accused both were Assistant Teachers in a Pathshala and both were having money transactions in between themselves and argued that actually Uma Shanker P.W.2 did not deposit any money and the entries in the pass book were made in order to secure the money which had been previously advanced by Uma Shanker to him (Lakhan Lal) on previous occasion. However, this argument has no force in view of the entries in the Pass Book and the statement of P.W. 2 Uma Shanker who stated specifically that these amounts were not in connection with some previous money transactions but he deposited these amounts in cash in the post office in his Saving Bank Account.

8. The report in this case has been lodged not by the victim Uma Shanker Naik but by the Inspector Post Office Sri H.K. Agarwal. The complaint, which was said to have been given by Uma Shanker Naik to the Sub-Post Master Jaitpur in connection with the said entries has not been produced by the prosecution in this case but the approach of the learned Magistrate to treat the absence of this report as a lacuna in prosecution case, in our opinion, is not correct, specially when the relevant pass book is on record which apparently shows that the said complainant Uma Shanker must have made a complaint and handed over that pass book to the Inspector Post Office. The said pass book has been filed by the prosecution in this case before the trial court and when the accused Lakhan Lal denied his handwriting and signature on this pass book in connection with those entries, then the signature and writings of Lakhan Lal were sent for expert evidence and the Expert report was filed by the prosecution on the record of the trial court.

9. The Expert Rajendra Singh Yadav has also been examined and he is P.W.4. According to the evidence of this witness P.W. 4 the writing and the signature on the relevant entries in the passbook of Uma Shanker tally with the handwriting and signature of the accused Lakhan Lal.

10. One witness Sri Vinay Kumar Jaiswal, Munsif Magistrate, P.W. 5,was also produced in whose presence signatures of Lakhan Lal were obtained for comparison with the signature in the passbook at the relevant entries. Therefore, the omission on the part of the prosecution to file the complaint of Uma Shanker Naik, alleged to have been given by him to Sub Post Master is not at all relevant and material in this case and the contrary view of the learned Magistrate on this point is not at all tenable.

11. Learned counsel for the accused-respondent has drawn our attention to paper No. 113 Ka which is said to be the statement of Lakhan Lal Saxena recorded by Inspector Post office during inquiry. The learned Magistrate has

observed in his judgment that this statement can be read in evidence and it is binding on the prosecution because it has been filed by the prosecution itself and in view of this statement it was the duty of the Investigating Officer to examine Hardeo Singh and Rama Shanker Tiwari, in whose presence Sri Lakhan Lal accused is said to have made entries in the pass book of Uma Shanker.

12. In our opinion, that statement of Lakhan Lal is not admissible in evidence. Neither such type of suggestion has been given to any of the witnesses of the prosecution by the defence nor it has been specifically stated by the accused in his statement u/s 313 Cr.P.C. that actually Uma Shanker had paid Rs. 3,000/- to him on some previous occasion and when he demanded the money back then it was agreed between him and Uma Shanker that the entries of the said amount in the pass book shall be made by the accused as a security and when the amount will be refunded by Lakhan Lal to Uma Shanker then Uma Shanker will get the pass book in question torn and fresh pass book will be issued. This type of statement appears to have been given by accused Lakhan Lal to the Inspector post office but since this paper was not put to the accused in his statement u/s 313 Cr.P.C. and he did not get any opportunity to explain the circumstances in which such type of statement was given by him hence this statement can not be read in evidence. The mere filing of the statement by the prosecution is not at all relevant, specially when such type of suggestion has not been given to the prosecution witnesses and this fact has not been stated specifically by the accused in his statement u/s 313 Cr.P.C. It is to be noted that names of these witnesses have not been mentioned in the F.I.R. and hence if the Investigating Officer has not recorded statements of these witnesses u/s 161 Cr.P.C. during investigation then it is not material, specially when the accused has denied even his signatures and handwriting in connection with these entries in the pass book and thus the stand of the defence taken during trial is altogether contrary to the statement on Paper No. 113 Ka.

13. In these circumstances, in our opinion, even if it is accepted that the Investigating Officer of this case must have recorded the statement of these witnesses during investigation, then too it can not be said that the absence of recording of the statement of these witnesses or to produce these witnesses by the prosecution in the trial court was fatal to the prosecution case, because admittedly evidence regarding deposit of the amount is there i.e. the pass book coupled with the statement of the complainant and the absence on the part of the accused to narrate this fact in his statement u/s 313 Cr.P.C. Moreover, no such suggestion has been given by the defence to the prosecution witnesses. Therefore, at this stage it can not be accepted that it is the case of the defence that the money was actually not paid and the entries were made in the pass book as a security of the advance alleged to have been made by Uma Shanker to accused Lakhan Lal on some previous occasion when he had agreed that he will get the pass book torn after return of the money by Lakhan Lal to Uma Shanker. Moreover, it was not expected from the accused, who was holding a responsible post of Post Master in the Post and Telegraph Department of the Government of

India, to use the official record in the settlement of his personal transactions. It is to be noted that the Government records are public records and their authencity should be maintained by the public servants. Therefore, if any public servant who manipulates government record in such a way is left unpunished, then it will shatter the confidence of the public not only in the administration and the officials of the Government but also in the Government records which are presumed to be authentic and genuine under law. The Government records are presumed to be authentic and genuine under law and admissible in evidence without any formal proof.

14. Alternatively if reliance is placed on document Paper No. 113 Ka, then it will be a clear admission of the accused regarding the entries in the post office in his own handwriting. The accused in this case has denied these entries to be in his own handwriting and signatures. It is proved by the evidence of D.W.2 Uma Shanker and the Expert report that the said entries were in the handwriting of the accused-respondent. It is proved by evidence of the complainant of this case that the said entries did not find corresponding place in the relevant registers maintained in the post office, which clearly indicates that the accused did not deposit the money which was entered by his in the pass book of Uma Shanker in his savings bank account maintained at the post office and misappropriated the same for personal gains and, therefore, all the ingredients of the offence u/s 409 I.P.C. are clearly made out and fully established against the accused respondent Lakhan Lal.

15. It was also argued before us by the learned counsel for the respondent that it is a case of the year 1979 and the appeal is pending since 1981. More than 24 years have elapsed and it was simply in connection with misappropriation of small sum of Rs. 3000/- and if the accused is sentenced and sent to jail for such an offence now, no useful purpose would be served Rather it will cause great hardship to the accused. In our opinion, this argument is not tenable and is devoid of any force. If the accused in this case is allowed to be left unpunished, then the confidence of the public will shake not only in connection with government records but also in the administration of justice. Benefit of this delay in disposal of this appeal, in our opinion, cannot be given to the accused, who is otherwise found guilty by cogent and reliable evidence on record for committing an offence under Section, 409 I.P.C. The conduct of the accused respondent to change his stand from time to time also created complications un-necessarily. The prosecution had to call Expert report in this case which was mainly due to the reason that the accused even though admitting that the entries were made by him in the pass book in presence of two persons, started to deny his handwriting and signatures in connection with the said transaction.

16. Thus, in our opinion, the trial court erred in appreciating the prosecution evidence in its correct perspective and has passed the order of acquittal against the accused on the grounds untenable in law. The order of acquittal, therefore, passed by the learned Magistrate is not justified. The prosecution in this case has

fully established its case beyond all reasonable doubt by cogent and reliable oral and documentary evidence on record and hence the accused is liable to be convicted for the offences u/s 409 I.P.C. and the order passed by the learned Magistrate deserves to be set aside.

17. In the result the appeal succeeds and is allowed. The order of acquittal-dated 19.02.1981 passed passed by the Magistrate is hereby set aside. The accused-respondent Lakhan Lal Saxena is held guilty for the offence u/s 409 I.P.C. and is convicted and sentenced to R.I. for three months and to pay a fine of Rs. 5,000/-. The accused shall be taken into custody forthwith to serve out the sentence. The fine shall be deposited within a period of one month in the lower court from the date of receipt of a copy of this order. In case the respondent fails to deposit the amount of fine within the stipulated period, then he shall undergo further R.I. for one month. In case the find is deposited, a sum of Rs. 3,000/- out of the said sum of Rs. 5,000/- shall be paid to Uma Shanker, P.W. 2, the victim, as compensation.

18. A copy of this judgment shall immediately be sent to the Court of Chief Judicial Magistrate concerned, who shall cause the accused to be arrested and lodged in jail to serve out the sentence awarded under this order. Compliance report shall be reported within two months.