

## **Dasrathlal Chandulal Joshi vs State Of Gujarat on 18 January, 1979**

**Equivalent citations: AIR1979SC1342, 1979CRILJ1078, (1979)4SCC338, 1979(11)UJ359(SC), AIR 1979 SUPREME COURT 1342, 1979 UJ (SC) 359, 1979 CRILR(SC&MP) 111, 1979 SCC(CRI) 974, 1979 (4) SCC 338**

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**Bench: A.D. Koshal, S. Murtaza Fazal Ali**

### **JUDGMENT**

S. Murtaza Fazal Ali, J

1. This is an appeal by special leave directed against the judgment of the High Court of Gujarat dated 19th January 1973, by which the High Court reversed the order of the trial court acquitting two accused persons Manubhai Chhaganbhai Patel and Dasrathlal Chandulal and convicted them Under Sections 420/34 and 471/34 The petition for special leave filed by petitioner No. 1 Manubhai Ghagantal Patel was dismissed by this Court and leave was granted only to the appellant Dasrathlal Chandulal Joshi. A detailed narrative of the prosecution case is to be found in the judgment of the High Court and that of the trial court and it is not necessary for us to repeat the same all over again In order to understand the charge against the appellant certain admitted facts may be. mentioned. It appears that Sadachar Samiti had printed a number of receipts which were given to different authorised persons for collection of funds on behalf of the Committee in aid of a famine relief fund organised by the Bansakathe Famine Relief Committee. This fund was meant to give relief to the famine-stricken people of Ban sake the district. It was alleged by the prosecution that accused No 1 forged a number of receipts starting from series No. 5000 and passed the same as genuine and collected donation from various persons of whom P Ws. 1 to 8 have been examined as Prosecution Witnesses. There is absolutely no allegation that either when the receipts were printed by the accused No. 1 or at any other time the appellant was taken into confidence and had any knowledge that the receipts had been actually forged by the accused, nor is there any evidence that the appellant got money or derived any profits from the amounts realised by accused No. 1. The only limited role played by the appellant was that he accompanied accused No. 1 wherever he went for collecting donations. The Trial court after considering the evidence came to a clear finding that there was no evidence to show that the appellant had any knowledge regarding the activity of the accused No. 1. In this connection the trial court observed as follows:

I may further state that it was stated by all the witnesses that it was accused No. 1 and accused No. 2 did not speak anything at all. There is also no evidence to show that accused No. 2 had knowledge regarding the activity of accused No. 1. I would have therefore, even if I had come to the conclusion that accused No. 1 had issued the

receipts in question to the witnesses, given benefit of doubt to accused No. 2 & acquitted him of the charge leveled against him.

2. We have gone through the judgment of the High Court and we find that It has not given any convincing reason for displacing of the finding of the learned Sessions Judge which led to the acquittal of the appellant. The High Court seems to have relied to three circumstances in order to convict the appellant, first that the appellant accompanied accused No. 1 wherever he went for collecting donations; 3rd, that the accused No. 1 had granted receipts which were forged & 3rdly, that there were certain entries in the Red Book which were contrary to the contents of the receipt granted by Accused No. 1 and the appellant did not object to the same. These circumstances by themselves were not sufficient to bring home the charge against the appellant. It was the duty of the prosecution, before the appellant could be convicted under Sections 420/34 or 471/34 to prove that the appellant knew from before that the receipts used by the accused No. 1 were forged, Secondly, it must also be proved that accused No. 1 had shared the fraudulent intention with accused No. 1 in passing as genuine forged receipts and obtaining donations from various persons on false pretexts. There is, however, not an iota of evidence on the record to prove these facts. To begin with, the appellant was an outsider and a stranger and was picked up by accused No. 1 from a hotel and asked to accompany him. No witness says that at the time when accused No. 1 made certain representations while collecting the money the appellant endorsed his stand or made any statement to indicate that he was aware that the receipts were not genuine and still supported the activities of the accused No. 1. Under these circumstances, therefore, it will be difficult for the prosecution to substantiate the charge against the appellant merely on the ground that the appellant accompanied accused No. 1 wherever he went to collect donations. Mr. Sharma appearing for the State frankly conceded that apart from the evidence that the appellant had accompanied accused No. 1 there was no evidence of any overt act to show that the appellant endorsed the stand of accused No. 1. It was further argued by Mr. Sharma that in some cross there was a discrepancy between the amount mentioned in the Red Book and the receipt and, therefore, the appellant must be presumed to know that this discrepancy was there. We are, however, unable to accept this argument in the absence of any evidence to show that the appellant had been shown the Red Book previously and had compared it with the receipts so as to have clear knowledge of the discrepancy and still he kept quiet when the accused No. 1 was collecting donations from various persons. We have gone through the evidence of P.Ws. 1 to 8 and we are unable to find that they in any way show that the appellant was a party to the forgery committed by accused No. 1. For these reasons we are satisfied that there is no legal evidence against the appellant and the High Court was wrong in law in reversing the acquittal of the appellant. We fully agree with the finding and the reasoning of the trial court, a portion of which has been extracted above by which the trial court acquitted the appellant. For these reasons, therefore, the appeal is allowed, the convictions and sentences passed on the appellant are set aside and he is acquitted of the charges framed against him. The appellant will now be discharged from his bail bonds.