The State Of Andhra Pradesh vs I.B.S. Prasada Rao And Ors. on 27 October, 1969

Equivalent citations: AIR1970SC648, 1970CRILJ733, (1969)3SCC896

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Bench: I.D.Dua, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. This appeal is brought by special leave from the judgment of the Andhra Pradesh High Court dated 23-3-1967 in Criminal Appeals Nos. 297, 298, 299 and 300 of 1965 preferred by respondents 1 to 4 whereby the High Court allowed the said appeals, set aside the judgment of the Sessions Court and acquitted the respondents.

2. In the Co-operative Central Bank, Srikakulam, accused No. 1 Satya Rao and accused No. 2 Prasada Rao were working as clerks while accused No. 4 Mohan Rao was a peon. The Co-operative Central Bank has four branches one of which is at Sompet. The Branch Office has a manager, a clerk, a shroff and one peon and a night watcher. Till September 30, 1964 Sri V. S. Venkateswarlu was the Branch Manager of the Bank at Sompeta. He went on leave with effect from October 1, 1964. In his place accused No. 1 was posted to act as Branch Manager, Sompeta. Accused No. 1 took charge as Branch Manager with effect from October 1, 1064 from Venkateswarlu. The case of the prosecution is that while accused No. 1 was at the headquarters he came to know that the accused No. 4 was in the habit of practicing signatures of the Secretary of the Bank. A conspiracy for cheating the bank was entered into between all the accused. In pursuance of the conspiracy accused No. 2 had typewritten credit advice card and also a letter of authority both stating to the effect that they should be treated as Demand Draft advice and Demand Draft respectively. To both these documents accused No. 4 forged the signature of the Secretary. On October 8, 1964 accused No. 4 took the credit advice card to the despatch clerk and said that the Manager wanted that the advice card should be despatched immediately and got it despatched the same day to the branch office. The credit advice card was received on October 10, 1964 by accused No. 1 himself who handed the credit advice card to the clerk and asked him to keep the same with him in spite of the fact that the clerk protested that such advice cards should be kept with the Manager himself. On October 13, 1964 accused No. 1 pretended that he was having motions and was unable to sit up in the office and asked the clerk to carry on the business of the branch for him. But accused No. 1 was all the tune sitting by the side of the clerk giving him guidance. On October 14, 1964 accused No. 1 was still pretending

that he was unwell and asked the clerk to carry on the transactions on his behalf. At 12.80 P. M. on October 14, 1964 accused No. 2 Went to the Sompeta Branch office. Accused Nos. 1 and 2 went out for about 15 minutes and came back at about 1.45 P. M. Accused No. 3 went to the Bank & presented to accused No. 1 the letter of authority typewritten on the letter-head with a copy to the Central Bank purporting to authorise payment of Rs. 15,000 to V. Chandradasu of Mandasa treating the letter as Demand Draft. The letter purported to bear the signature of the Secretary and also specimen signatures of the payee Cttandradasu. Accused No. 1 gave the letter to the clerk for necessary action. When the clerk protested that no amount will be paid on the letter of authority in the absence of Demand Draft accused No. 1 said that the amount should be paid in any case as the bank's prestige was at stake. The clerk in obedience to the advice of accused No. 1 took out the credit advice card and tallied the signature of the Secretary and after satisfying himself that the signatures were correct, prepared the debit slip and after taking endorsement of accused No. 3 made the payment order. The clerk passed on the documents to the shroff who again protested that the payment could not be made unless the payee was identified by a person known to the Bank. Again accused No. 1 interfered and told the shroff that to demand identifying witnesses would amount to harassment of customers and the prestige of the Bank would be lowered. When the shroff found accused No. 3 was talking familiarly with accused No. 1 he took it that accused No. 1 must be knowing accused No. 3. But as there was no sufficient money in the counter accused No. 1 and the shroff went to the chest and drew Rs. 15,000. When the money was paid to accused No. 3 he took it and went away without even counting the amount. On October 27, 1964 the Secretary verified the accounts of the Bank and of the Head Office and found that there was no credit of Rs. 15,000 in favour of Chandradasu. Suspecting foul play the Secretary and the Auditor proceeded to Sompeta and made enquiries. After return to Headquarters the Secretary made a complaint to the Sub-Inspector of Police, Srikakularn. On the same day the Sub-Inspector arrested accused No. 1 and upon his statement recovered a sum of Rs. 7,000 (Rs. ,3,000 in 100 rupee currency notes and the rest in 10 rupee currency notes). Then accused No. 1 took the police party to the house of accused No. 3 who after interrogation produced a sum of Rs. 3,000-(300 ten rupee currency notes). Accused No. 1 took the police party to the house of accused No. 2 who after his arrest produced Rs. 1,930 (193 ten rupee notes). Besides, he produced a transistor radio with a licence and one gold necklace stating that he purchased the transistor radio from D. V. Ramanaiah for Rs. 495.50 and had redeemed the gold necklace from A. Gopala Rao of Vijayanagaram by paying Rs. 200. He further stated that he Said Rs. 250 to Patnala Satyanarayana, dealer in watches at Srikakulam to get him a "Fortis" wrist watch. Accused No. 1 took the police party to the house of accused No. 4 in Relli Street at Srikakularn. Accused No. 4 produced Rs. 1,686 (168 ten rupee currency notes and sis one rupee currency notes). He also produced one gold necklace, a gold chain, a wrist watch and other articles. Accused No. 3 was identified by the clerk and the shroff of Sompeta in test identification parade held by the Judicial Second Class Magistrate on November 11, 1964 in Srikakulam Sub-Jail.

3. The Additional Sessions Judge, Srikakulam, convicted all the four accused of the charge under Section 120-B, I.P.C. and sentenced them to undergo rigorous imprisonment for three years each. Accused Nos. 2 and 4 were also convicted under Section 467, I.P.C. and each of them was sentenced to undergo rigorous imprisonment for three years. Accused Nos. 1, 2 and 3 were convicted under Sections 467 and 471, I.P.C. and each was sentenced to undergo rigorous imprisonment for three years. Accused Nos. 1 to 4 were further convicted under Section 429, I.P.C. and each of them was

sentenced to undergo rigorous imprisonment for four years. Accused No. 3 alone was convicted under Section 419, I.P.C. and was sentenced to undergo rigorous imprisonment for two years. Accused No. 1 was found guilty under Section 203, I. P.C. All the accused presented appeals to the Andhra Pradesh High Court which allowed the appeals and acquitted them of all the charges.

4. On behalf of the appellant it was contended by Mr. Ram Reddy that in reversing the judgment of the Additional Sessions Judge the High Court has failed to take into account all the important circumstances pointing to the guilt of each of the respondents and as a result the findings of the High Court suffered from grave infirmities and there has been a failure of justice in this case.

5. On a consideration of the entire evidence the Additional Sessions Judge found that the following circumstances are established:

(1) Accused No. 4 was in the habit of practising the signatures of the Secretary and the Manager and other officials of the Bank as spoken to by P. Ws. 7 to 9;

(2) Accused Nos. 1, 2 and 4 were in dose contact with one another;

(3) On October 7, 1964 accused No. 2 took a bundle of Advice Cards from P.W. 2 and was later seen typing an Advice Card and a letter of Authority;

(4) Accused No. 4 took the Advice Cards and the letter of authority to P.W. 7 and told him that the Advice Card addressed to the Sompeta Branch was to be despatched immediately;

(5) Accused No. 1 received the Advice Card on October 10, 1964 and asked the clerk to keep it in his custody;

(6) Accused No. 1, though he was present in the office on October 13 and 14, 1964 pretended to be ill and made the clerk P.W. 1 to attend to the business of the Branch;

(7) Accused No. 2 met Accused No. 1 at Sompeta on October 14, 1964;

(8) Accused No. 3 appeared at the Branch office on October 14, 1964 with a letter of authority and despite the irregularities pointed out by the clerk and shroff accused No. 1 made them pay the amount of Rs. 15,000 to accused No. 3;

(9) Soon after accused No. 3 left accused No. 1 also left the office throwing the keys on the shroffs table;

(10) On October 27, 1964 P.W. 11 found the documents relating to the payment of Rs. 15,000 missing;

(11) Various accused produced various amounts and articles when interrogated by the police;

(12) Accused No. 3 was identified by P. Ws. 1 and 2 at an identification parade held by the Magistrate, P.W. 15.

(13) P.W. 14, the Handwriting Expert gave his opinion that Ex. P-4, the debit slip was in the handwriting of accused No. 3.

6. In our opinion the Additional Sessions Judge was justified in holding that on the basis of all these circumstances the charge of conspiracy under Section 120B and a charge of cheating under Section 420, I.P.C. was established against all the four respondents and the charge under Section 419, I.P.C. against respondent No. 3.

7. In regard to the question of the effect and sufficiency of circumstantial evidence for the purpose of conviction, it is now settled law that before conviction based solely on such evidence can be sustained, it must be such as to be conclusive of the guilt of the accused and must be incapable of explanation on any hypothesis consistent with the innocence of the accused. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must meet any and every hypothesis suggested by the accused, however extravagant and fanciful it might be. Before an accused can contend that a particular hypothesis pointing to his innocence has remained unexcluded by the facts proved against him, the Court must be satisfied that the suggested hypothesis is reasonable and not farfetched. Further, it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused or point conclusively to his guilt. It may be that a particular fact relied upon by the prosecution may not be decisive in itself, and yet if that fact, along with other facts which have been proved, tends to strengthen the conclusion of his guilt, it is relevant and has to be considered. In other words, when deciding the question of sufficiency, what the Court has to consider is the total cumulative effect of all the proved facts each one of which reinforces the conclusion of guilt, and if the combined effect of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that any one or more of those facts by itself is not decisive.

8. Applying the principle to the present case we are satisfied that the charges under Sections 120-B and 420, I.P.C. have been established against all the four respondents and under Section 419, I.P.C. against respondent No. 3.

9. The case of respondent No. 1 was that he was not in the Branch office and did not attend to the business of the Branch on October 13 and 14, 1964. D. Ws. 1 to 4 were examined on his behalf to show that he was not in the Branch Office either on the 13th or 14th, October. All the witnesses said that they were in the Branch Office for 5 to 10 minutes. It: is possible that they might not have noticed respondent No. 1 or at that particular time respondent No. 1 might have gone out. The evidence of these witnesses was also discarded by the trial court on the ground that it was inconclusive. On behalf of respondent No. 3 three witnesses D. Ws. 9, 10 and 11 were examined to prove the plea of alibi The case of respondent No. 3 was that he was present at the Panchayat Court

at Kotabommali on October 14, 1064 and gave evidence in S. C. Nos. 2 and 3 of 1964. The evidence of D. W. 9 does not in any way establish the alibi pleaded by respondent No. 3. But D. Ws.10 and 11 stated that respondent No. I was present in the Panchayat Court at Kotabommali on October 14, 1964 for giving evidence. The evidence of these two (sic)esses cannot be relied upon because it is admitted that the father-in-law of respondent No. 3 was the purohit of Kotabommali and was, therefore, in a position to influence D. Ws. 10 and 11. No reliance can be placed on the evidence of D. Ws. 10 and 11 for the important reason that in the court of the Committing Magistrate respondent No. 3 did not set up the plea of alibi. If the respondent. No. 3 was actually present in the Panchayat Court on October 14, 1964 it is most unlikely that he would not have put forward this plea of alibi in the court of the Committing Magistrate. We are, therefore, of opinion that the Additional Sessions Judge rightly rejected the defence evidence adduced on behalf of the respondents.

10. It is well settled at the extraordinary jurisdiction of this Court under Article 136 will be exercised by it only when it finds (a) substantial and grave injustice has been done and (b) exceptional and special circumstances exist in the case. In our opinion the judgment of the High Court in the present case is perverse and as we have already shown the guilt of the respondents has been established beyond all reasonable doubt and the facts proved against them are of such a nature that the only conclusion which any Court would legitimately reach on those facts is that the offences charged have been committed by each one of the respondents.

11. For these reasons we allow these appeals, set aside the judgment of the High Court and convict all the four respondents under Section 120-B and sentence them to rigorous imprisonment for three years each. We also convict all the respondents under Section 420, I.P.C. and sentence them to rigorous imprisonment for four years each and respondent No. 3 under Section 419, I.P.C. and sentence him to rigorous imprisonment for four years. The sentence of imprisonment will run concurrently; if the respondents are at large action should be taken for the arrest and the surrender of the respondents.