Bhagat Ram vs State Of Punjab on 9 February, 1954

Equivalent citations: AIR1954SC621, AIR 1954 SUPREME COURT 621

JUDGMENT

Jagannadhadas, J.

1. These two are appeals by special leave against a common judgment of the High Court of Punjab in its revisional jurisdiction. The appellant who is the same in both was convicted by the Magistrate, First Class, Hoshiarpur at two separate trials, one in respect of a charge under section 420 and the other in respect of a charge under section 409 of the Indian Penal Code. The convictions were confirmed by the Sessions Judge on appeal and by the High Court in revision. The charges relate to connected matters and the evidence, though separately recorded, was substantially the same. It is, therefore, convenient to deal with the two appeals by a common judgment as the High Court did.

2. The appellant, Bhagat Ram, was the Civil Nazir in the office of the Senior Subordinate Judge, Hoshiarpur. The main charge against him was that in his capacity as a public servant, he committed criminal breach of trust in respect of a sum of Rs. 3,496/5/- of Government money between the 1st December, and the 18th December, 1948.

The other charge was that in order to find the money to cover up the embezzlement, he tried to raise a sum of Rs. 3,350/- by way of loan from one Seth Brij Lal, misrepresenting to him that it was required by the then Subordinate Judge and that by such representation he dishonestly induced the said Seth Brij Lal to issue a cheque for the sum of Rs. 3,350/-.

At the material period of time Shri K. S. Gambhir was the Senior Subordinate Judge of Hoshiarpur in the place of the regular Senior Subordinate Judge, Shri Bhandari, who was officiating as the District and Sessions Judge, from the 13th November to the 16th December, 1948.

Under arrangements made by the High Court, the Senior Subordinate Judge of the place was vested with certain administrative duties, one of such being that he was to draw and disburse month by month the salaries of the Civil Courts establishments at Hoshiarpur and of three other outlying Tahsils of that district, viz., (1) Una, (2) Dasuya, and (3) Garhshankar. The normal procedure for the disbursement of the salaries was to prepare the salary bill of all the four Tahsils and present it to the Treasury on or about the first of the month, the salary for the Sadar Tahsil of Hoshiarpur being drawn in cash and the salaries for the three other Tahsils being drawn by means of cash orders authorising payment locally.

The embezzlement in question relates to the salary bill for the month of November, 1948. Departing from the pre-existing practice, the said salary bill was drawn entirely in cash for all the four Tahsils. This was done under the authorisation of the Subordinate Judge, Shri Gambhir, but the actual cash

amounting to Rs. 5,576/6/- was received from the Treasury by the appellant on the 4th December, 1948. Out of this amount a sum of Rs. 811/1/- for Hoshiarpur Sadar and a sum of Rs. 1,420 for Garhshankar Tahsil were in fact disbursed within a few days. The salaries of Una and Dasuya, totaling an amount of Rs. 3,347/5/- were not disbursed. On the 14th December, a telegram was received by the District Judge, Hoshiarpur, from the Subordinate Judge, Una, complaining that the civil establishment pay of his Tashil was not so far received and requesting him to arrange for the same.

It is the prosecution case that the appellant had misappropriated the amount and that on receipt of the above telegram by the District Judge, he realised the urgency of finding the money somehow and that he accordingly made attempts to raise the money by way of a loan.

It is in evidence that on the 16th December, he approached two persons, by name Hakim Rai and Lala Shiv Dayal for loans, representing to them that they were required for the Subordinate Judge. Failing in these attempts he approached one Seth Brij Lal for the amount of Rs. 3,350/- also making the same representation. He showed them a 'Ruqqa' from the Subordinate Judge purporting to authorise him to raise the money. On the morning of the 17th, Seth Brijlal gave the appellant a bearer cheque on the local Imperial Bank drawn in favour of Shri K. S. Gambhir, Subordinate Judge, by name. The cheque was presented by the appellant on the Bank that very day at 10 a. m. But before the cash was paid to the appellant by the Bank, Seth Brij Lal happened to have gone towards the Court premises and to have met the Subordinate Judge. He informed him that he had issued the cheque to accommodate him. The Subordinate Judge appeared surprised at it and repudiated the same. Consequently Seth Brij Lal rushed up to the Bank and stopped payment, got back the cheque from the Bank authorities, and informed the Subordinate Judge. The Subordinate Judge thereafter took a statement from him. This statement and the returned cheque were duly sent up to the Police for investigation.

Suspicion having been thereby aroused against the appellant as regards the handling of the moneys drawn by him, the relevant accounts were immediately checked and it was discovered that the salaries of Una and Dasuya establishment were not disbursed. Accordingly, two complaints, one in respect of a charge under section 420 and the other in respect of a charge under section 409 of the Indian Penal Code were filed against the appellant, the first on the 17th December at 8-30 p. m. and the second on the 18th December. It would appear also that the appellant left the place on the 17th itself and sent to the Subordinate Judge, an application for leave for a month. He was not found for some days and was actually arrested on the 3rd January, 1949. Meanwhile the entire amount was deposited by the brother of the appellant on the 21st of December, 1948. It may also be mentioned that the Subordinate Judge, Shri Gambhir, contacted the two persons, Shiv Dayal and Hakim Rai, whom the appellant had approached for raising the loan, and took their statements on the 19th December. These statements also were forwarded to the Police.

3. The appellant substantially admits all the material facts above stated. His defence is that it was the Subordinate Judge, Shri Gambhir, that misappropriated the amount and that it was at his request and under his specific authority that he made the attempts to raise the sum of Rs. 3,350 on the 16th and the 17th of December, from the three persons above mentioned.

In support of this defence he has examined a witness and produced a 'Ruqqa,' Ex. D. A. dated the 4th December, 1948, purporting to bear the signature in English of Shri K. S. Ghambir acknowledging receipt of "a sum of Rs. 3,500/- out of the pay account of the process-serving establishment from the Civil Nazir for a day". The said 'Ruqqa' bears an endorsement of repayment of Rs. 150/- on the 8th December, so that, it is, if true, a receipt for the sum of Rs. 3,350/- said to have been misappropriated. The appellant relies on this in respect of the charge under section 409 of the Indian Penal Code.

So far as the charge under section 420 of the Indian Penal Code is concerned, it is his defence that the Subordinate Judge gave him on the 16th December another 'Ruqqa', signed by him and specifically authorising him to raise an amount of Rs. 3,350/- by way of loan on his behalf locally and that he made use of it in his attempts to raise the loan for him. The 'Ruqqa' has not been produced. But it is his case that it was returned to the Subordinate Judge after being shown to Brij Lal. He relies on the evidence of the very witnesses whom he is said to have approached for the loan in support of this defence.

The trial Court as well as the appellate Court have disbelieved the defence and convicted him of both the charges and sentenced him to imprisonment as well as fine.

The High Court on revision confirmed the convictions but considered the fines uncalled for and confined the sentences to the imprisonment awarded.

It may be mentioned that after we heard the arguments fully on these appeals, we have been informed that the appellant has served out the sentences of imprisonment. But we have been pressed to express our view on the merits of the case inasmuch as the conviction has affected the official employment of the appellant and has caused him serious loss and dislocation in his life.

4. On the above statement of the case it is fairly clear that the appellant must be found guilty of the offences charged unless the defence put forward by him can be held to be made out to the extent of its being reasonably probable.

In the course of the trial certain circumstances relating to this transaction have been elicited which have been variously relied on by the prosecution as well as the defence as being in support of their respective cases.

The learned Judge of the High Court who dealt with this matter in revision sums up the position as follows in his judgment.

> "The issue in the cases is quite simple -- either Mr. Ghambir is the villain of the piece and Bhagat Ram is a victim of his oppression and is being made to embezzle a sum of Rs. 3,500/- for Mr. Ghambir's benefit on the 4th of December, and then falsely being accused of trying to cheat the money-lender Seth Brij Lal when in fact the loan was being taken on behalf of Mr. Ghambir, or else Mr. Ghambir is rather a careless officer who allowed himself to be tricked by the accused in the matter of pay-bill on the 4th

> December and was thereafter falsely accused by Bhagat Ram of being the principal offender when Bhagat Ram's embezzlement of Rs. 3,500/- could no longer be concealed owing to the urgent demands for the pay of the process serving establishment at Una and Dasuya. 'It cannot be denied that there are circumstances in the evidence on the record which point towards both conclusions'. (Underlined (here in ' ') by me)."

The learned Judge, however, came to the conclusion that the Courts below have carefully considered the circumstances for and against and that they rightly held that it was Bhagat Ram, the appellant who was responsible for the embezzlement and that his efforts to throw the blame on the Subordinate Judge, Shri Ghambir, were false.

5. On a consideration of the merits of the case, it is necessary to notice at the outset that the conviction of the appellant is not based upon a mere acceptance of the oath of shri Ghambir denying the alleged misappropriation by himself and the alleged authorisation by him to the appellant to raise money on his credit but on a consideration of the circumstances brought out in the evidence.

Indeed all the three Courts had severe comments to make against the evidence of the Subordinate Judge. The trial Magistrate Characterised a material item of the evidence of Shri Ghambir as "a piece of falsehood unworthy of a judicial officer of the standing of Mr. Ghambir". The Sessions Judge at the conclusion of the judgment stated as follows:

> "Before concluding I would like to say that though I have exonerated Mr. Ghambir from all complicity in the matter of the misappropriation of Government money, I cannot exonerate him from all blame in connection with this affair. He has come in for a good deal of criticism which in my judgment is not altogether unmerited at the hands of the learned trial Magistrate both in regard to the truthfulness of the statement he made in Court and the fact that he arrogated to himself the role of the complainant and the investigator in this case"

The learned Judge of the High Court has also substantially agreed with this opinion. The question, threfore, that arises in this case is whether the circumstances brought out are or clear as to show that the defence is false or improbable. In a case like this depending on the conclusions drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt. This Court has affirmed the proposition in - 'Hanumant v. State of Madhya Pradesh', (A), in the following terms at pp. 345-346.

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first, instance be fully established, and alt the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words,

> there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused".

We cannot help noticing that the Courts below do not appear to have kept this fundamental approach in view. The first question that arises in this case is whether from the circumstances it is so well-established beyond doubt that it is the appellant that has misappropriated the amount in question.

There are at the outset two circumstances 'against' him, (1) that the amount in question was drawn by him from the Treasury, and (2) that it remained unpaid to the parties concerned, viz., to the Civil Establishments at Una and Dasuya. But he asserts that the money was taken from him by the Subordinate Judge himself temporarily for his own purpose. Apart from the alleged receipt, Ex. D. A. which will be dealt with presently, the defence relies on the following circumstances. It is pointed out that the scope for misappropriation by one party or the other arose in this case by virtue of deviation from the normal practice of drawing the pay of outlying Tahsils by way of cash orders and that this deviation was at the instance of the Subordinate Judge himself and with his full knowledge, but that he now falsely denies all knowledge of the same.

It is in evidence that the salary bill as originally presented to the Treasury had a note at the top thereof that the amounts for the three outlying Tahsils were to be paid by cash-orders. The bill was returned on the 4th December for correction of a small mistake in the details thereof. The evidence shows that before re-presenting it to the Treasury, the note above referred to was scored out under signatures of the Subordinate Judge at the two ends of the note, thus converting the bill into one for payment of the entire amount thereof in cash to the appellant. A look at the original bill which has been exhibited also shows this. In addition to this authorisation to draw the entire amount in cash, in departure from the pre-existing practice, another circumstance has also been brought out in the evidence. As already stated the Subordinate Judge of Una sent a telegram to the District Judge of Hoshiarpur on the 14th December complaining that the pay of the Civil establishment was not disbursed till then. The District Judge forwarded it to the Subordinate Judge, Shri Ghambir, on that very date marking it "immediate". No action appears to have been taken on it by him. All that appears is that certain memos were issued to the other Subordinate Judges of the outlying stations requesting that their respective Nazirs should be sent over to the Sadar station for receiving the salaries of their establishments. This order appears to have been issued as part of a general order, Ex. P. W. 9/A, which is as follows:

> "Generally salaries of officials in the Mufassil are received late. To avoid this delay it is proposed that Nazirs posted at the Mufassil should personally come to the Sadar along with their respective pay bills in the first week of every month and should not send anybody else so that they should take with them salary of the establishment. As a rule, pay is drawn at the Sadar on the first day of every month. Hence, all Mufassil Nazirs should bring with them their pay bills within the first week of every month and return the same day after receiving salaries of their establishments to avoid

> cash-order or any other trouble. Acquittance roll shall be kept at the Sadar. Nazirs may also take them along with salaries. This is for urgent information.
>
> ORDER This Robkar be sent to the Sub-Judge, Una, with the request that the Nazir may be kindly instructed to comply (with the above instructions) in future."

Thus not only was there a departure from the previous practice by way of drawing cash also for the outlying stations under the specific orders of the Subordinate Judge but when delay in payment was made a matter of complaint no action was taken thereon but there was only an attempt to gain time by adopting the device of appearing to make a general change in the practice for the future and asking the outlying Nazirs to go over to Sadar for receiving the moneys.

The Subordinate Judge disclaims responsibility for these circumstances, by putting forward the plea that he signed the scoring out in the salary bill merely as a matter of routine and without being conscious of the implication thereof and that the instructions in Ex. P. W. 9/A were issued without his knowledge. He asserts that the appellant alone was responsible in getting his signatures and for issuing these instructions.

It cannot be disputed that under the rules, the responsibility was entirely that of the Subordinate Judge and that it was a serious one and that a disclaimer thereof is not to be lightly accepted. The Punjab Financial Rules lay down as follows:

> "The head of an office is personally responsible for every pay drawn on a bin signed by him or on his behalf until he has paid it to the person entitled to receive it and obtained his receipt, duly stamped where necessary on the office copy of the pay bill".

The Rules and Orders of the Punjab High Court also are as follows:

> "As the Government is responsible for the due application of all property and money received in accordance with law by any court of justice the officers presiding over such courts must be held directly and personally responsible for any loss caused by failure to observe rules or neglect on their part to exercise supervision and control over the officials subordinate to them in accordance with law and the orders issued by the High Court .....".

To negative the plea of the Subordinate Judge that he had no knowledge of the pre-existing practice, evidence has been given of previous instances when this practice was within his notice. This appears from Ex. P. W. 6/D. A. and B. W. 6/D. C. When confronted with these documents in cross-examination, he has mo answer except to say that he does not remember. Having regard to the matter therein and dates thereof this answer appears to be false. There can also be no doubt that the orders contained in Ex. P. W. 9/A were issued under his specific instructions.

The Subordinate Judge takes advantage of the fact that Ex. P. W. 9/A is signed by P. W. 6 and the matter thereof is in the handwriting of the appellant. But P. W. 6 deposes that the Subordinate

Judge admitted before him that he did instruct the appellant to send for the Mofassil Nazirs to receive payment at Sadar. P. W. 6 also deposes that he made similar admission before Shri Bhandari in the departmental enquiry against the appellant which followed, pending the prosecution. Shri Bhandari's evidence confirms this but the Subordinate Judge, Shri Ghambir, falsely denies having so admitted. If as appears to us to be clear, the pleas put forward by the Subordinate Judge to explain these circumstances are false and if the Subordinate Judge not only authorised cash to be drawn for outside stations instead of mere cash-orders but when the delay in disbursement was specifically drawn to his attention, he did not also take any notice of it as against the appellant and only authorised the issue of instructions to the outlying stations that their Nazirs should he sent over to the Sadar in order to receive the moneys, the reasonable probability is that the non-availability of the money for disbursement by about the 16th December was a situation for which the Subordinate Judge was deliberately and primarily responsible.

6. It is as against this background that the defence of the appellant, that he in fact handed over the money to the Subordinate Judge, has got to be considered. As already stated he produced a receipt Ex. D-A in support of it. The Courts below have discredited that receipt. All the three Courts below were inclined to hold that that receipt bears the genuine signature of the Subordinate Judge notwith-standing the denial thereof by him. But, all the same, they held it to be a forgery. The reasons given by the trial Court and the appellate Court for this are not by themselves convincing. The main reason given is that the very look at the piece of paper on which this receipt was written indicates its forged character.

We have had the opportunity of looking at the original 'Ruqqa'. Ex. D. A., ourselves, bat do not think that it can be definitely pronounced to be a forgery by appearance. The Courts below were inclined to think that it is on a piece of paper which may have been torn out from a larger sheet containing the genuine signature of the Subordinate Judge in which a blank space was by some chance left above it. But a look at it shows clearly that the suggested blank space is about 2 to 3 inches in size commencing from the normal uncut top line of an ordinary sheet. It is not easy to see how a blank space of that size and in that position was likely to have been left above a genuine signature. The impression of the Courts below in this behalf is mere speculation and there is nothing in the evidence of the Subordinate Judge to indicate any such likelihood.

7. Another consideration which weighed with the trial Court and the appellate Court in rejecting this 'Ruqqa' is that the Subordinate Judge was very unlikely to have admitted in a piece of paper under his signature that he had taken a sum out of the pay account of the process-establishment even for a day, for that would have meant a complete ruin of his official position and of his future career and that so responsible an officer was not likely to have done so. This consideration is not without force. But the Courts do not seem to have appreciated that the same consideration equally weighs in favour of the appellant. The trial Magistrate has noted in his judgment that the appellant had an unblemished record of service. The prospect of jeopardizing the same is one which would equally weigh with him to prevent his misappropriating the money for his own use. The reaction on his position and on his future, consequent on such misappropriation, is not the less for him, from his point of view, merely because he is a person in lesser official situation and drawing a lower salary.

One cannot help feeling that in viewing this circumstance as in others, the Courts below have without justification -- unconsciously it may be -- adopted differing standards as between the Subordinate Judge and the Civil Nazir. One of the main reasons which persuaded the learned Judge of the High Court to accept the view of the Courts below that Ex. D. A. was a forgery was the following. The very next day after the incident took place, i. e., on the 18th December, the appellant sent two letters, Exs. P. W. 6/C and P. W. 6/D, one to the clerk, P. W. 6, Ramdas, and another to a process-server, Barkat Ram. In the letter, Ex. P. W. 6/D, he states as follows:

> "On the 4th December, 1948, he took Rs. 3,500/- in cash and gave a ruqqa. But he took back that ruqqa on the 17th December".

In view of this categorical admission, the learned Judge was inclined to think that the piece of paper that has now been produced into Court as Ex. D. A. could not have been genuine. While this inference is not without force, it must be noticed that the accused who has put forward this 'Ruqqa' in the forefront of his defence throughout and who has admitted the genuineness of the two letters, Exs. P. W. 6/C and P. W. 6/D has not at all been asked to explain how with reference to his previous statement in Ex. P. W. 6/D he was now able to produce it into Court. One cannot imagine what explanation he may have been able to give. Having read the two letters Exs. P.W.6/C & P.W.6/D carefully together, we feel that it is not altogether unlikely that the statement in Ex. P. W. 6/D which has been relied on as negativing the genuineness of Ex. D. A. may have been due to some confusion at the time, for, we find that in Ex. P. W. 6/C which is much more detailed and categorical as regards the material facts in this case, the only 'Ruqqa' stated to have been returned to the Subordinate Judge is the second 'Ruqqa' of the 16th December ¬ the first 'Ruqqa' dated the 4th December, while there is reference to both in the contents thereof.

However that may be, it is unnecessary for the purposes of this case to find positively that Ex. D. A. is genuine. It is sufficient to say that we cannot agree with the view taken by the Courts below that it is proved to be a forgery.

8. In this context it is also relevant to consider whether there is any indication in the case as to who out of the two was likely to have had need for the money at the time.

The learned Judge of the High Court very rightly touched on this aspect of the case. But his assumption that there is no indication in the evidence that the Subordinate Judge had any need for the money at the time is not correct. It is in the evidence of P. W. 4, Shiv Dayal, that, when approached by the appellant for a loan on behalf of the Subordinate Judge, he believed it to be genuine because he knew already that the Subordinate Judge, Shri K. S. Ghambir, had purchased land and therefore guessed that the money may have been required by him in that connection. Even in the earliest statement (Ex. P-B. dated the 19th December, 1948), which he made to the Subordinate Judge, Shri Ghambir, he stated as follows:

> "He (the appellant), however, told me that the Sub-Judge had to repay the amount in respect of land. Since it was within my knowledge that the S. Kartar Singh, Sub-Judge, had purchased land, I guessed that the said Sardar Sahib might have

asked for money."

The Subordinate Judge himself, in his cross-examination says as follows:

> "I offered a bid to purchase two plots of land offered to the refugees by the East Punjab Government for sale at Hoshiarpur on 25-6-48 and 10 per cent of the amount was paid the same day. It was about Rs. 580/- or a little above or less. It was paid on the same day and after a month or so the Government refused to confirm the sale and the money was refunded to the bidders and the balance was never paid. Two plots were purchased by me one in my name and one in the name of my son Kewal Krishan and another plot was purchased by my father-in-law. I had taken to the spot Rs. 300/-. I handed over that money to S. Harkishan Singh A. D. M. and my father-in-law gave me a cheque for Rs. 4,000/-. I think I gave that cheque to the accused for getting it credited into my account with the Punjab National Bank and gave him another cheque either to Bhani Ram my orderly or to the accused and perhaps this cheque was for Rs. 600/- or 700/-".

All this, no doubt, is far from proving that the Subordinate Judge had any substantial need for money at the time. But such as it is, it gives some indication that there may have been need for him in connection with the land transaction. It does not appear whether there has been any investigation of the circumstances of the Subordinate Judge relating to his land transactions though the statement of Shiv Dayal made to the Subordinate Judge himself on the 19th December indicating this was forwarded to the Police and was before them during investigation. In the circumstances, the remark made by the learned Judge of the High Court that the Subordinate Judge may have had no need for the money at the time cannot be of much weight.

On the other hand it is a matter not without some significance in this context, that no need of the appellant for any finance at the time has even been indicated. The fact that his brother has paid up the entire amount so quickly as the 21st December, obviously in response to the suggestion conveyed in the letter, Ex. P. W. 6/D, must furnish some indication that the appellant could command ready money for a crisis like this and have been able to make it up on his own account if he had himself misappropriated the amount instead of having to go about in the open market trying to raise money by false representations as to the authority of the Subordinate Judge.

9. It appears to us, therefore, that the defence put forward by the accused on this part of me case cannot be said to have been disproved or to be so improbable that his guilt must be taken to have been established beyond reasonable doubt.

10. Coming to the other part of the case which is the subject matter of the prosecution under section 420 of the Indian Penal Code it is clear that in the above view, his defence on this part also cannot be said to be improbable. If the defence of the appellant that the Subordinate Judge took the money from him is accepted as not improbable, it follows that the defence that the attempts to raise the loan were for him and on his authorisation, becomes probable. There is also some evidence in support of this. Hakim Rai, P. W. 5 and Seth Brij Lal, P. W. 14, both definitely say that a 'Ruqqa'

bearing the signature of the Subordinate Judge and authorising the raising of a loan on his behalf for a sum of Rs. 3,350/- was shown to them.

No doubt the 'Ruqqa' itself has not been produced and P. W. 5 says that he was not in a position to identify the signature of the Subordinate Judge. But he does say that he read the 'Ruqqa' carefully and was satisfied that the Judge Sahib really wanted money. In his earliest statement Ex. P/B dated the 19th December, made to this very Subordinate Judge, P. W. 5, sets out the contents of the 'Ruqqa' as follows:

> "I (i. e. Sardar Ghambir Singh, Sub-Judge) need Rs. 3,350/- which I will repay to you after some days".

Here again it is not either necessary or feasible to hold definitely that this defence has been completely made out. But it certainly cannot be said that it is improbable or false.

11. One of the outstanding features of this, case is that the defence which has been put forward at the trial is one which has been very elaborately and categorically set out the very next day after the incident in Ex. P. W. 6/C. One has only to read the whole of that letter closely and carefully to see that the great deaf of detail that has been set out therein was very unlikely to have been an anticipatory false-defence. The learned Judges of the Courts below have almost ignored this letter excepting to make a reference to it for the purpose of discrediting the defence.

They do not seem to have realised the significance of the fact that quite a member of details furnished therein have found ample corroboration from the very evidence of the prosecution witnesses Nos. 4, 5 and 14, persons in respect of whom the appellant could not have felt sure at the time when he was setting out the details in his letter. It is somewhat unusual to find the accused in a case like this coming out with his entire defence so early after the occurrence and the same finding substantial corroboration at the trial from the witnesses for the prosecution. The only reason that the learned Judges give for discrediting this is that a period of 24 hours had elapsed by then. Having regard to the nature and contents of the letter and the fact that it has been sent by registered posts the next day from & different place--probably at a distance--called Daulatpur as indicated by the stamping on the registered envelope thereof, we are not able to share the view that there was time enough for concocting such a false defence in this letter. To our mind, the very fact that the defence was given out at such an early stage and that it has, to such a large extent, been corroborated is a strong reason for thinking that the defence was very likely to have been true.

12. The Courts below have relied on a number of circumstances which they consider to be against the accused, most of which appear to us inconsequential and to be based on insufficient appreciation of the surrounding situation. For instance the learned Judge of the High Court thinks that "there was no necessity for the Subordinate Judge, Shri Ghambir, to repudiate the whole scheme when confronted by Seth Brij Lal on the 17th December after the loan had in fact been raised and the money was about to be realised which would tide over the embezzlement and give Shri Ghambir a breathing space for some time, if in fact he was a party and indeed the principal figure in the embezzlement".

He treats this as crucial in the case.

With respect, the learned Judge does not seem to have appreciated that the fact of Brij Lal having issued a cheque in the name of the Subordinate Judge himself makes all the difference. It is obvious that if the embezzlement, however temporary, came to light, the fact of the amount having been raised on the basis of a cheque in his name and his having taken advantage of it in spite of information thereof having been conveyed by Seth Brij Lal himself, would have been a serious matter. The cheque itself would have been fairly strong evidence against him. It is not unlikely that he expected merely cash accommodation which would leave no documentary evidence behind but that when he found that that expectation did not materialise, he saw the danger into which he was running.

13. Again the Courts below were inclined to think that if the defence of the appellant was true and he had in his possession a 'Ruqqa' Ex. D. A., acknowledging receipt of the amount of Rs. 3,500/-, the appellant would have at once put it forward on the 17th itself at the premises of the Imperial Bank when Seth Brij Lal stopped payment on the ground of misrepresentation of the Subordinate Judge's authorisation in this behalf.

But it does not appear to have been appreciated that the question uppermost in the minds of everybody at that time was as to whether he was obtaining the loan on the authority of the Subordinate Judge. For this it was the 'Ruqqa' alleged to have been given to the appellant by the Subordinate Judge on the 16th that would have been material and not the 'Ruqqa' of the 4th December. If what is stated in Ex. P. W. 6/C namely that the 'Ruqqa' of the 16th December was returned by the appellant to the Subordinate Judge at the suggestion of Seth Brij Lal himself is true, he may well have become panicky on the realisation of the mistake he had committed in so returning it in view of the prosecution for an offence under section 420 of the Indian Penal Code that was imminent and probably threatened.

14. There are a number of other similar circumstances relied on by the Courts below into which it is unnecessary to go at length. It is enough to say that in our opinion none of them can be legitimately treated as circumstances which disprove the defence put forward by the appellant. We are clearly of the opinion, as already stated, that the defence was not improbable both as regards the assertion that the money was taken by the Subordinate Judge from the appellant by way of temporary accommodation and as regards the assertion that the Subordinate Judge not being able to put the money back within the expected time and in view of the urgency, authorised the appellant to raise money for him. In this view it would follow that the offences charged cannot be said to have been brought home to the appellant beyond reasonable doubt. The Courts below in taking the contrary view have failed to keep in mind the fundamental rule stated at the outset relating to the proof of guilt based on circumstantial evidence and have proceeded on conjectures in a case where statedly the circumstances are more or less equally balanced. They have adopted varying standards as between the accused and the Subordinate Judge in weighing the circumstances against them. They have also virtually ignored a crucial circumstance in favour of appellant, 'viz.' that he came forward with his defence on the very next day which finds considerable support from the prosecution evidence itself. The interference of this Court to prevent miscarriage of justice is accordingly called

for.

15. It may be noted that in the above discussion we have ignored the alleged embezzlement of the small extra amount of Rs. 149/- since we consider the appellant's explanation therefore in answer to question No. 7 on 19-11-1949 not to be improbable and the same has also been paid up.

16. There is, however, one other aspect of the matter which requires consideration. The very receipt, Ex. D. A., on which the appellant relies shows that the appellant intentionally handed over the money in his custody to the Subordinate Judge for being utilised by him for purposes other than the disbursement of the salaries though it be statedly for a day.

The trial Court has pointed out that even on this view the offence under section 409 of the Indian Penal Code stands committed. That is also the view taken by the Sessions Judge on appeal as an alternative.

The correctness of this view, however, would depend upon whether the Civil Nazir, in drawing the money from the Treasury under the authority of the Subordinate Judge, and keeping the same in his custody, can be said to have been entrusted with the money. The exact legal position as to the nature of the custody of the money by the Civil Nazir in such a case has not been clarified. We have been shown no rule which authorises or enables the Civil Nazir in such cases to keep custody of the money with himself pending disbursal. If there was any such rule such custody may well amount to entrustment.

The only rule that has been placed before as shows that it is the Subordinate Judge that is fully responsible for the drawal and the disbursal. It is he that must be primarily taken to be entrusted with the money. No doubt the Subordinate Judge himself in his evidence says that it is the duty of the Civil Nazir to draw the pay of the subordinate employees and to keep the same in his personal custody along with any other Government money in the safe provided to him which is kept in the Nazir Khana. Also one of the witnesses, P. W. 10, a Civil Nazir, states that it is incumbent on the Civil Nazir to keep all the Government money lying undisbursed with him in the safe provided by the Government fixed in the Nazir's room.

The appellant when asked about these matters under section 342, Cr. P. C. in questions 1, 2 and 3 makes a distinction between amounts drawn in respect of pay and the amounts drawn on contingent bills and says that it was his duty to keep only contingent amounts with him implying that in respect of salaries it was not his regular duty. In the absence of a clear rule defining this responsibility in this behalf and the nature of his custody of money in such circumstances, we do not think that he can be held to have been entrusted with the custody of the money.

But, inasmuch as he has handed over the money to the Subordinate Judge with the knowledge that it was to be utilised for a purpose other than that for which it was legally intended, he may be said to have abetted criminal breach of trust by the Subordinate Judge. In an appropriate case the conviction may probably have been altered to one of abetment of an offence under Section 409 of the Indian Penal Code. But in this case an alteration of the appellant's conviction under section 409

of the Indian Penal Code into one of abetment thereof would imply a definite finding of guilt against the Subordinate Judge, Shri Ghambir, who is not before us. It would, therefore, be unfair to make such an alteration. We do not accordingly feel called upon to do so in an appeal on special leave.

17. In the result Criminal Appeals 46 and 47 of 1953 are allowed and the convictions of the appellant for both the offences with which he was charged are hereby set aside.