State Of Gujarat vs Vinaya Chandra Chhota Lal Patni on 5 September, 1966

Equivalent citations: 1967 AIR 778, 1967 SCR (1) 249

Bench: V. Ramaswami, Vishishtha Bhargava

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
VINAYA CHANDRA CHHOTA LAL PATNI

DATE OF JUDGMENT:
05/09/1966

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
RAMASWAMI, V.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 778 1967 SCR (1) 249
CITATOR INFO :
C 1967 SC1326 (8)
RF 1973 SC2200 (3)

ACT:
Criminal Trial-Complainanl's statement-Corroboration with documents, statements of accused in other cases-Admissibility-Handwriting expert, examination, if essential. Indian Evidence Act, 1872 (1 of 1872), s. 45-Handwriting Expert, evidence, if conclusive.

HEADNOTE:
The respondent was charged under s. 408 I.P.C. for misappropriating the funds of his employer. The only witness to prove the entries and signatures on the cheques was the complainant (employer) and corroboration of his statement was sought from four documents two of which were said to be handed over to the complainant by the respondent when the respondent's conduct was found out. The other two documents were the, respondent's statement as are 'accused n

a criminal case and an application given by the respondent in another case. The trial court convicted the respondent. On appeal, the High Court acquitted the respondent holding that (i) it was unsafe to rely on the statement of the complainant alone. (ii) the documents were inadmissible in evidence, and (iii) it was for the prosecution to example a handwriting expert to prove the disputed handwriting, In appeal by the State.

HELD : The appeal must be allowed.

(i) The complainant was competent to speak about entries and signatures, as the respondent had been his employee for a number of years. He had many an occasion to see the respondent write and sign. [251 D-E]

(ii) The documents were admissible in evidence.

The documents handed over by the respondent to the complainant and the statement of the respondent provide strong corroboration to the statement of the complainant. In fact the admission in the document together with the statement could also be treated as a confession of the respondent cashing the cheques, the subject matter of the charge in this case.

The statements of the respondent in the criminal case and in the application in another case were admissible in evidence to prove his admissions with respect to these facts. [253 H; 254 F]

(iii) It was not essential that handwriting expert must be examined in a case to prove or disprove the disputed writing. A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the, writing in order to appreciate properly the other evidence produced before it in that regard. The opinion of an handwriting expert is also relevant in view of s. 45 of the Evidence Act, but that too is not conclusive. The sole evidence of a handwriting expert is not normally sufficient for recording a definite, finding about the writing being of a certain person or not. [251 G, H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No, 43 of 1964.

Appeal by special leave from the judgment and order dated July 18, 1963 of the Gujarat High Court in Criminal Appeal No. 527 of 1963.

A.S.R. Chari, M. V. Goswami AND B. R. G. K. Achar, for the appellant.

V. S. Nayyar, AND H. M. Chenoy, for the respondent. The Judgment of the Court was delivered by Raghubar Dayal, J. This appeal, by special leave, is by the State of Gujarat against the order of the Gujarat High Court acquitting the respondent of the offence under s. 408 I.P.C. The respondent was an employee of Nalinkant P.W. 1, sole proprietor of Arora Trading Company, in 1959. He was in service from 1954. It was his duty to withdraw moneys from the Union Bank of India Ltd., with which Nalinkant had an account. Nalinkant used to leave his cheque book with a few blank signed cheques with the respondent when he had to go out of Ahmedabad, the place of business. The prosecution case is that the respondent took advantage of such blank cheques, filled them up and cashed them from the Bank and misappropriated the amounts so received. He made no entries about such receipts in the petty cash book maintained by the firm.

Nalinkant was the only witness to prove that the relevant entries in the cheques and the signatures at the back of the cheques in token of having received the amounts from the Bank were of the respondent. Corroboration of his statement was sought from four documents two of which were documents said to have been handed over to Nalinkant by the respondent when the respondent's ,conduct of committing breach of trust with respect to certain items was found out on December 14, 1959. The other two documents were the respondent's statement as an accused in a criminal case and an application given by the respondent in another criminal case.

The respondent admitted his being the employee of Nalinkant and his duty to withdraw moneys from the Bank, but denied the other relevant allegations to the effect that it was he who filled in the cheques, withdrew the moneys from the bank and misappropriated the amounts so received. The trial Court accepted the testimony of Nalinkant and con evicted the respondent of the offence under S. 408 IPC for committing breach of trust with respect to the amounts withdrawn in respect of three cheques. On appeal, the High Court acquitted the respondent. The learned Judge considered it unsafe to rely on the evidence of the complainant alone and held the various documents ,to be inadmissible in evidence.

Before dealing with the contentions for the parties in this Court we may mention that the State of Gujarat has instituted five other criminal appeals, Nos. 44 to 48 of 1964 against this very respondent against his acquittal by the High Court in five other cases in regard to his committing breach of trust with respect to various other amounts withdrawn by him from the Bank by filling in blank cheques which had been left duly signed with him by Nalinkant. The High Court's order of acquittal in those cases is based on the same grounds on which the order of acquittal under appeal is based. Consequently, learned counsel for the State and the respondent made their submissions with reference to the judgment of the High Court in this appeal.

Mr. Chari, for the State, has argued that the High Court was in error in holding the four documents to be inadmissible in evidence and in expressing the view that it was for the prosecution to rely upon the evidence of a handwriting expert on the question of the handwriting of a person, as the handwriting of a person could be proved by other means. In the present case it wag' proved by the complainant that the various entries in the cheques and the signatures on the reverse of the various cheques were in the handwriting of the respondent. The complainant was competent to speak about them as the respondent had been his employee for a number of years. The complainant had many an

occasion to see him write and sign.

No reason has been given by the learned Judge for differing with the view of the trial Court that the complainant was a reliable witness. The mere expression it is not safe to rely upon the evidence of the complainant alone in a case like this' is not a sufficient ground for differing from the trial court in its opinion about the credibility of the witness who had deposed before it.

This statement is not factually correct also as the trial Court had itself compared these writings and signatures with certain other writings which had been proved to be of the respondent. A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of s. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not normally sufficient 'or recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the dis Sup. C1/66-3 puted writing. It was therefore not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i.e., in a case in which no handwriting expert had been examined in support of his statement.

This is sufficient to set aside the order of the High Court acquitting the respondent as the evidence of the complainant, when believed, is sufficient to establish the offence against the respondent. However, we shall discuss the admissibility of the four documents as we understand that it is really for a decision on that point that the State preferred this appeal.

One of the documents is a slip on which, according to the complainant, the respondent noted down the various amounts which he had misappropriated, after he had perused the counterfoils of the cheques. The respondent did this on December 14, 1959, when the complainant, on checking accounts with the statement of account received from the Bank, found that the two did not tally and, when, on questioning, the respondent admitted having misappropriated some amounts. This slip of paper mentions a number of cheques besides certain amounts received from certain persons. With respect to the cheques, their number, the date of the cheque or of withdrawal and the amounts, presumably the amounts withdrawn, are noted. The three cheques in the present case are mentioned in this list. It may be mentioned that most of the other cheques were the subject matter of the proceedings in the other cases which have given rise to the other five appeals.

The learned Judge rejected this document as inadmissible as, according to him, it did not convey any meaning and the document could not be read along with the explanation given by the complainant. In this, we are of opinion that the learned Judge was in error. A statement of the complainant about the circumstances in which this document was written and what it purported to indicate, is admissible. What is relevant for the case is what is ultimately proved and what is proved would depend on the statement of the complainant. His statement, if believed, establishes that the particulars noted on this slip relate to sums which were admitted by the respondent to have been

misappropriated by him. The very fact that the details of the three cheques, the amounts drawn on which are said to have been misappropriated in this case, find a place in this list, bears out the statement of the complainant. The entries in this list, together with the statement of the complainant, make out a confession of the respondent to the effect that he had withdrawn the amounts of the cheques mentioned in the list and that he misappropriated them. This document therefore was admissible in evidence. In fact, the learned Judge himself, after observing that the document could not be admitted in evidence even if it be in the handwriting of the respondent, observed:

> " that document can however be admitted as part of the extra-judicial confession said to have been made to the complainant."

The other document consists of a statement written by them respondent on December 14, 1959, subsequent to his writing out the first document, viz., the list of the various items misappropriated. The complainant has stated that the respondent wrote it on being asked by the complainant to give him a statement in writing so that he may be able to present the same before the income-tax, authorities. He has further deposed that it was a voluntary statement of the respondent and that no threat or promise had been held out to him for making that writing. The learned Judge observed,. with respect to this document, that there was nothing in that statement to show that it amounted to an admission, that there was no reference to the cheques which were the subject matter of the charge in the case and that a general statement that he had committed breach of trust by withdrawing the amount of the cheques did not amount to an admission. Curiously enough, the learned Judge observed a little later:

> "Further, it amounts to an extra judicial confession, and in a case like this it is not safe to base a conviction on extra judicial confession."

It is true that there is no specification of the cheques which were cashed by the respondent and the amounts received and misappropriated. This vagueness of a sort is explained by the statement of the complainant and by the proof of the first document which gave the various amounts misappropriated. Apart from this, the statement makes reference to certain other facts which had a bearing on the question in issue in the present case. In this statement the respondent admits being entrusted from time to time with blank cheques bearing the complainant's signatures, his committing breach of trust by withdrawing big amounts from the bank by exchanging those cheques, especially during the ten months prior to December 14, 1959 and his not crediting the amounts of those cheques, presumably, in the accounts. It further mentions that the respondent, had passed the writing out of his own sweet will and not on account of any improper pressure brought upon him. He further states that he had given this writing willingly on his being suspected and on one or two such cheques having been found out. In our opinion, this document is clearly an admission of the circumstances which have a bearing on the accusation brought against the respondent and is thus admissible in evidence. In fact, the admission in the document together with the statement of the complainant can also be treated as a confession by the respondent of his cashing the three cheques, the subject matter of the charge in this case.

The learned Judge is not right in observing that it was not safe to base a conviction on an extra-judicial confession. The ,conviction in this case was not based merely on the extra-judicial confession. There was the evidence of the complainant against the respondent. The extra-judicial confession strongly corroborated that statement. This document too, therefore, was admissible in evidence and had been wrongly ignored by the learned Judge. The other two documents were considered irrelevant and therefore inadmissible in evidence. One of them is the statement of the respondent made under s. 342 Cr. P.C. on September 3, 1960, in a criminal case against him. The statements about the respondent being a clerk of the complainant and the admissions of the respondent in this statement about the complainant giving him cheques signed by him so that he could, whenever necessary, draw the amounts and about his maintaining the petty cash book and the ,circumstances in which the defalcations were found out and about the respondent giving the writing dated December 14, 1959 admitting the defalcations, are admissions for the purposes of the present case and as such this document was admissible in evidence to prove the respondent's admissions with respect to these facts.

The fourth document was an application given by the respon- dent on October 27, 1960 in another criminal case against him. The document, as a whole, is not of much use to the prosecution, but at the same time it cannot be held to be inadmissible as it consists of certain statements which could be used as admissions in this ,case even though the respondent had given such explanations with respect to his admissions as might have reduced their evidentiary 'value. We are of opinion that the documents handed over by the respondent to the complainant on December 14, 1959 and the statement of the respondent dated September 3, 1960 provide strong corroboration to the statement of the complainant. The result is that this appeal must succeed. We accordingly allow the appeal, set aside the order of the High Court and restore that of the trial Court.

Y.P. Appeal allowed.