Anwarul Hasan vs The State on 14 July, 1952

Equivalent citations: AIR1953ALL142, AIR 1953 ALLAHABAD 142

JUDGMENT

Malik, C.J.

1. The appellant Anwarul Hasan has been convicted under Section 408, Penal Code under two out of three counts and has been sentenced to two years' rigorous imprisonment and a fine of Rs. 100/- under each count, the sentences of imprisonment to run concurrently. He has been acquitted on the third count. The case was tried with the aid of a jury and the jury returned a verdict of guilty on the two counts mentioned above. In this appeal learned counsel has raised the point that the jury was not properly charged and that the verdict was, therefore, vitiated by the irregularity in the charge.

2. There was a Consumers' Co-operative Stores started in Rifah-i-am, Lucknow, of which Mr. B. L. Kaul, Advocate was the President. The accused Anwarul Hasan was the Honorary Secretary. The shares of this Co-operative Stores were valued at Rs. 10/- each and the amount was payable in a lump sum or in instalments. The charge against the accused was that on 22nd October 1948, he realised the share money from Mr. T. N. Varma and deposited the amount which was short by Rs. 4/-. - On 13th October 1948, he realised another sum from Mr. Darbar Chand, but the deposit was Rs. 5/- short and on 20th November 1948, it was said that he had realised Rs. 50/- from Mr. Radhey Lal but had deposited Rs. 10/- and misappropriated Rs. 40/-. As he has been acquitted on the third count, it will no longer be necessary to mention the same.

The accused worked as Honorary Secretary up to 4th March 1949, when he resigned. After he had left the President Mr. Kaul sent certain allotment cards to the share-holders and Mr. T. N. Varma and Mr. Darbar Chand, when they received their cards, mentioned that the amounts entered in their credit was less than the amount paid by them. The President thereupon sent for the accused and threatened to hand him over to the police unless he made a clean breast of the whole thing. The accused thereupon wrote a letter (Ex. 10) on 12th September 1949, in which he admitted that due to inexperience he had made mistakes in totalling and a sum of Rs. 17/- was due from him, which amount he deposited. On a further enquiry, however, the President found other similar items and on 28th January 1950, he wrote a letter to one Mr. Furkan Ahmad,, an uncle of the accused, that unless he deposited a sum of Rs. 300/- to be adjusted against any short deposits, the case would be handed over to the police. Mr. Furkan Ahmad deposited the sum of Rs. 300/-, a part of which has been adjusted and the balance kept in suspense account. On 14th December 1949, however the District Cooperative Officer wrote a letter (Ex. 14) to the District Magistrate, who sent the case to the police and the accused was thereupon prosecuted.

3. Three points have been prominently brought forward by the Counsel :

Firstly, that the charge was such that it was not likely to have been understood by the jujors who had been empanelled;

Secondly, that the charge with reference to the document (Ex. 23) was not proper and amounted to a misdirection to the Jury; and Thirdly, that the document (Ex. 10) being a confession by the accused and obtained from him by threat, it was not admissible in evidence and the learned Sessions Judge should not have referred to it in the charge to the Jury.

4. Taking up the last point first, we have looked into Ex. 10 and though Mr. Kaul in his letter Ex. B wrote to Furkan Ahmad, the uncle of the accused, that the accused had owned up and given in writing the paper (Ex. 10) on his holding out a threat that he would be handed over to the police, the document in question is not a confession within the meaning of that term in Section 24 of the Evidence Act and it could not, therefore, be said that it was not admissible in evidence under that section. What is confession has been defined by their Lordships of the Judicial Committee in -- 'Narayana Swami V. Emperor', AIR 1939 PC 47, where their Lordships pointed out that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. In Ex. 10 there is no such admission. All that the accused has said is that due to inexperience he has made mistakes in accounting, He has not admitted that there was any guilty intention nor is there any confession that he had misappropriated the money. Explaining the cause for the confusion in the interpretation of Section 24 and the definition of the word 'confession' their Lordships pointed out that the reason for the divergence of Judicial opinion was based on Article 22 of Stephen's Digest of Law of Evidence and in dealing with that commentary their Lordships said that the definition is not contained in the Indian Evidence Act, 1872, and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused suggesting the inference that he committed the crime. So, even a statement which merely suggests an inference that the accused must be guilty is not enough according to their Lordships' view. Ex. 10 can-not, therefore, amount to a confession and was not inadmissible under Section 24 of the Evidence Act.

5. Coming to the second point, before the Magistrate a document (Ex. 23), which was supposed to be a summary of the accounts of realisations made by the accused in his own handwriting, was filed and proved. Before the Sessions Judge, however, the document was not produced and the accused summoned it from the Court of the Magistrate and had it exhibited as Ex. E. The learned Sessions Judge was of the opinion that if Ex. E was the genuine document, it completely exonerated the accused. To prove that Ex. E could not be genuine, the prosecution produced Exs. 6 and 12, Ex. 6 being the original and Ex. 12 being the carbon copy of the account's slip prepared by the appellant. Ex. 6 had certain corrections and additions and the question arose whether these had been made after the paper was filed by the prosecution in the Court of the learned Sessions Judge or it had these corrections from before. It was to prove that the corrections were not there that Ex. 12 the carbon copy was filed and Mr. Kaul President gave evidence to the effect that he had carefully examined Ex. 6 before it was filed and it did not bear the corrections that it bore at the time when the matter came up for consideration. Ex. 12 and Ex. 6 without the corrections help the prosecution while Ex. 23 helps the accused. This, of course, is the view of the learned Sessions Judge. We have

not examined the papers ourselves from that point of view. When the accused produced Ex. 23 they summoned the Magistrate to prove his signature on the document. The Magistrate stated that the document bore his signature but the word "Exhibit" and the figures "23" were not in his handwriting; they were either in the handwriting of the Special Prosecuting Officer or of the clerk of his Court, as he generally initialled the exhibits and the exhibit number was written by the Special Prosecuting Officer or by the clerk of the Court. The auditor Mr. Jit Bahadur Nigam however, denied that the paper bore his initials. The document has in its corner written "Seen J. B." Mr. Jit Bahadur said that these words were not in his handwriting. On the other hand, Mr. Kaul, the President, said that the paper which had been marked Ex. 23 by the learned Magistrate had been discovered in the papers of the accused and he had handed over that paper to thb auditor. There was, therefore, conflict of testimony on the point, and as the paper was so important that, according to the learned Sessions Judge himself, if that paper was genuine, it disproved the prosecution case, the learned Sessions Judge should have taken great care to place the facts fairly and impartially before the jurors. On the other hand, we find that the learned Sessions Judge suggested to the jury that the paper might have been changed in the Court of the Magistrate, though no such suggestion was made to the Magistrate and no evidence to that effect was led on behalf of the prosecution. The translation of the charge is in these words :

> "In connection with this paper on behalf of the accused, the trying Magistrate Sri Kanhaiya Lal has been made to give his statement who has identified his signature on Ex. E and said that it was certainly filed on 27-4-51 but it was neither possible for him to say with certainty nor has he said in so many words that it was certainly the same paper as was filed on behalf of the accused."

Dealing with evidence of Jit Bahadur, the learned Sessions Judge's charge to the jury was as follows :

> "There are signatures of Sri Jit Bahadur on other papers also before you. Probably they may be helpful to you in deciding whether the signatures of Sri Jit Bahadur on Ex. E tally with those in other papers. I think it would be better if you compare them."

The learned Sessions Judge did not point out to the jury with what particular signatures the initials were to be compared. We have looked through the record and we do not find any single other document bearing the initials of the auditor. They either have his full signatures or they have been signed as J. B. Nigam. More important is the omission of the learned Sessions Judge to point out to the jurors that the President Mr. Kaul had stated that this particular paper Ex. 23 had been discovered in the papers of the accused and had been handed over by him to the auditor. Learned Counsel appearing for the State has said that Mr. Kaul could not have said anything else as he had no reason to believe that the paper was changed and even if it had been changed, he was not likely to know. Be that as it may, no suggestion was made to Mr. Kaul that the paper was different and that it had been changed and his statement on the point appears to us to be clear that it was the same paper which had been handed over to the auditor. In any case, if the learned Sessions Judge was suggesting to the jurors that it was possible for the Magistrate's signature to have been forged or the Magistrate to have been duped and was pointing out to them the denial of the auditor, in all fairness

he should also have brought to their notice the statement made by Mr. Kaul and left to them to their own conclusion. The learned Sessions Judge has himself said that Ex. E or Ex. 23 of the Court of the Magistrate goes to the root of the case and if once believed it exonerates the accused completely. The defect in the charge, therefore, is serious enough to vitiate the conviction.

6. The last submission is that the charge is in such a high flown literary style that it was not possible for the jurors to have followed the learned Sessions Judge. The members of the jury were the following :

1. Sri Murli Manohar,

2. " Jaduraj Bakhsh Singh,

3. " Akhtar Husain,

4. " Kedar Nath and

5. " Rameshwar Bakhsh.

The office of this Court had to translate the document for the use of the Court and they found it very difficult to translate it and at the last hearing of the case it was discovered that certain serious mistakes had been made in the translation. We asked the learned counsel for the State to read out the charge and it is not in simple Hindi which could commonly be followed by men in the position of the jurors to whom it was addressed. There were several words of which they were not likely to know the meaning. No doubt, in the beginning of the charge the learned Sessions Judge mentioned it to the members of the jury that if there were any portions in the charge which they were not able to follow, they should ask him to explain. Mr. R. K. Rai, who appeared in the lower Court has stated before us that neither he nor the members of jury stopped the learned Judge to ask him any question. An affidavit, however, has been filed and that has been supported by Mr. Rai's statement at the Bar that the learned Sessions Judge read through the charge without giving any verbal explanation. At places after having used difficult words the learned Sessions Judge has tried to give their meaning in simpler language, but he has not nor could he follow it throughout the whole charge. No doubt, in Section 297 of the Criminal P. C. it is not mentioned in what language the charge should be, but as the charge is intended to explain the case to the jury, the Sessions Judges are expected to use a language which they can easily follow. The charge must therefore be in the plainest and simplest language and all attempt at pedanticism should be discouraged and we hope that in future the learned Sessions Judge would bear in mind that the charge is to ex-plain the case to the jury and avoid the use of language which is not easily understood by them.

7. We have seriously considered whether this is a case in which we should order a retrial. The two items with respect to which the charge was held to be proved amounted to Rs. 9/-in all which the accused refunded in 1949. The offence was said to have been committed in 1948 and the case has now been pending for several years. We do not think, therefore, that it is a fit case where a retrial should be ordered.

8. We accordingly allow the appeal and set aside the conviction and sentences passed on the appellant. The appellant, who is on bail, need not surrender to his bail. The fine, if realised, shall be refunded to him.