Supreme Court of India
Labhshanker Maganlal Shukla vs State Of Gujarat on 29 September, 1978
Equivalent citations: AIR 1979 SC 1012 a, 1979 CriLJ 890, (1979) 3 SCC 391
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Bench: J Singh, P Kailasam, A Koshal
JUDGMENT A.D. Koshal, J.

1. This appeal by special leave is directed against the judgment dated 31st Jan. 1972 of the Gujarat High Court setting aside the acquittal of the appellant for an offence under Section 409 of the I.P.C., convicting him thereof and sentencing him to rigorous imprisonment for six months and a fine of Rs. 3000/-, the sentence in default of payment of fine being rigorous imprisonment for one month.

2. The case arises out of the affairs of a Co-operative Society named Dhrangadhra Nargrik Sahkari Bank Limited, Dhrangadhra, (hereinafter referred to as the Bank), into which a probe was held at the instance of the Government of Gujarat in the year 1966 through the police who ultimately prosecuted three persons in the court of the sessions Judge Surendranagar. The charge against the three accused was that during the period between the 25th Sept. 1957 and the 31st May 1958, they committed criminal breach of trust in respect of a total sum of Rs. 23,200/- over which they had dominion and which was in their possession as bankers. The breach of trust complained of was said to have been committed in pursuance of a conspiracy entered into by the three accused who were charged with an offence under Section 120-B read with Section 409 of the I.P.C. In the alternative they were charged for an offence under Section 409 read with Section 34 of the Code or one under Section 409 aforesaid simpliciter. The trial ended in an acquittal of all the three accused of the charge in its entirety. The judgment of the learned Sessions Judge was upheld by the High Court in an appeal instituted by the State of Gujarat except in relation to one item of Rs. 2000/- which was found to have been the subject-matter of a breach of trust by the appellant, who was convicted and sentenced as aforesaid.

3. The offence under Section 409 of the I.P.C. found by the High Court to have been brought home to the appellant pertained to a transaction which took place at the Bank on the 3rd Dec. 1957, when a sum of Rs. 2000/- was debited to the account of Parmanand Acharya (P.W. 2 and hereinafter called Acharya) on the basis of five documents (Exhibits 46/1-5) which purport to evidence the receipt by the letter of the said "sum by way of loan and each of which purports to bear his signature. Document Ex. P. 46/1 is an application for a loan of Rs. 3000/- by Acharya. Document Ex. 46/2 is a Kabulyat (acknowledgement) in respect of the receipt of the sum of Rs. 2000/- by Acharya as a loan. This Kabulyat bears the attestation of two marginal witnesses named Gokuldas and Punjara Rasiklal Gopalji. It further bears an endorsement by Harihar Maneklal and Babubhai Chhaganlal Pancholi who. undertook the responsibility for the repayment of the loan as sureties. Still another endorsement appearing on the Kabulyat and said to bear the signature of the appellant speaks of the identification of Acharya as a person known to the appellant. Document Ex. 46/3 is a demand pro-note which is again attested by the two marginal witnesses above named. Document Ex. 46/4 is a payment voucher authorising the Bank to debit the sum of Rs. 2000/- to Acharya's account. Document Ex. 46/5 is another voucher directing the Bank to credit a sum of Rs. 10/-in the compulsory savings account of Acharya opened on that very day.

According to the prosecution, Acharya was not in the picture at all and either somebody impersonated him at the instance of the three accused or the signatures of Acharya on the various documents were otherwise forged so that the amount of Rs. 2000/- was either paid to the impersonator for the benefit of himself and the three accused or was embezzled by the three of them without a fourth person being made to participate in the embezzlement:

4. The findings arrived at by the High Court are detailed below:

(i) Although the Bank obtained an award dated 15th Dec. 1963 (Exhibits 63 and 63/2) against Acharya in respect of the amount due on the transaction of the 3rd Dec. 1957. Acharya has disclaimed all responsibility in respect thereof and the stand taken by him that he was not the author of the signature purporting to be his and appearing on documents Exhibits 46/1-5 is correct.

(ii) Punjara Rasiklal Gopalji has deposed that he did not sign any of the documents above mentioned and his evidence is trustworthy.

(iii) Although the signature of Gopaldas does appear as a marginal witness on the Kabulyat (Ex. 46/2), he had made that signature on a blank form and before the signature purporting to be that of Acharya appeared on the same.

(iv) Although the appellant made a faint attempt to deny his signature on the Kabulyat (Ex. 46/2), the same was proved to be his.

(v) Acharya was well known to the appellant and so were the two sureties.

(vi) The appellant made a false endorsement of identification deliberately and with full knowledge of the real facts.

(vii) The two co-accused of the appellant were justified in advancing the loan on the basis of the identification endorsement made by the appellant who was the Chairman of the Board of Directors of the Bank as also of the Loan Committee thereof.

It was on the basis of these findings that the appellant was convicted and sentenced as aforesaid.

5. After hearing learned Counsel for the parties, we do not find ourselves in agreement with the main conclusion arrived at by the High Court, namely, that the testimony of Acharya deserved to be taken at its face value and that it was proved on the record that the signatures purporting to be that of Acharya and appearing on documents Exhibits 46/1-5 were not his. In this connection it may be noted that although an award was obtained by the Bank against Acharya as far back as 15th Dec, 1963, he took no steps to have the award set aside even though he appeared in the proceedings held by the arbitrator. The explanation offered is that after he had put in appearance during those proceedings, he lost contact therewith and never came to know of the award. Even if that be so, we cannot lose sight of the fact that Acharya was a witness very much interested, in denying his responsibility flowing from documents Exhibits 46/1-5 and in disclaiming his signatures thereon. It

was, therefore, the duty of the prosecution to establish the correctness of its stand by production of more reliable evidence. It is noteworthy that apart from the word of Acharya, there is no evidence at all to show that the signatures purporting to be his were not in his handwriting. The services of a handwriting expert were no doubt requisitioned by the prosecution but his testimony is to the effect that no definite opinion can be given about the disputed signatures as to whether they were or were not made by Acharya. The position boils down to this that the court had to make a choice between the stand of Acharya who, as already stated is a witness very much interested in disclaiming the authorship of the said signatures, and that of the appellant according to, whom it was Acharya and nobody else| who was the author thereof. In this situation the High Court erred in relying on the word of Acharya and thus giving' the benefit of doubt to him rather than to the appellant who deserved it, the onus of proof being always on the prosecution to establish beyond reason-able doubt all the ingredients of an offence with which a person accused thereof is charged.

6. Once it is held that the disputed signatures have not been proved to be in the handwriting of a person other than Acharya, the appellant cannot be held guilty of any offence whatsoever; for, if those signatures have flown from Acharya's pen, the money was rightly paid to the person who had applied for it and in whose favour its payment had been sanctioned by the Bank. Accepting the appeal, therefore, we reverse the judgment of the High Court in so far as it relates to the conviction and sentence of the appellant, who is acquitted of the charge in its entirety.