Arjuna Lal Misra vs The State on 30 November, 1950

Equivalent citations: AIR1953SC411, AIR 1953 SUPREME COURT 411, 17 CUTLT 1

Bench: B.K. Mukherjea, Chandrasekhara Aiyar

JUDGMENT

Fazl Ali, J.

1. I do not wish to express dissent from the order proposed by my learned brothers, as the order seems to be the logical consequence of the findings arrived at by the High Court in revision, which tend to throw very great doubt on one of the crucial questions in the case, namely, whether any theft was committed at all. It is clear that if there was no theft, the appellant's conviction for offences of which the main ingredient is theft, cannot be sustained. But I must confess that a careful reading of the judgment of the High Court has produced an uneasy feeling in my mind that the High Court has not bestowed the same care and attention upon the facts and the evidence of the case as they have received from the first two courts. There can be no doubt that where the interests of justice demand, the findings of the Courts, which normally deal with the facts of a case, may be reopened and may even be reversed by the High Court, but, before that is done, every item of relevant evidence upon which the findings to be reversed are based, should be carefully scrutinized and weighed.

2. In the present case, the conclusion arrived at by the learned Judges of the High Court that no crowbar was used in the commission of the alleged theft and that the marks on the safe were probably made in the course of investigation by the Superintendent of Police, seems to have been arrived at without considering and appreciating the evidence of K. C. Paricha, P. W. 23 -- the police, officer in charge of Koraput police station -- who visited the scene of theft soon after it was reported, and who states to have found the padlock of the chest missing, the locking arrangement of the embedded lock broken and the staple of the outer locking arrangement damaged. Again, the learned Judges of the High Court, while referring in the concluding part of their judgment to the fact that the confession of the appellant had received some corroboration, have relied on matters of a more or less trivial nature which afford little corroboration of any value, and entirely omitted to mention the recovery of two sums of money, which, according to the appellant himself, were part of the proceeds of the theft. Thus, a situation has arisen in which a confession which was found by the first two courts to have been corroborated in all material details, has become a meaningless statement, upon the findings arrived at by the High Court and the opinions expressed by it.

B.K. Mukherjea, J.

3. I agree that the appeal should be allowed, and I concur substantially in the reasons given by my learned brother, Chandrasekhara Aiyar J., in his judgment.

Chandrasekhara Aiyar, J.

4. This Criminal appeal comes up for our consideration on the strength of leave granted by the High Court of Orissa under Article 134(1)(c) of the Constitution of India. The order granting leave is a lengthy one and proceeds on the basis that the conviction of the appellant amounted to a miscarriage of justice on the facts and that there was failure to comply with the requirements of Section 342, Criminal P. C.

5. Arjun Misra, the appellant, was charged with another person Patnaik with offences under Sections 457/380/461, Penal Code, (house breaking by night to commit theft, the substantive offence of theft, and dishonestly breaking open a closed receptacle). The case for the prosecution was that these two persons entered into a room on 17-11-1946 (Sunday) in the District Police office at Koraput where the iron safe was kept, broke it open, and removed a sum of Rs. 2,290-14-0 from a net-bag in the safe. A confession was recorded from the appellant by a 1st Class Magistrate on 22-11-1946. This confession narrates many details about the plan for the commission of the offence, how it was actually committed, what happened to a crow-bar which was employed to break open the outer padlock of the safe as well as the embedded lock, and how the stolen currency notes were disposed of. As many as 26 witnesses were examined for the prosecution.

6. Patnaik, who was the co-accused with the appellant, denied all knowledge of the commission of the offence and asserted that P. W. 1, who was the Head Clerk in charge of the cash, must have been responsible for the misappropriation. He also set up the plea that at the time of the commission of the offence he was actually in a hospital. The appellant, when examined under Section 342, Criminal P. C, stated that the confession was made by him on the inducement of the C. I. D. Inspector examined as P. W. 12, to implicate Patnaik in order that he might himself be exonerated, and that what he stated was due to the Inspector's tutoring.

7. The Sub-Divisional Magistrate of Koraput, who tried the case in the first instance, held both the accused guilty of the three charges leveled against them and he sentenced them to rigorous imprisonment for one year and six months and a fine of Rs. 300 each for the offence under Section 457, Penal Code, and to rigorous imprisonment for one year and a fine of Rs. 200 each for the offence under Section 380, Penal Code. He did not pass any separate sentence for the offence under Section 461, Penal Code.

8. On appeal, the case was heard by the Additional Sessions Judge, Jeypore, and he confirmed the convictions and sentences. When the matter went before the High Court on revision, Patnaik was acquitted but Arjun Misra's revision was dismissed mainly on the ground that there was a confession by him.

9. In acquitting Patnaik, the High Court recorded its findings which destroyed the prosecution case almost in its entirety. The story that a crow-bar was used for breaking the outer padlock and forcing

open the iron safe was not accepted as there were no marks of violence or forcible opening. It was probable according to the High Court that the safe was opened with the help of keys in the possession of their custodian or by someone else with his connivance. The keys were with P. W. 1, the Head Clerk, against whom strong suspicion fastened itself. The facts disclosed were more consistent with a natural opening of the safe than by the use of force with the aid of a crow-bar. The broken padlock and the crowbar were not traced or recovered. A small cash box in the iron safe which also contained money was left intact. As regards the 'alibi' pleaded by Patnaik, they held that there was the solid testimony of many witnesses that at the time of occurrence he was not on the scene of offence but at a hospital.

10. The prosecution case having been thus shattered in material parts, we have only to see if the retracted confession of the appellant can furnish any basis for his conviction. In using the confession for this purpose, the High Court did not advert to the substantial truth of the story as narrated by the accused; in fact, they could not. The learned Judges rest their view on a line of reasoning which is entirely at variance with the confession, and in fact, is outside its scope. The following extract from the judgment of the High Court may be quoted :

> "The case against petitioner Arjuna Misra stands on a different footing. The confession that he made before the Magistrate, though subsequently retracted, finds corroboration from the other evidence recorded in the case. Being closely associated with Natabar Das (P. W. 1), he had knowledge of the contents of the iron safe. He had opportunities of pilfering the keys from P. W. 1's house and making false keys. He was hand in glove with and was in the confidence of P. W. 1. He can be regarded as 'particeps criminis' with P. W. 1. The suggestion of the accused P. J. Patnaik that P. W. 1 was heavily involved in debts and was short of funds and that he therefore resorted to the story of burglary to cover up his acts of misappropriation, cannot be brushed aside as untenable. I am loath to believe that the padlock or the iron safe itself was broken open as alleged by the prosecution with the help of a crowbar which was never recovered. The marks of violence alleged to have been noticed on the iron chest are probably those that were made at the instance of the S. P. while he was conducting a sound test. The removal of the net bag alone is also a circumstance which does not appear to be natural. If there had been a burglary, why the small cash box was left untouched and why only the bag was removed defies explanation. The find of a two rupee note near about the iron safe also raises a grave suspicion that the whole affair was a made up job, having regard to the fact that the notes in the iron safe were stitched. The discrepancy in the evidence with regard to the net bag is another circumstance which seems to be inconsistent with the natural course of events. According to one version the net bag was inside the chest lying empty; while according to another version it was found in the room. The presence of P. W. 1 in the office on the day of occurrence which was a Sunday and the evidence that he was there till after 5 o'clock lends support to the inference that he was himself the thief or an active participant or abettor of the theft. It may be that he left the padlock and the lock of the iron safe open and put the seal merely to divert attention and thus facilitate the removal of the cash by the petitioner Arjun Misra soon after P. W. 1 left

> the office a little later than 5 p.m. In view of the apparent contradictions in the evidence regarding the borrowing of a crow-bar by Arjun and its non-recovery by the police, I am not inclined to accept the story that a crow-bar was actually used to force the safe open."

11. The theory that the appellant may have been associated with P. W. 1 (the Head Clerk) who was probably the real thief and who had custody of the keys, is not the case for the prosecution. It would be apparent therefore that the footing on which they proceeded to convict the appellant is totally different from what is disclosed in or by the confession. No point is made by the High Court of the recovery of part of the stolen moneys as the result of statements made by the appellant and this is possibly for two reasons. One is that apart from the confession, there is nothing to show that the currency-notes recovered from the bush and cow-dung heap were the currency notes in the iron safe at the time of the commission of the offence; and the second is that the appellant was not asked specifically what explanation he had to give about the recoveries.

12. If the offences of house-breaking and theft fail against Patnaik, the same result has to follow as regards the appellant also. The confession has been shown to be devoid of truth in substantial particulars and there is no safe substratum on which we can hold the appellant guilty. It is true that in the concluding portion of the judgment of the High Court there is the observation that even apart from the confession there was sufficient evidence to prove the guilt of Arjun Misra. We are not prepared, however, to attach much weight to this remark, when the evidence has not been indicated and all that is relied on in the next sentence is the appellant's absence from the police office at the time of the roll call on 27-11-1946.

13. Accepting the version of the High Court about the occurrence, as we must, we have before us a case where the conclusion of guilt rests solely on a retracted confession, not only uncorroborated in material particulars, but untrue in many parts. Such a conviction is opposed to law and cannot be allowed to stand.

14. It becomes unnecessary in these circumstances to consider the question whether the omission, in the examination under Section 342, Criminal P. C., to ask the accused specifically what explanation he had to give about the recovery of currency-notes from two places, is so material as to vitiate the trial altogether.

15. The convictions and the sentences imposed on the appellant are set aside and the appellant will stand acquitted of the charges. We direct him to be set at liberty.