

MOHINDER SINGH & ANR.

V

STATE OF HARYANA

March 5, 1974

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

Indian Penal Code, Ss.409, read with s.109—Whether conviction could be sustained on oral evidence in the face of negative written evidence—Illiteracy—How far benefit could be given.

The complainant who was Sarpanch of gram panchayat asked the second appellant, his predecessor, to make over the records of the gram panchayat, transfer its accounts and hand over the money belonging to the gram panchayat to him. The second appellant put him off. When he made a complaint to higher authorities the second appellant transferred some amount to the complainant, but not the whole of it. The complainant filed a suit in Civil Court for recovery of the balance and rendition of accounts in respect of the unpaid amount which was also large. The suit of the complainant for rendition of accounts was dismissed by the Civil Court, accepting the evidence of the second appellant and his plea that the accounts between the parties had been settled. The complainant filed a complaint alleging that the first appellant, an advocate and the second appellant had made him sign an official receipt of the gram panchayat with its official seal affixed on the receipt and took it without making the payment of money to him. The second appellant was tried for offences under sections 409, 461 read with 109 and 474 Indian Penal Code and the first appellant under s.409 read with s.109, section 467 read with s.109 Indian Penal Code and were convicted and sentenced to various terms of imprisonment and fine. The High Court confirmed their conviction and sentences. Before the trial court the complainant led oral evidence to prove that the appellants had taken advantage of his illiteracy and a trick was played upon him by them.

Allowing the appeals to this Court,

HELD : There are clear infirmities in the prosecution case. It is not possible to sustain the conviction of the accused. Oral evidence which runs counter to an admission contained in writing signed by a party in the very nature of things is a very weak piece of evidence and cannot be accepted without a grain of salt. In the face of the finding of the Civil Court it would be incongruous to convict the second appellant on the basis that the amount of the Gram Panchayat was still due from him. The complainant may be illiterate but there must be a limit up to which the benefit of illiteracy can be extended to him. The fact that the complainant was illiterate could not induce the court to ignore the infirmities in his evidence or to fill in lacunae in the prosecution case. [524B-C, 525B-D, 526A-B]

This fact would also not justify the benefit of the doubt being given to the prosecution instead of to the accused. [526B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 221 of 1970 A-S 47 of 1971.

Appeals by special leave from the judgment and order dated the 8th October, 1970 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeals Nos. 374 and 376 of 1970.

Nuruddin Ahmad and *U.P. Singh*, for the appellants.

N. N. Goswamy and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

KHANNA, J.—*Surat Singh* and *Mohinder Singh* Advocate were tried in the court of Additional Sessions Judge Karnal for various

offences. The learned Additional Sessions Judge convicted Surat Singh under section 409 Indian Penal Code, section 467 read with section 109 Indian Penal Code and section 474 Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 25,000 or in default to undergo rigorous imprisonment for a further period of eight months on the first count, to undergo rigorous imprisonment for a period of one year on the second count and rigorous imprisonment for a period of one year on the third count. Mohinder Singh accused was convicted under section 409 read with section 109 Indian Penal Code and section 467 read with section 109 Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 25,000 or in default to undergo rigorous imprisonment for a further period of eight months on the first count and to undergo rigorous imprisonment for a period of one year on the second count. The substantive sentences of imprisonment in the case of each of the two accused were ordered to run concurrently. It was also directed that out of the fine, if realised, Rs. 46,875 should be paid to the Gram Panchayat Neemwala. On appeal the Punjab and Haryana High Court affirmed the decision of the trial court. By special leave Mohinder Singh has filed criminal appeal No. 221 of 1970 while Surat Singh has filed criminal appeal No. 47 of 1971. This judgment would dispose of both the appeals.

The prosecution case is that prior to the year 1961, four villages, namely, Seonsar, Hailwa, Neemwala and Ramgarh Ror had a common Gram Panchyat known as Gram Panchyat Seonsar. Surat Singh accused was the Sarpanch of the Gram Panchyat. Ram Kishan was then a member of the Gram Panchyat and he represented village Ramgarh Ror. Each of the other three villages was also represented by a Panch. In 1957-58 the Government acquired large areas of shamlat land of villages Ramgarh Ror, Seonsar and Hailwa for the purpose of establishing a big forest plantation. The shamlat land of these villages had already vested in the Panchyat under the Punjab Village Common Lands (Regulation) Act. On the acquisition of those lands, the Government paid compensation amounting to Rs. 3,51,844. Out of that amount, Rs. 1,68,844 represented the compensation for the acquisition of shamlat land in village Ramgarh Ror. Surat Singh in his capacity as Sarpanch of the Gram Panchyat received those amounts and the compensation for each of the villages was kept distinct and separate, so that the benefit of the money should accrue only to the respective villages. The compensation amount of Rs. 1,68,800 relating to Ramgarh Ror was invested as follows :

- (i) Rs. 1,00,000 deposited in the Kaithal Mandi Post Office
- (ii) Rs. 50,000 deposited in the Reserve Bank of India New Delhi
- (iii) Rs. 18,800 deposited in the Central Co-operative Bank Kaithal

The Gram Panchyat of Seonsar continued to function up to the beginning of 1961. Some amounts out of the compensation deposited were withdrawn for being spent for those villages.

- A In the beginning of 1961 the Government split the area of Gram Panchyat Seonsar into two separate areas and constituted two Gram Panchyats. In this new arrangement the Gram Panchyat Seonsar functioned only for two villages, namely, Seonsar and Hailwa. For villages Neemwala and Ramgarh Ror a new Gram Panchyat known as Gram Panchyat Neemwala was constituted. After the formation of the new Panchyat Ram Kishan PW was elected Sarpanch of Gram Panchyat Neemwala, while Surat Singh continued as Sarpanch of Gram Panchyat Seonsar. After the elections Ram Kishan as Sarpanch of Gram Panchyat Neemwala made a demand for the custody of the Panchyat record relating to the two villages Neemwala and Ramgarh Ror and also asked for the payment of the amount standing in the account of village Ramgarh Ror. Surat Singh accused, however, put off Ram Kishan PW. Ram Kishan thereupon made an application to the higher authorities. Surat Singh accused thereafter transferred the deposit of Rs. 1,00,000 in the name of Ram Kishan as Sarpanch of the new Panchyat. No steps were, however, taken by Surat Singh accused to transfer the remaining amount. As Surat Singh did not render accounts, Ram Kishan PW consulted Mohinder Singh Advocate accused and on the latter's advice filed a suit for rendition of the accounts against Surat Singh in the Court of Sub Judge at Kaithal.
- D Mohinder Singh accused was also engaged by Ram Kishan PW as his counsel in that case. Ram Kishan then learnt that Mohinder Singh accused had good relations with Surat Singh and he, therefore, requested Mohinder Singh for his help for the return of the balance of the amount lying with Surat Singh. On the advice given by Mohinder Singh, Ram Kishan got passed resolution DB/1 by Gram Panchyat Neemwala on May 14, 1963 whereby Ram Kishan was authorised on behalf of the Panchyat to receive the amount due from Gram Panchyat Seonsar. Ram Kishan also handed over memorandum PW1/A which had been issued by the Reserve Bank of India for the deposit of Rs. 50,000 to Mohinder Singh accused. Ram Kishan thereafter made enquiries from Mohinder Singh about the amount of Rs. 50,000 but on each occasion Ram Kishan was put off by Mohinder Singh by saying that the amount had not been transferred and that as soon as it was done, he would get in touch with Ram Kishan. As the payment of the amount was being delayed and some funds were needed for the school building, Ram Kishan talked to Mohinder Singh in the first week of December 1963 about the payment of Rs. 6,000 which was due as interest. Mohinder Singh then told Ram Kishan to come to his office on December 13, 1963 with the receipt book of the Panchyat and its official seal. Mohinder Singh also mentioned that he would send for Surat Singh accused on that day and would secure the payment of the interest amount of Rs. 6,000 as well as of the principal amount if the same too was received.

- H On December 13, 1963 at about 10 a. m., it is stated, Ram Kishan PW accompanied by Mussadi PW went to the office of Mohinder Singh accused with the official receipt book and seal of Neemwala Panchyat. Both the accused were present in the office. Mohinder Singh accused then called a boy aged about 14 or 15 years and got something written

on the official receipt book which had been brought by Ram Kishan. Ram Kishan knows only Landa character and is otherwise illiterate. Mussadi too is illiterate. Both Ram Kishan and Mussadi kept sitting at some distance smoking Hookah. Ram Kishan was then called by Mohinder Singh accused and his signatures were obtained on receipt DA as well as counterfoil P1 of that receipt. The official seal of the Gram Panchyat was also taken from Ram Kishan and was affixed both on the receipt and the counterfoil thereof under the signatures of Ram Kishan. Receipt DA was torn off from the receipt book by Mohinder Singh accused and was handed over to Surat Singh accused. When Ram Kishan protested that the receipt had been taken from him without his being handed over any money, he was assured by Mohinder Singh accused that he would be taken to the bank and paid the money there. Ram Kishan, Mussadi and the two accused then went to Co-operative Bank Kaithal. The clerk on duty in the bank told Mohinder Singh that the sum of Rs. 6,000 on account of interest could not be paid in cash without sanction but he would transfer the amount in the name of Gram Panchyat Neemwala from the account of Gram Panchyat Seonsar by a book entry. The amount of Rs. 6,000 in this way transferred to the account of Gram Panchyat Neemwala. Surat Singh accused then went away, while Ram Kishan, Mussadi and Mohinder Singh went to the office of Mohinder Singh. At the office Ram Kishan demanded back the receipt from Mohinder Singh as the amount had not been paid in cash. Ram Kishan was, however, told by Mohinder Singh that the receipt was with Surat Singh. Mussadi PW was then sent to call Surat Singh but the latter declined to come. Mohinder Singh told Ram Kishan that he need not worry. Mohinder Singh also wrote the word "Cancelled" on the counterfoil P1. Mohinder Singh further promised to get the original receipt back from Surat Singh. Ram Kishan and Mussadi then came back to the village. Some days later a fresh election was held and Mehar Chand became the Sarpanch of Neemwala Panchyat.

According further to the prosecution case, about a month after the fresh elections Ram Kishan learnt from an overseer of Block Samiti Chika that Surat Singh had withdrawn the amount of Rs. 50,000 from the bank and was giving out that he had paid that money to Ram Kishan and got a receipt from Ram Kishan for that amount. Ram Kishan at first did not attach much importance to that talk but when the rumour persisted, Ram Kishan learnt on enquiry that the amount had already been withdrawn by Surat Singh accused some months earlier. Ram Kishan then made a complaint to the District Magistrate Karnal on June 12, 1964 praying that a case might be registered against the accused under sections 120B, 409, 467, 468 and 471 Indian Penal Code. A case was thereafter registered against the accused.

During the investigation of the case it transpired that an amount of Rs. 46,875 which was lying in deposit with the Reserve Bank of India in the account of Gram Panchyat Seonsar was sent on July 12, 1963 by bank draft to Surat Singh. The aforesaid amount was credited in the account of Surat Singh with the Co-operative Bank Kaithal

A on July 18, 1963. The same day, *i. e.* July 18, 1963 Surat Singh withdrew the amount of Rs. 46,875 from the bank by means of a cheque. It further transpired during the investigation that receipt DA which was got signed from Ram Kishan was for an amount of Rs. 46,875 and that the said receipt bore the date July 18, 1963. Writing marked A was also made on copy DB of resolution DB/1. The writing was as under :

"Rs. 46,875 received.

Receipt accordingly issued.

Thumb Impression, Ram Kishan

Sarpanch, Neemwala

18-7-63."

C The charge which was framed against Surat Singh was that he had committed criminal breach of trust in respect of Rs. 46,875 while that framed against Mohinder Singh was that he had abetted the commission of the above offence. There were also charges against the two accused about their having forged the writings purporting to be receipts issued by Ram Kishan in respect of the amounts of Rs. 46,875. Surat Singh was further charged for keeping in his possession the forged receipts for fraudulent and dishonest use of the same.

D At the trial Surat Singh accused admitted that a sum of Rs. 1,68,844 had been received as compensation for acquisition of the land of village Ramgarh Ror. Surat Singh further admitted that out of that amount, Rs. 50,000 had been deposited in the Reserve Bank of India. E It was not disputed by Surat Singh that the Gram Panchyat Seonsar had been split into two Panchyats. According to Surat Singh, he withdrew on July 18, 1963 Rs. 46,875 found due on the basis of deposit certificate of the value of Rs. 50,000 and he paid the same amount to Ram Kishan PW as per receipt Ex. A. on DB as well as the official receipt DA. Surat Singh denied having gone to the office of Mohinder Singh on December 13, 1963. The allegation that the receipts were fabricated or that any amount had been misappropriated by Surat Singh were denied by him.

F Mohinder Singh accused admitted having filed a suit as counsel of Gram Panchyat Neemwala against Surat Singh. Mohinder Singh denied the other allegations against him. Mohinder Singh expressed G ignorance about the withdrawal of money from the bank by Surat Singh on July 18, 1963: Likewise the allegation that Ram Kishan and Mussadi had visited his office on December 13, 1963 was denied by Mohinder Singh. Mohinder Singh also denied that the word "Cancelled" on counterfoil P1 of receipt DA was in his hand.

H The trial Court, as mentioned earlier, accepted the prosecution allegations and convicted and sentenced the two accused as above. On appeal the High Court affirmed the judgment of the trial court.

In appeal before us Mr. Nuruddin, learned council for the appellants has taken us through the evidence on record and has contended that the amount of Rs. 46,875 after being withdrawn from the bank on July 18, 1963 was paid by Surat Singh to Ram Kishan. It is further contended that Ram Kishan instead of accounting for that amount has falsely involved the two accused in this case. As against that, Mr. Goswami on behalf of the state has supported the judgments of the High Court and the trial court and has urged that no case has been made for interference with the view taken by those courts.

We have given the matter our consideration and find that there are glaring infirmities in the prosecution case and as such, it is not possible to sustain the conviction of the accused. It is in the evidence of Kitab Singh (PW 4) who was posted as an official in the Kaithal Co-operative Bank that on July 18, 1963 Surat Singh withdrew the amount of Rs. 46,875 from that bank after that amount had been transferred from the Reserve Bank of India New Delhi. The accused have brought on the record receipt DA. It is a printed receipt in Hindi in the prescribed form. The necessary particulars have been filled in this receipt. The receipt is dated July 18, 1963 and according to it, Rs. 46,875 were received by Ram Kishan PW from Surat Singh Sarpanch Seonsar. This receipt admittedly bears the signatures of Ram Kishan in Landa character and also bears the seal of Gram Panchayat Neemwala. In addition to receipt DA, the accused have produced another receipt about the payment of Rs. 46,875 by Surat Singh to Ram Kishan. This receipt is on copy DB of resolution DB/1 which had been passed by Gram Panchayat Neemwala on May 14, 1963. Ram Kishan PW was authorised by this resolution to receive the amount of Rs. 50,000 which had been deposited in the Reserve Bank of India and to issue a receipt after receiving that amount. Copy Ex. DB is admittedly in the hand of Mukand Lal (PW 13), who was the Secretary of Panchayat Neemwala and is signed by him. The receipt is in the form of writing A wherein it is recited that Rs. 46,875 had been received by Ram Kishan and he had also issued a receipt in token of his having received that amount. The writing is dated July 18, 1963. The accused examined Gian Parkash Sharma (DW 3) Finger Print Expert, whose evidence shows that the thumb impression on writing marked A tallied with the admitted thumb impression of Ram Kishan PW. Ram Kishan PW also did not deny that the thumb impression underneath writing marked A was his own. According to him, the thumb impression might be his own. There is in addition evidence on the record that the writing marked A was in the hand of Chaudhry Daryao Singh, who was the Manager of Co-operative Bank in July, 1963. Chaudhry Daryao Singh is now dead, but the fact that the writing marked A on Ex. DB is in the hand of Chaudhry Daryao Singh is proved by the testimony of Kitab Singh (PW 4), who was in charge of the Co-operative Bank, as well as by that of Nihal Singh (DW 1), who is a first cousin of Daryao Singh deceased and is familiar with his handwriting. The receipt DA as well as the writing marked A on which were signed and thumb marked by Ram Kishan PW show that Surat Singh immediately after withdrawing the amount of

- A Rs. 46,875 from the Co-operative Bank on July 18, 1963 paid that amount to Ram Kishan PW. The case of the prosecution is that though Ram Kishan issued those receipts, he did not receive the amount of Rs. 46,875. It is alleged that advantage was taken of the illiteracy of Ram Kishan and a trick was played upon him by giving him the assurance that those writings related to the amount of Rs. 6,000. It is further alleged that though the two receipts bore the date July 18, 1963, they were in fact prepared on December 13, 1963.
- B The prosecution in support of the above allegation has examined Ram Kishan (PW 1) and Mussadi (PW 2). We find ourselves unable to accept the statements of Ram Kishan and Mussadi in this respect. Oral evidence which runs counter to an admission contained in writing signed by a party in the very nature of things is a very weak piece of evidence and cannot be accepted without a grain of salt. It seems
- C difficult to believe that Ram Kishan signed the official receipt as well as the other receipt on copy DB of the resolution without receiving the amount in question. Even if Ram Kishan knew only Landa character, he could not be unaware of the fact that receipt Ex. DA was not for an amount of Rs. 6,000, in which sum there are only four numerals, but for a much bigger amount consisting of five numerals.

D

- There is another circumstance⁷ which militates against the case of the prosecution that it was sometime in 1964 that Ram Kishan came to know that a trick had been played upon him and that he had been made to issue on December 13, 1963 a receipt dated July 18, 1963 for an amount of Rs. 46,875 without receiving that amount. The official receipt book from which receipt DA had been issued remained with Ram Kishan when he returned to his village after receipt DA had been handed over to Surat Singh. The said receipt book contained counterfoil Pl of receipt DA which had been handed over to Surat Singh. The trial court has found that the said counterfoil bore the date July 18, 1963 and was for an amount of Rs. 46,875. Ram Kishan must have shown that counterfoil to the Secretary of the Gram Panchayat or some other literate person after his return to the village and, as such, could
- E not have remained unaware of the fact that the receipt which he had issued was dated July 18, 1963 and was for an amount of Rs. 46,875. There was all the more reason for Ram Kishan to show the counterfoil to someone because, according to him, he had insisted upon obtaining a writing regarding the cancellation of the receipt, counterfoil of which was Pl. It is difficult to believe that Ram Kishan after coming to know on December 13, 1963 that a receipt of Rs. 46,875
- F dated July 18, 1963 had been obtained from him would have kept quiet for a number of months thereafter. The counterfoil Pl when produced in court by Ram Kishan shows that the date July 18, 1963 had been scored off and contained the date December 19, 1963. Likewise, the amount of Rs. 46,875 had been scored off and in its place, the amount of Rs. 6,000 had been mentioned in the counterfoil. The scoring off of the date and the amount mentioned on the counterfoil
- G Ex. Pl and their substitution by the new date and amount must plainly have been done by someone at the instance of Ram Kishan. If the conscience of Ram Kishan was clear, it is not explained as to why he
- H

got the date and amount scored off and got inserted another date and amount. Ram Kishan may be illiterate but there must be a limit up to which the benefit of illiteracy can be extended to him. The fact that Ram Kishan is illiterate cannot induce the court to ignore the infirmities in his evidence or to fill in lacunae in the prosecution case. In any case, this fact would not justify the benefit of the doubt being given to the prosecution, instead of to the accused.

An attempt was made by the prosecution to show that the receipt book from which receipt DA was issued had been purchased on October 24, 1963 from Harish Chander (PW 10), as per cash memo PW1/D. This cash memo, however, relates to the sale of receipt book No. 9. There can be hundreds of such receipt books and it is admitted by Harish Chander that he cannot say whether the cash memo relates to the receipt book from which receipt DA had been issued or to some other receipt book. It, therefore, cannot be said to have been proved that receipt book from which receipt DA was issued had been purchased on October, 1963.

There are also some other circumstances which create a doubt about the correctness of the prosecution allegations. It is admitted by Ram Kishan PW that long before he made a complaint to the District Magistrate, he came to know that Surat Singh was representing that he had paid the amount of compensation which was lying in deposit with the Reserve Bank of India to Ram Kishan and that Surat Singh was in possession of receipt for the payment of that amount. Surat Singh also mentioned in a suit brought by him in August 1964 against Ram Kishan that he had paid the amount of Rs. 46,875 to Ram Kishan as per receipt dated July 18, 1963. It would, therefore, follow that Surat Singh has always been taking the stand that he had paid the amount of Rs. 46,875 to Ram Kishan on July 18, 1963 as per receipt issued by the latter and that the plea taken by him at the trial was not the result of an afterthought.

Another fact which may also be mentioned in the above context is that a suit was brought in September 1962 by Ram Kishan PW on behalf of Gram Panchayat Neemwala against Gram Panchayat Seonsar through Surat Singh accused for rendition of account in respect of the assets of Gram Panchayat Neemwala. In that suit the plea of Surat Singh was that the account between the parties had been settled. Evidence was also led by Surat Singh to that effect. The court accepted this evidence and held as per judgment dated October 19, 1963 that the accounts between the parties had been settled. The plaintiff's suit was accordingly dismissed. In the face of that finding of the civil court, it would appear to be incongruous to convict Surat Singh on the basis that the amount of Gram Panchayat Neemwala was still due from him.

A We thus find that the prosecution case suffers from glaring infirmities. In fact, there are some circumstances which lend credence to the plea of the accused. It is, in our opinion, not possible to sustain the conviction of the accused on the material brought on record. We accordingly accept the appeals, set aside the conviction of the accused and acquit them.

B Before parting with this case, we would like to refer to one aspect. A huge amount belonging to the Gram Panchayat Neemwala is alleged to have been misappropriated by someone. The case of the prosecution is that misappropriation of the amount was facilitated by the illiteracy of the Sarpanch of the Gram Panchayat. It may, therefore

C be necessary that some salutary directions are issued or rules made so that because of the illiteracy of a Sarpanch the funds of the Panchayat are not embezzled or used for any purpose other than that of the Panchayat.

P.B.R.

Appeals allowed