

(1977) 03 OHC CK 0003

Orissa High Court

Case No: Criminal Revision No. 187 of 1976

Abhiram Jagadeb

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision: March 2, 1977

Acts Referred:

- Evidence Act, 1872 - Section 24, 5
- Penal Code, 1860 (IPC) - Section 409

Citation: (1977) 43 CLT 562

Hon'ble Judges: S. Acharya, J

Bench: Single Bench

Advocate: K.C.J. Ray and P.C. Kar, for the Appellant; B.H. Mohanty, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

S. Acharya, J.

The Petitioner stands convicted u/s 409, Indian Penal Code for having temporarily misappropriated Rs. 246.46 Paise, and he has been sentenced thereunder to undergo S.I. for one month.

2. The Petitioner admittedly was the Branch Postmaster of Brahmania Branch Post Office under Brahmagiri Sub-Post Office in the district of Puri at the relevant time. The said Branch Post Office had been shifted from village Brahmania to the Bhagabat Ghar at Dhvajapatna, an adjoining village, as village Brahmania had been badly affected by flood and cyclone. Within a short time of the shifting of the said Branch Post Office to Dhvajapatna, the Inspector of Post Offices (P.W. 5) visited the said Branch Post Office on 18-11-1968. and on verification of accounts he found that the cash balance in the Post Office was short by Rs. 246.46 Paise. When the said shortage was detected, it is alleged by the prosecution, the accused admitted in writing that he had utilised the said amount for his own use and that he would

reimburse that amount within a short time. P.W. 5 then lodged an F.I.R. alleging misappropriation of the aforesaid amount by the Petitioner, and the Petitioner was prosecuted for an offence u/s 409, Indian Penal Code of which he was found guilty, convicted and sentenced as stated above.

3. According to the accused-Petitioner, he wrote out Ext. 9 exactly as dictated by P.W. 5 due to the threat and inducement of the latter. He further states that at the relevant time the Branch Post Office was being held in a solitary house in the outskirts of mouza Dhvajapatna, and as the locality was very badly affected by flood and cyclone and there was no iron safe or steel almirah in the said Branch Post Office, he had to keep the surplus cash amount of that Post Office with his wife as he found it unsafe to keep that amount in the Bhagabat Ghar of mouza Dhvajapatna. He further states that on the date of inspection of the Post Office by P.W. 5, the wife of the Petitioner was absent from the village and so the amount which had been kept in his house in the custody of his wife could not be produced before P.W. 5 as the key of the box in which the said amount was kept was with his wife.

4. The conviction of the Petitioner is mostly based on the statement made in Ext. 9, treating the same as an extrajudicial confession made by the Petitioner before P.W. 5 when the said shortage was detected.

5. P.W. 5 at the relevant time was the Inspector of Post Offices and he has admitted in his cross-examination that he at the relevant time was the administrative superior of the Petitioner. It is he who inspected the Post Office and obtained the statement (Ext. 9) from the accused. He reported the matter to the police, and on his report the Petitioner was prosecuted in this case. Therefore, there is no doubt that P.W. 5 was a person in authority in respect of the Petitioner.

P.W. 2, whose signature appears in Ext. 9, has testified on oath that Ext. 9 was written by the Petitioner on the dictation of P.W. 5. When P.W. 5 asked the accused about the said shortage, the latter told the former that he had kept that amount in the safe custody of his wife and that he would be able to give that amount as soon as his wife come back from her father's Place. At this, P.W. 5 stated that unless, the accused wrote out what he dictated the accused would lose his job and would be immediately arrested. P.W. 5 of course assured the accused at that time that if he would write out a statement as per his (P.W. 5) dictation, then the accused would be protected by P.W. 5. The testimony of D.W. 2 to the above effect has not at all been challenged in cross-examination excepting the lone suggestion to him at the end of his cross-examination that the accused voluntarily wrote out the statement in Ext. 9, which suggestion was stoutly contradicted as false. The veracity of this witness has not been challenged in any manner; nothing has been suggested to him to show his interestedness with the accused or that he had some other reason to depose falsely in favour of the accused. The learned Government Advocate is not able to show any convincing reason on which his evidence can be discarded or discredited. From the

unchallenged testimony of P.W. 2 to the above effect, it is quite evident that the accused wrote Ext. 9 due to the inducement offered and threat held out by P.W. 5 to the accused.

On the above facts and considerations, as per Section 24 of the Evidence Act, the statement in Ext. 9 cannot be admitted in evidence as an extra-judicial confession of misappropriation of the cash amount made by the Petitioner. Accordingly, Ext. 9 has to be discarded from the consideration.

6. It is an admitted fact that on the date on which P.W. 5 inspected the Post Office, a shortage in cash to the extent of Rs. 246.46 Paise was found in the said Post Office. The accused has admitted that shortage. That being so, it was for him to show what happened to that amount. If the Court finds that the explanation given by the Petitioner regarding the amount in question is false, an inference of misappropriation with dishonest intention can reasonably be drawn against him. But law is well settled that the accused is not expected to prove his case beyond reasonable doubt as is expected of the prosecution to prove the criminal charge against him. It is sufficient if the explanation offered by the accused is founded on the standard of preponderance of probabilities as acceptable or if it appears on such standard of proof to be probable. Once the explanation is found to be probable that will cast doubt on the prosecution case against the accused, in which case he would be entitled to an acquittal.

In [Shri Rabindra Kumar Dey Vs. State of Orissa](#), it has been held:

... It is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of the version given by him throws doubt on the prosecution case and, therefore, the prosecution cannot be said to have established the charge beyond reasonable doubt.

It is sufficient for the defence to give a version which competes in probability with the prosecution version, for that would be sufficient to throw suspicion on the prosecution case entailing its rejection by the Court.

7. In the present case the Petitioner's consistent case is that he did not consider it safe to keep the said amount in the Post Office as it was situated in a lonely place, there was no suitable cash box in the said Post Office and the locality at that time was badly affected by flood and cyclone and so he had kept that amount in the custody of his wife. On the date on which P.W. 5 inspected the Petitioner's Post Office, his wife had gone away to her father's house in another village and so he could not hand over that amount to P.W. 5 on that date, but very soon after she came back to the Petitioner's house he deposited that amount in the Sub-Post Office at Brahmagiri. His above case, so far as possible, was suggested to P.W. 5 in his cross-examination. The accused stated so in his statement before the Court, and

D.W. 2 also testified to the fact that the accused stated so to P.W. 5 in the Post Office.

As stated above, the evidence of D.W. 2 to the above effect has not been assailed or challenged in any manner in cross-examination. On his unchallenged testimony and the case consistently made out by the Petitioner all through during his trial as stated above, and on the fact that the amount was deposited within a few days of the inspection of the Post Office, I am inclined to accept his explanation as probable; in the minimum the explanation viewed with the admitted facts and circumstances of the case and the unchallenged evidence of D.W. 2 throws doubt on the prosecution charge of misappropriation against the Petitioner. That being so, the Petitioner is entitled to be acquitted in this case.

On the above discussions and considerations the conviction of the Petitioner u/s 409, Indian Penal Code and the sentence passed against him thereunder are set aside, and he is acquitted of the same.

The revision accordingly is allowed. The Petitioner be relieved of his bail bond.

Revision allowed.