IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of decision: 31-05-1996.

CRIMINAL APPEAL No 601 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MOHBATSINH VAKHATSINH RANAVAT

Appearance:

MR MA BUKHARI ADDL.PUBLIC PROSECUTOR for the Petitioner

MR KB ANANDJIWALA for the Respondent.

CORAM : H.R. Shelat, J.

Date of decision: 31/05/96

ORAL JUDGEMENT

1. The respondent was placed on trial, before the then learned Judicial Magistrate (F.C.) at Jamnagar, to answer to the charge of the offences under sec.408 & 477(A) of the Indian Penal Code, in Criminal case No.187 of 1976. The trial ended in acquittal on 31st

March,1987. Shorn of unnecessary details, the case of prosecution is as under:-

2. At Nandori, a village in Jamnagar district there is Nandori Seva Sahakari Mandali (herein after referred to as the Mandali)which is a member of the Jamnagar District Co.operative Bank Ltd.(for short the Bank) at Jamnagar. The respondent was the Secretary of the Mandali upto 31st December, 1974. The respondent was transferred after 31st December, 1974. Mr. K.J. Oza, the Chief Investigating Officer along with Mr. Damjibhai Mohanbhai Patel visited the office of the Mandali at Nandori for the purpose of auditing the accounts and checking the dealings. They were authorised to audit and check the books of account because they were the officers of the Bank, and it used to advance the loan to the Mandali. On 21st & 22nd May,1976 both had gone to Nandori to check the accounts & dealings of the Mandali, and to have audit of the account books. They could know that the respondent who had left after 31st December,1974 had committed the breach of the trust by misappropriating the amounts of Rs.7500/-. They could see that Bogha Ramsi, the member of the Mandali had taken the loan of Rs.2000/-on 18th June,1974, however, the record showed that he had again taken the loan of Rs.1800/- on 1-7-1974 which was dubious. Dosa Bhura another member of the Mandali had taken the loan of Rs.1200/- on 24th May,1974, and though he had not taken further loan, the record showed that on 1-7-1974, he took the loan of Rs.1500/-. Likewise, Lakhu Dhana no doubt took the loan of Rs.1000/-on 5th June,1974, but again it was shown in the record that he had taken a loan of Rs.1500/- on 1st July,1974. Dosa Merag also applied for the loan and got the loan of Rs.1000/- on 5th June, 1974. In his account, another loan amount of Rs.1500/- were debited on 1st July, 1974 though he had not taken the loan of that amount. Raja Ala had applied for the loan which was sanctioned and the amount of Rs.2000/- were paid to him on 5th June, 1974. However, the entry of the loan of Rs.1000/- was also posted on 1st July, 1974. Thus, Mr. Oza and Mr. Patel found that though above named five persons had not taken the loans in the month of July, 1974, necessary documents thereof were prepared and false entries were made in the account books debting the sums going to show that above named five persons prayed for the loan amounts again and the amounts of loans were paid to them. It was also found that the respondent who was the Secretary at the relevant time had forged all those documents and had also prepared the false account books and thereby misappropriated the amounts of Rs.7500/-. A careful study also revealed that the respondent being the

Secretary of the Mandali was entrusted with the fund, books of account and management of the Society and also dominion over the property of the Society. He committed the breach of the trust in respect of the Mandali's property by wilfully, and with intend to defraud the Society, made false entries in the books of account, and forged the loan papers called the loan application (Karaz- khat) and thereby committed the offences under sec.408 & 477(A) of the Indian Penal Code. A complaint was then lodged before the Lalpur police station setting the police investigation to motion. At the conclusion of the investigation, a chargesheet was filed against the respondent before the lower Court. A charge was then framed at Ex.10 to which respondent pleaded not guilty. The prosecution led necessary evidence. At the conclusion of the hearing, the learned Magistrate found that the prosecution had failed to establish the charge levelled against the respondent beyond reasonable doubt. He therefore acquitted the respondent. It is against that order the present appeal has been filed.

3. On behalf of the appellant-State it was submitted that the learned Judge did not appreciate the evidence rightly. He drew the conclusions which could be termed arbitrary and perverse. Though the evidence was weighty leaving no room to doubt, the learned Judge eschewed to convict the respondent, and falling into error acquitted the respondent. The evidence of the handwriting expert and Damjibhai Mohanbhai Patel coupled with the evidence of others was sufficient to hold that the charge was established beyond reasonable doubt. Mr. Raval, the learned APP therefore urged me to allow the appeal, set aside the order of acquittal and convict the respondent.

4. Mr. Anandjiwala, the learned advocate representing the respondent supported the order of the acquittal.

5. I have gone through the judgment of the lower Court, and I am in general agreement with the reasonings of the lower Court. However, I may mention how the prosecution has failed to establish the charge beyond reasonable doubt. Whenever it is alleged that the clerk or the servant employed has committed the offence of the breach of trust, entrustment of the property being the necessary ingredient has to be established. In this case, the prosecution has led no satisfactory evidence to prove the entrustment of the Mandali's property, record and capital to the respondent. As per the rule governing the business of the Society under the Co.operative Societies' Act, and rules made thereunder, the Society

has to pass the resolution about the entrustment; and another resolution, permitting the Secretary or the President to keep particular amount on hand, and excess to be deposited in the bank on the next day so as to avoid any malpractices or corrupt practices is required to be passed. It is pertinent to note that in the case on hand, no such resolution is produced. It was submitted that in this case necessary resolutions were not passed, and the entrustment was made orally. When the rules governing the management of the Society mandate for the resolution, oral entrustment being contrary to rules cannot be given due weight and the same has to be ignored. It may be remembered that periodically the inspection is made by the Registrar, Co.operative Societies or the Officer deputed by him, and if at all during the inspection, it is found that resolution about the entrustment is not passed, the governing body of the Society is directed and compelled to pass the resolution by the Registrar, Gujarat Co.operative Societies. In view of such position, it can be said that in this case necessary resolutions were passed and affairs were managed as per the resolutions. However when the resolutions about the entrustment are not produced on record, it can be assumed that had the same been produced, it would have shown that the entrustment was not made to the respondent, but to someone else. In this case, therefore, the entrustment being the essential ingredient constituting the offence is wanting and therefore on that material point, the whole case falls flat.

6. In view of this fact, no other points are required to be dealt with. However, I may discuss two or three points which were highly emphasized. Damjibhai Mohanbhai Patel accompanied Mr.K.J.Oza for the purpose of auditing and inspecting the Society's affairs. It was their surprise visit. Unfortunately, the evidence of Damjibhai Mohanbhai Patel (Ex.97) is not helpful to the prosecution. Damjibhai categorically admitted when he was trapped in the cross-examination that he was having no personal knowledge about the misappropriation or falsification of accounts because the accounts & other files & documents were checked and examined by Mr. K.J.Oza. He was merely a silent spectator. No doubt, he has filed the complaint before the police about which he admitted that he did not prepared the complaint; receiving the readymade complaint from the higher ups, he acted as a post office. Taking the complaint he received, he went to the police station and lodged the same putting his signature. When accordingly he has acted and is having no personal knowledge, his evidence

loses value, it cannot be termed worthy of credence as it throws no light on the proposition with certainty. In short, his evidence has to be kept aside for want of knowledge. Mr. K.J. Oza had the knowledge about the same as he deeply investigated and reached the conclusions about breach of trust and falsification of accounts, but unfortunately, he is not examined. When available material evidence is suppressed, the prosecution can not succeed.

7. It was however submitted on behalf of the prosecution that evidence of the handwriting expert recorded at Ex.48 was sufficient to connect the respondent with the charge levelled against him. Of course, the loan applications (Karaz Khat) alleged to have been forged, are produced at Ex.49, 55, 60, 65 & 71 but are of no help. They relate to Bogha Ramsi, Dosa Bhura, Lakhu Dhana, Dosa Merag & Raja Ala. In those applications, the thumb impressions of these persons are alleged to have been forged by the respondent. The handwriting expert compared & examined the disputed thumb marks along with the admitted thumb marks taken at Ex.43, 44, 38, 40 & 45 and formed the opinion that in no way both the thumb impressions were tallying, and therefore, the thumb impressions on the loan applications were forged, but such opinion expressed by the handwriting expert cannot alone be made the base of conviction. The Supreme Court in the case of Ramchandra & another v. State of Uttar Pradesh, AIR 1957 SC 381 has made it clear that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction. It may be however relied upon along with other various items of external and internal evidence relating to the documents in question. In another case of Ishwari Prasad Misra v. Mohammad Isa, AIR 1963 SC 1728 when likewise question arose, it is laid down that the evidence given by the expert of handwriting can never be conclusive because it is after all opinion evidence. In view of the law made clear by the Supreme Court in above stated two decisions, external and internal evidence relating to the documents in question if found on record i.e. something more connecting with charge, has to be taken into account.

8. In order to identify the thumb impression alleged to have been forged, it is stated that the respondent himself put up necessary endorsement in his own handwriting and identified the same for the purpose of committing the wrongs. What is noteworthy is that expert's opinion is not sought also on the hand writings by which the thumb impressions are identified, and no

reason is assigned by the prosecution for not seeking the opinion of the expert. In this case, when the opinion of the expert is sought on the portion of the documents and not on other material portion helpful to decide the point in issue, such tricky omission indicates faul game and that discredits the truth of the case of the prosecution. In short when material portion is kept in the background and opinion on the whole of the document is not sought and thereby the concerned are placed on wrong track or mis-directed by suppression, the opinion given cannot be termed fullfledged, but incomplete, and no reliance can be placed. It may also be stated that while disbursing the amount, signature of the person taking the loan is taken on the vouchers (acknowledgments). Those vouchers are not produced on record, and they were also not sent to the handwriting expert for seeking the opinion. When that material aspect of the matter has been suppressed from seeking the opinion, the case of the prosecution cannot be accepted simply on the basis of the opinion given by the handwriting expert which can be termed the part of the whole of the subject matter.

9. While receiving the amount of the loan as per the rule of general practice adopted, the person praying for the loan is asked to furnish sureties of two persons, and those sureties have to sign the surety bond assuring the Society that in case the person taking the loan amount fails to make the payment they would be liable to pay and would pay the amount of loan. In this case, signature or thumb impression of sureties were taken, but neither of the sureties has been examined and no reason is assigned for such omission which gives rise to a doubt.

10. On other points, I agree with the learned Judge below and therefore it is not necessary to discuss all those points, re-state and reiterate the same. Suffice is to say that I am in general agreement with the learned Judge below. Of course, in the account books, debit entries about the amount of loan having been disbursed to the above stated five persons are made by the respondent, but simply on that fact he cannot be linked with the charges. According to him, he was not entrusted with the funds and disbursement of the loan amount. The President of the Mandali used to deal with the same, and then send necessary papers to him on the basis of which he used to post necessary entries in the books of account. This defence has not been successfully dislodged by the prosecution leading necessary evidence, and therefore that defence cannot be overlooked out right. If under the direction of the President or believing the documents received to be genuine, the respondent posted necessary

debit entries of Rs.7500/-, it cannot be said that with the intention to defraud or cause wrongful loss to the Society, he posted the entry and thereby prepared the false accounts, and misappropriated the sum.

11. Considering the above stated facts and evidence on record, there is a reason to believe that because of political vendetta the respondent after he was transferred might have been involved in the wrongs. At the relevant time, Haridas Jivanlal was the President of the Lalpur Taluka Panchayat and the respondent was the Secretary of the Mandali and the Talati cum Mantri of the Panchayat. The respondent was considered to be the man of confidant of Haridas Jivanlal. Bhimsingh Kesha is the Member of Legislative Assembly and he is one of the directors of the governing body of the bank. Bhimsingh Kesha does not have good terms with Haridas Jivanlal and respondent was not found faithful to Bhimsingh Kesha. The possibility that because of this political rivalries the respondent was falsely roped in, cannot be ruled out.

12. In view of this fact, the judgment and order of the learned Judge below cannot be termed erroneous or on the verges of perverse. It is quite in consonance with the law. The reasonings are logical and appealing, and therefore, I see no justification to disturb the order of acquittal. The appeal therefore fails. In the result, the appeal being devoid of merits is hereby dismissed.