

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
cr
CRIMINAL APPEAL No 978 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
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?
1 to 5 No
-

STATE OF GUJARAT

Versus

MANJIBHAI RANMALBHA MAKWANA

Appearance:

MR SR DIVETIA, learned Addl. P.P. for the State of Gujarat.

MR KB PUJARA for Respondent (accused)

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 31/08/96

ORAL JUDGMENT

1. On 21-8-84 a report was lodged with the Police Sub Inspector of Ambaji Police Station, Ambaji by one K.J. Raval, Asst. Officer, Ambaji Mata Temple stating therein that the counting of the cash received as offerings in the Temple was being made under his supervision on 30-7-84. At that time the Deputy Administrator of the Temple, namely, J.A.Patel was also present. He has set out the names of the persons, who were present at the time of this counting including the present respondent-accused Manjibhai Ranmalbhai Makwana at item No.3 as M. R. Makwana, Clerk. In this report, it was alleged that the respondent-accused took a fifty rupees note and put the same in his pocket. The

respondent-accused was asked as to what he had put in his pocket and thereupon in presence of all, the fifty rupees currency note was produced by him from his pocket. The statement of the accused was recorded and the fifty rupees currency note was found to be a part of the offerings made before the Temple and after preparing the papers, the matter was brought to the notice of the Manager of the Committee of Ambaji Mata Temple Devasthanam Trust and the report was made for taking suitable action against him. On the basis of this complaint, the matter was investigated and the Challan was filed before the Court of J.M.F.C., Danta (Palanpur) under S.381 of the IPC against the respondent-accused. The respondent-accused was in employment of the Ambaji Mata Temple as a Clerk and had committed theft of the property of his employer. The J.M.F.C. conducted the trial against the accused. The respondent-accused denied the charge under S.381 of the IPC. The J.M.F.C. recorded the conviction of the respondent-accused under S.381 IPC, but passed an order releasing him on probation for a period of 2 years on executing a personal bond for good conduct for a period of 2 years for a sum of Rs.2000/- under the provisions of the Probation of Offenders Act. Against this order the respondent-accused preferred an Appeal before the Sessions Court and his Appeal against the conviction was allowed by the Addl. Sessions Judge, Banaskantha at Palanpur and the order of conviction and the further order passed with regard to the probation was set aside. Against this order dated 28-10-88 passed by the Addl. Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No.22/86 (against the order dated 7-5-86 passed in Criminal Case No. 949/84 by the J.M.F.C., Danta - Palanpur) the present Appeal has been preferred by the State of Gujarat.

2. Mr. S.R. Divetia, learned Addl. P.P. has submitted that the conviction of the respondent-accused has been wrongly set aside by the Addl. Sessions Judge and he has submitted that the offence had been brought home and the guilt had been proved to the hilt on the basis of the statements of the prosecution witnesses i.e. P.W. 1, to P.W. 6 and the Panchanama.

3. I have perused the orders dated 7-5-86 and 28-10-88 and have gone through the relevant record. P.W. 1 - Kantilal, who was Asst. Officer, has stated that the Deputy Administrator Joitabhai Patel apprehended that during the course of counting, the respondent-accused had put in something in his pocket and when the respondent-accused was asked to bring out what was put in his pocket, the respondent-accused brought out fifty

rupees note and thereupon the statement of the accused was recorded wherein he admitted that he had put the currency note in his pocket during the course of counting. The persons, who were present at the time of counting, also supported the case that the respondent-accused had put the currency note in his pocket and had then produced the same, as stated above. In cross-examination he has stated that it was correct that he had not seen the respondent-accused putting the note of rupees fifty in his pocket. He has also admitted that Panchanama of this fifty rupees note was not prepared and it was also not recorded that what was the number of this currency note. P.W. 2 Joitabhai i.e. Deputy Administrator of the Temple Trust has narrated the procedure, which is followed for the purpose of counting of the cash received in the offerings and has stated that on the date of incident i.e. 30-7-84 he had known that the respondent-accused had put in something in his pocket but at the time of counting he did not speak anything because at that time the sorting was going on and the respondent-accused could have thrown away the thing which he had put in his pocket. After the counting, the slip of the total amount was given to the respondent-accused by the Jamadar and when he was putting this slip in his left pocket by left hand, this witness had seen a fifty rupees note in his pocket and thereupon he was asked to bring out the said note and this fifty rupees note was then produced by the respondent-accused before Raval and the accused had also stated before Shri Raval that he had committed a mistake. Asst. Officer Raval had taken the statements of the persons, who were present there. He has stated in the cross-examination that the currency notes of Rs.100/-, Rs.50/- and Rs.20/- are counted by the Deputy Administrator and Administrator and the respondent-accused was sorting the currency notes of Rs.2/- each. He has stated that a Panchanama in respect of a fifty rupees note had been prepared, but he does not remember the number of the note. He has denied the suggestion that for some social obligations the respondent was to go out of station and, therefore, some amount was left in his pocket by mistake. He has also stated that at the time of entry into the cash room (Bhandar) the pockets of the entrants are not checked. P.W. 3-Maganlal has stated that the respondent-accused was sorting out currency notes of Rs.2/- each and at that time Joitabhai had told the respondent-accused that what is there in your pocket because he suspected that there was money and at that time respondent-accused replied that there was nothing in his pocket. When he was questioned second time, he brought out the currency note in question. This note was then put into the Bhandar by

Raval. He has also stated in cross-examination that he had not seen the respondent-accused putting the note of Rs.50/- in his pocket, number of the currency note is not known and that no Panchanama of the currency note of Rs.50/- was prepared. P.W. 4-Nanalala, who is a Panch witness, has been declared hostile and P.W. 5 Devilal, who is also a Panch witness, has also been declared hostile. P.W. 6 is the Constable, who was on duty at the Temple and he has stated that a complaint with regard to this incident had been received by him and he had investigated and had prepared the Panchanama and had recorded the statements of the witnesses.

4. On the basis of the evidence the Panchanama of the place becomes suspicious because the Panch witnesses have been declared hostile. No Panchanama about the currency note in question has been tendered in evidence as it does not even appear to have been prepared. Except P.W.2 no witness has said that Panchnama in respect of fifty rupees currency note in question was prepared. It is also stated by one of the witnesses, as aforesaid, that the fifty rupees currency note in question had been put in the cash of Bhandar. The number of this currency note have not been given out or recorded and it is also stated that this currency note was put back in the Bhandar. The respondent-accused was apprehended on the basis of suspicion and no witness in fact had seen the respondent-accused putting this currency note of Rs.50/- in his pocket and certain witnesses have also deposed that the respondent-accused was dealing with the currency notes of Rs.2/- only and the currency notes of Rs.100, Rs.50/- and Rs.20/- were being counted and dealt with by the higher Officers, whereas he was only a clerk. In this view of the matter it can not be said that the offence under S.381 of the I.P.C. has been proved against the respondent-accused to the hilt by the prosecution and in the facts and circumstances of this case, looking to the varied version of the witnesses, the lack of the Panchanama in respect of the currency note in question and in absence of any direct eye witness, I do not feel safe to convict the respondent-accused under S.381 of I.P.C. on the basis of the feeble circumstantial evidence, which is not corroborated by any other cogent evidence so as to bring home the guilt beyond doubt. I accordingly find that the respondent-accused is entitled to the benefit of doubt in the facts of this case and, therefore, the order of acquittal passed by the learned Addl. Sessions Judge does not warrant any interference.

5. The Appeal is, therefore, dismissed.

