

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. A. NO. 349 OF 2009

State, rep. By
Inspector of Police
District Crime Branch
Vellore.

.. Appellant/Complainant

- Vs -

1. K.Malathi
2. Sureshbabu

.. Respondents/Accused

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the order dated 06.06.06 passed by the learned Judicial Magistrate No.II, Vellore, in C.C. No.209/04.

For Appellant : Mr. Iyyapparaj, APP
For Respondents : Mr. P.Govindarajan for R-1
Mr. T.Subramanian for R-2

JUDGMENT

The accused/respondents herein, who were arrayed as A-1 and A-2, were charged and tried before the learned Judicial Magistrate No.II, Vellore, in C.C. No.209/04 for the offences u/s 120 (B), 409, 467, 471 and 477 (A) IPC and the prosecution, having not proved the case as against the accused beyond reasonable doubt, the trial court acquitted the accused. The State, aggrieved by the said order of acquittal of the accused/respondents herein, by the learned Judicial Magistrate No.II, Vellore, in C.C. No.209/04, vide order dated 06.06.06, has preferred the present appeal.

2. For the sake of convenience, the accused/respondents herein will be referred to as A-1 and A-2.

3. The brief facts, necessary for disposal of this appeal, are as hereunder :-

A-1 was a public servant, working as Postal Assistant in SLRS Sub Post Office (for short 'Post Office'), Karigiri, during the period 16.7.97 to 4.10.99. A-2 was working as Accountant Clerk in Sheblin Leprosy Hospital (for short 'Hospital'), Karigiri. A-2 was entrusted with the work of collecting the consultation charges from the out-patients and the amounts so

collected were deposited in the Savings Bank Account No.2242646 of the Hospital, maintained at the Post Office. The deposits were made by way of pay-in slips with attached counterfoil. It is alleged by the prosecution that A-2 in connivance with one Udayan, who was the Sub Post-Master of the said Post Office, hatched a criminal conspiracy and in furtherance of the same, misappropriated a sum of Rs.6,54,371.35 from and out of the hospital collection by falsifying the Savings Bank account by manipulating the entries made in the pass book of the hospital and the ledger book maintained by the post office.

4. It is further case of the prosecution that A-1, who was the postal assistant at the relevant point of time, abetted with A-2 and the said Udayan in misappropriating the amounts of the hospital by manipulating the pay-in slips, SB pass book and the ledger book. It is the further allegation of the prosecution that the amounts collected by A-2, which were supposed to be deposited in the SB account of the hospital, were siphoned off in such a manner that while the pass book and the counterfoil in possession of the hospital revealed the actual amount, however, the ledger book and the pay-in-slip maintained at the post office reflected the amount that was accounted for by the post office. The prosecution case further reveals that the said falsification of accounts came to notice through the act of A-1 demanding A-2 to bring the pass book as a condition for making the necessary entries in the pass book towards entertaining deposit of the amount on 22.9.99. Since there was difference between the ledger entry and the pass book entry, criminal machinery was set in motion by registration of a case in Crime No.5/99.

5. Before putting the criminal machinery in motion, P.W.s 1 and 2, at the instance of the superior officials at the Head Post Office, Vellore, conducted an enquiry and examined A-1 and the documents at the post office. The statement of A-1 was also recorded by P.W.2. Thereafter, after obtaining necessary permission from the hospital authorities, P.W.s 1 and 2 examined the documents at the hospital, viz., the counterfoils by which deposits were made. P.W.s 1 and 2 also examined A-2 and recorded his statement.

6. P.W.8, the investigating officer, on registration of the case in Crime No.5/99, took up investigation. He examined witnesses and recorded their statements. The necessary material documents, viz., the pass book entry and ledger entry, were sent for forensic analysis in order to establish the handwriting therein. On transfer of P.W.8, the subsequent investigation officer, P.W.9, took up further investigation and after going

through the records of the investigation done by P.W.8, laid the charge sheet against the accused charging them for the offences u/s 120 (B), 409, 467, 471 and 477 (A) IPC.

7. The accused/respondents herein were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed five charges viz., u/s 120 (B), 409, 467, 471 and 477 (A) IPC. When questioned, the accused pleaded not guilty.

8. To prove the case, the prosecution examined P.W.s 1 to 9, marked Exs.P-1 to P-609 and M.O.1. When the accused/respondents herein were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, acquitted the accused/respondents as aforesaid, aggrieved by which the Department/appellant has filed the present appeal against the said acquittal.

9. Learned Addl. Public Prosecutor appearing for the appellant/State contended that the trial court has not considered the evidence tendered by P.W.s 1 to 9 as also Exs.P-1 to P-609 in proper perspective and has erroneously acquitted the accused/respondents herein. It is vehemently contended by the learned Addl. Public Prosecutor that the evidence of P.W.s 1 to 4, who are employees of the postal department, coupled with Exs.P-14 and P-597, the statements of A-1 to P.W.2 unequivocally establish the guilt of A-1. It is the further submission of the learned Addl. Public Prosecutor that A-1, on her own admission, which is available in Exs.P-14 and P-597, has admitted her guilt and, therefore, the trial court was not correct in acquitting her.

10. It is the further submission of the learned Addl. Public Prosecutor that A-2 also, through his admission in his statement, Ex.P-15, recorded by P.W.2, and attested by P.W.s 5 and 6, who are employees of the hospital, has admitted his act of committing misappropriation with the connivance and conspiracy with one Udayan (since deceased). It is the submission of the learned Addl. Public Prosecutor that the statement of A-2 could very well be taken as an extra-judicial confession and would very well be admissible in evidence, as the same was not obtained through threat, coercion or undue influence from A-2. It is the further submission of the learned Addl. Public Prosecutor that A-2 has admitted his collusion with the said Udayan in the statement, Ex.P-15 and has not retracted

the said statement and, therefore, the same is very well admissible in evidence. It is the submission of the learned Addl. Public Prosecutor that the collusion of A-2 with the said Udayan in hatching the criminal conspiracy to misappropriate the amounts has been established through documentary evidence. However, the trial court, without properly appreciating the said evidence, has acquitted the respondents, which warrants interference at the hands of this Court.

11. Per contra, Mr. Govindarajan, learned counsel appearing for the 1st respondent/A-1, at the very outset submitted that the appellate court should be very circumspect while entertaining an appeal against an order of acquittal rendered by the trial court. Unless the materials on record reveal perversity or illegality, the appellate court should normally refrain from interfering with the order of acquittal. It is the submission of the learned counsel appearing for the 1st respondent/A-1 that the materials available on record in no way implicates A-1 with the falsification of the accounts with a view to misappropriate the funds of the hospital. It is submitted that it was A-1 who brought the discrepancy in the entries in the ledger book vis-a-vis the pass book to the notice of the postal authorities, more especially, P.W.4, on 22.9.99, when she refused to accept the amount deposited by A-2 in the absence of the pass book. However, the prosecution, for reasons best known and in the absence of any material has roped in A-1 as one of the perpetrators of the crime, without there being even an iota of evidence. It is further submitted that P.W.s 1 and 2, on whose evidence much reliance is placed by the prosecution, do not anywhere point a finger as to the culpability of A-1 in the offence. Further, it is submitted that A-1, in her statement, Ex.P-14 as well as Ex.P-597, has not admitted that she had falsified the documents and in the absence of any material connecting A-1 with the crime, the finding rendered by the trial court acquitting A-1 does not call for any interference.

12. Learned counsel for the 1st respondent/A-1 placed reliance on the following decisions in support of his contention that the appellate court should normally not interfere in an order of acquittal unless it is shown that the order of the trial court paints itself with illegality and perversity :-

- i) Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248);
- ii) Shailendra Pratap & Anr. - Vs - State of U.P. (2003 (1) SCC 761)

13. Learned counsel appearing for A-2, while adopted the arguments advanced on behalf of A-1, further submitted that

except the extra-judicial confession, there is no other material connecting A-2 with the commission of the offence. It is the further submission of the learned counsel for A-2 that even according to the deposition of P.W.s 1 and 2, there is no loss caused either to the postal department or the hospital, which is corroborated by P.W.s 5 and 6. It is therefore submitted that once it is admitted by the prosecution witnesses that there is no loss either to the postal department or the hospital, the acquittal of A-2 does not warrant interference.

14. This Court heard the learned counsel appearing on either side and perused the materials available on record as also the decisions to which the court's attention was drawn. The following issues arise for consideration before this Court in the present appeal :-

i) Whether the prosecution has proved the case beyond reasonable doubt as against both the accused;

ii) Whether A-1 and A-2 entered into a conspiracy with Udayan to falsify the records and derive any benefit out of the misappropriation; and

iii) Whether A-1 is involved in the offence of misappropriation as alleged by the law enforcing agency;

15. In dealing with matters, where the acquittal rendered by the trial court is put to test, it is trite that unless the order of the trial court suffers from the vice of perversity, the High Court ought not to interfere with the said order. In Shailendra Pratap's case (supra), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants

recorded by the trial court as the same did not suffer from the vice of perversity."

16. Yet again, in Ram Kumar's case (supra), the Hon'ble Supreme Court has once again highlighted the need for the High court to give proper weight and consideration to the view of the trial court and has further held that if the view taken by the trial court is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

17. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the trial court for acquitting the accused/respondents herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the trial court are such which could not have been

possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

18. The basic contention of the learned Addl. Public Prosecutor relating to A-1 being a public servant is not disputed. Therefore, it is not necessary to dwell into the said submission. At the same stretch, the pass book and ledger book, as also the entries made therein are not in dispute. It is the case of the prosecution that there is falsification of accounts, in that, the pay-in slip and the ledger account maintained by the postal department reflects a different and lower figure from the figure that is reflected in the counterfoil and pass book maintained by the hospital and that A-1, being the postal clerk who is entrusted with the duty of making the necessary entries, has colluded in the act of misappropriation along with A-2 and Udayan. It is the further case of the prosecution that the daily collection of the hospital, as collected by A-2, was deposited at the post office savings account not with the postal clerk, but was handed over straight to the Sub Post Master, Udayan, (since deceased) and, thereby, amounts have been siphoned off by Udayan in connivance with A-2 by making short entries in the ledger book and pay-in slip, which were signed by Udayan, while in the counterfoil and pass book of the hospital, the actual deposit amount was recorded.

19. A perusal of the deposition of P.W.1, who was then working as Class I Superintendent at the postal department, Vellore Division, reveals that based on information and direction from the Head Post Master, Vellore, P.W.1 along with P.W.2 received the pass book pertaining to SB Account No.2242646 and went to SLRS Post Office and conducted an enquiry. It is further evident from the deposition of P.W.1 that on enquiry and search at the said post office, one rexine bag, M.O.1, was seized, which contained an amount of Rs.4603.05, a passbook in the name of Udayakumar bearing No.2520, a pass book of Udayan with the said post office bearing account No.2242361, which was started on 9.1.96, an Indra Vikas Patra for a value of Rs.200 issued by Sathuvachari Post Office, documents and pass book relating to SB Account No.2948 with Indian Bank, Tarapedu Branch in the name of Udayan and a LIC premium receipt in the name of one V.Geetha. The report prepared in this regard is Ex.P-3 and the documents were marked as Exs.P-4 to P-9 respectively. P.W.1 has further deposed that P.W.2 enquired P.W.4 and A-1 relating to the receipt of SB Account pass book No.2242646 at the head office and obtained a statement. P.W.1 has further deposed that he, along with P.W.2, went to the hospital and verified the counterfoils after obtaining the permission of the Director of the hospital. P.W.1 has further deposed in chief examination

that on scrutiny of the counterfoils maintained by the hospital, it came to light that A-2 with the connivance of the Sub Post Master, Udayan, with whom he had entrusted the amounts, had short deposited the cash in the savings bank account of the hospital as revealed by the pay-in slips, while the actual amount was reflected in the counterfoils maintained by the hospital, since 6.11.98. While the actual amount that was to have been reflected in the savings bank account in the ledger book was Rs.9,27,504.25, the amount that was found reflected as deposited in the savings bank account was to the tune of Rs.2,23,130.65 as reflected by the pay-in slips and the amount that was misappropriated was to the tune of Rs.6,54,373.60. P.W.1 has further deposed in chief examination that A-2 had directly given the amount to Udayan and not to the clerk at the counter, viz., A-1. P.W.1 has admitted in cross examination that the counterfoils were filled by Udayan and signed by him and even the ledger entries were signed by Udayan. However, P.W.1 denied the suggestion that A-1 was not in any way involved in the said act.

20. P.W.2, in his chief examination, has deposed that on 22.9.99, A-2 had tried to remit a sum of Rs.75,296.20 in SB Account No.2242646 without the pass book, which amount was kept in suspense by A-1 and, thereafter, A-2 had brought the pass book around 4.00 p.m. on that day, when it was found that while the pass book revealed a balance of Rs.9,27,504.25, however, the actual amount available as per ledger entry was only Rs.2,73,130.65, thereby the ledger entry revealed a shortfall of Rs.6,54,373.60. Therefore, Head Post Master initiated an enquiry by P.W.s 1 and 2 and pursuant to the said enquiry, a rexine bag was seized, which belonged to Udayan (since deceased). P.W.2 has corroborated the evidence of P.W.1 in all other aspects, including the recovery of the rexine bag and the contents of it. P.W.2 has further deposed that A-1 gave a statement in which A-1 has stated that she had made entries in the pass book from 6.9.99 to 22.9.99. P.W.2 also obtained a statement from A-2 on 27.9.99. P.W.2 has further deposed that A-2, in his statement, has given the dates on which deposits were made into the savings bank account between the period 18.11.98 and 6.9.99 and A-2 has categorically implicated Udayan (since deceased) as the person, who joined with him in misappropriating the amounts. During cross examination, roving questions were put to P.W.2 with regard to the deposits made and the entries made in the pay-in slips and counterfoils for which P.W.2 has given detailed replies.

21. P.W.4, who was the Sub Post Master has deposed that A-2 had come to the post office on 22.9.99 for depositing the

amount, however, A-1, who was on duty as postal clerk at that time, refused to make the necessary entries in the ledger book, as A-2 had not brought the pass book with him. Therefore, the same was informed to A-2 and, thereafter, A-2 left the post office and returned back at about 4.00 p.m., on that day with the pass book. P.W.4 has further deposed that examination of the pass book of the hospital and the ledger book maintained by the post office revealed that the amount as reflected in the ledger book was to the tune of Rs.2,73,130.65, while the amount as reflected in the pass book of the hospital showed an amount of Rs.9,27,584.25, which discrepancy was brought to his knowledge by A-1. Therefore, P.W.4 made a complaint to the head office about the discrepancy in furtherance of which P.W.s 1 and 2 enquired and prepared necessary reports. P.W.4 has further deposed that during enquiry and search, a rexine bag with inscription 109th Birthday celebrations of Dr.Ambedkar, was seized from the cupboard next to the table of P.W.4 which contained various documents, which were recovered along with an amount of Rs.4,203/-. The further deposition of P.W.4 is on the same lines as deposed by P.W.s 1 and 2.

22. P.W.s 5 and 6 are the staff of the hospital, who have deposed about the enquiry made by the postal authorities and the production of the counterfoils to the postal authorities at their request. P.W.s 5 and 6, in general, have corroborated the statements relating to the amounts reflected in the pass book as the amount that was said to have been deposited by A-2 with the postal office.

23. P.W.s 8 and 9 are the investigation officers, who have spoken about the investigation done by them in pursuance to the registration of the complaint and further sending the materials objects along with the handwriting samples of A-1 and A-2 for the opinion of the handwriting expert, P.W.7.

24. Insofar as the acquittal of A-1 is concerned, it is assailed by the learned Addl. Public Prosecutor by laying much stress on Exs.P-14 and P-597, the statements said to have been given by A-1 in which she is alleged to have admitted her complicity in the offence. It is therefore the submission of the learned Addl. Public Prosecutor that the statements, by itself, are a self-serving declaration of A-1 admitting her guilt, which admission has not been appreciated properly by the trial court.

25. This Court has carefully perused Ex.P-14, the statement given by A-1, from which it is evident that A-1 has stated that an amount of Rs.75,296.20 was deposited in SB Account No.2242646

on 22.9.99 by A-2, however, without producing the pass book. Therefore, the amount was taken and handed over to P.W.4, as the deposit was not made along with the pass book. However, later on the evening of 22.9.99, A-2 produced the pass book and 2 numbers of pay-in slips. A-1 has stated that she came to know about the fact that there are two accounts only at that point when two pay-in slips were produced. A-1 has further stated in her statement that as there was discrepancy between the amount reflected in the ledger book and the amount reflected in the pass book, she placed the matter before P.W.4. A-1 has further stated that for the entries between 6.9.99 and 22.9.99 made in the ledger book, she has made the necessary entries in the pass book. However, excepting the entries for the period from 6.9.99 to 22.9.99, all other entries were made by Udayan (since deceased) and countersigned by the said Udayan. A-1 has further stated that she would have found out the discrepancy in the amounts as reflecting in the pass book and ledger book had she made the necessary entries in the pass book and ledger book at the earlier points of time. Therefore, from the above statement of A-1, it clearly reveals that except for the entries between 6.9.99 and 22.9.99, all other entries in the pass book have been made by Udayan, who has countersigned for the necessary entries in the concerned documents, viz., ledger book and pass book and, therefore, there is no admission of A-1 with regard to the entries made in the pass book and ledger book.

26. Ex.P-597, the further statement of A-1, reveals that the said statement is further to the statements given by her on 25.9.99, 28.9.99, 29.9.99 and 30.9.99. However, curiously, the statements, alleged to have been given by A-1 on the above four dates, have not been marked by the prosecution and no reason for their non-marking has also been placed on record by the prosecution. The statement dated 4.10.99, which is Ex.P-597, has been marked by the prosecution, in which it is stated by A-1 that she received the amounts from A-2 and handed over the same to Udayan and that she has made the entries in the hand to hand receipt book to the dictates of her superior Udayan. A-1 has further stated that the entries made by her in the ledger book pertaining to SB Account No.2242646 have been struck by Udayan and new entries have been made for the period 16.3.99 to 6.9.99 to the tune of Rs.28,409.80. A-1 has admitted that for the period 6.9.99 to 22.9.99, the entries have been made by her. One other crucial piece of evidence is the question put by P.W.2, who recorded her statement, in which P.W.2 had questioned her as to why the misappropriation to the tune of Rs.6,54,373.60 which took place since 17.10.98 has not been brought to the knowledge of her superiors to which A-1 has stated that she came

to know about the said misappropriation done by Udayan only on 22.9.99.

27. From the above categorical evidence available on record in the form of the depositions of P.W.s 1 to 4 as also the statements of A-1, viz., Exs.P-14 and P-597, it is evident that neither the witnesses have spoken about the complicity of A-1 in the commission of misappropriation by colluding with A-2 and Udayan, nor A-1, of her own volition, has accepted that she had colluded with A-2 and Udayan in misappropriating the amounts. A-1, nowhere in Exs.P-14 and P-597, has admitted her hand in colluding with A-2 and Udayan and misappropriated the amounts. However, A-1 has categorically stated that the above misappropriation committed by Udayan in collusion with A-2 came to her knowledge only on 22.9.99. The prosecution, neither through oral evidence nor through any documentary evidence has established the complicity of A-1 in the commission of the offence. Further, the deposition of P.W.1 clearly reveals that A-2 had not deposited the money through the regular channel, viz., handing over to the postal clerk, viz., A-1, who had made necessary entries in the ledger book and pass book, but has handed over the amounts directly to Udayan by filling two different pay-in slips to shield the misappropriation and, thereby, both Udayan and A-2 have misappropriated the amounts. In fact, even the statement of A-2, Ex.P-15, reveals that A-2 has clearly stated that he had colluded with Udayan in the act of misappropriation of the amounts and nowhere has he implicated A-1 as one of the collaborators in the commission of the offence.

28. This Court is very much conscious of the ratio laid down by the Apex Court in Ram Kumar's case and Shailendra Pratap's case (supra), wherein the Apex Court has cautioned that unless the order passed by the trial court is illegal and suffers the vice of perversity, the High Court ought not to interfere with the said finding recorded by the trial court in acquitting the accused. In the considered opinion of this Court, the materials available on record insofar as A-1 is concerned, does not in any way further the case of the prosecution to render a different finding. The findings recorded by the trial court for acquitting A-1 are just, reasonable and plausible and the prosecution, has in no way, dislodged or demolished the findings rendered by the trial court. In fact, the whole web of the prosecution case enures more to the benefit of A-1 than to the prosecution. In the above backdrop, this Court, is entirely in agreement with the view taken by the trial court for acquitting A-1 and the same does not warrant any interference at the hands of this Court.

29. Insofar as the acquittal of A-2 is concerned, the deposition of P.W.s 1 and 2 reveals that A-2 was the person, who took the money collected from the out-patients to the post office and had handed over the amounts directly to Udayan (since deceased), by-passing the normal channel of depositing the money through pay-in slips with the postal clerk. It is further evident from the deposition of P.W.1 that two pay-in slips were filled to shield the act of misappropriation to which A-2 was fully conscious. Therefore, the collusion of A-2 with Udayan (since deceased) with ill-intent to siphon off the money of the hospital stands established. The act of A-2 not only gains strength from the deposition of P.W.1, but also cements itself by his own voluntary statement to P.W.2. The statement of A-2, Ex.P-15, given to P.W.2, clearly reveals that A-2 has admitted that not only there was discrepancy in the amounts deposited in the savings bank account No.2242646 of the hospital, but there was collusion between A-2 and Udayan (since deceased) in misappropriating the amounts. A-2 has also admitted that between 18.11.98 and 22.9.99, A-2 and Udayan had indulged in the act of misappropriation of the funds of the hospital. The modus in the operation of the account and the act of misappropriation have been clearly spelt out by A-2 in the statement, Ex.P-15, given to P.W.2. The dates on which short remittances were made and the amounts misappropriated have been given in the statement, Ex.P-15, given by A-2. A-2 has further categorically admitted in his statement that there was collusion between him and Udayan in misappropriating the amounts. A-2 has further stated that out of the misappropriated amount, he has received a sum of Rs.3,00,000/- from Udayan and the balance has been taken by Udayan. A-2 has further stated that he undertakes to remit the sum of Rs.3,00,000/- into the postal savings bank account of the hospital. A-2 has further stated that the statement, Ex.P-15, has been given by him in a sound and disposing state of mind and out of his free will and volition and that there was no threat, coercion or undue influence.

30. It is the strenuous contention of the learned counsel for A-2 that except for the abovesaid statement, Ex.P-15, alleged to have been given by A-2, there is no other document connecting A-2 with the crime. It is the further submission of the learned counsel appearing for A-2 that the extra-judicial confession, being termed as a statement, is a very weak piece of evidence and without there being necessary corroboration, reliance should not be placed on the said statement.

31. In this regard, useful reference could be had to the decision of the Apex Court in Ram Lal - Vs - State of H.P. (2018 SCC OnLine SC 1730), wherein the Apex Court has reiterated the

tests that should be satisfied before the Court can embark upon for accepting the extra judicial confession. For better clarity, the relevant portion is quoted hereunder :-

"13. Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. Considering the admissibility and evidentiary value of extra-judicial confession, after referring to various judgments, in Sahadevan v. State of Tamil Nadu, (2012) 6 SCC 403, this court held as under:-

"15.1. In Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259 this Court stated the principle that:

"10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180 stated the principle that:

"19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."

The Court further expressed the view that:

"19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and

in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...."

15.6. Accepting the admissibility of the extra-judicial confession, the Court in *Sansar Chand v. State of Rajasthan*, (2010) 10 SCC 604 held that:

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore*, (1970) 2 SCC 105, *Mulk Raj v. State of U.P.*, AIR 1959 SC 902, *Sivakumar v. State By Inspector of Police*, (2006) 1 SCC 714 (SCC paras 40 and 41 : AIR paras 41 and 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra*, (2009) 11 SCC 262 and *Mohd. Azad alias Shamin v. State of W.B.*, (2008) 15 SCC 449]"

14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In *Madan Gopal Kakkad v. Naval Dubey*, (1992) 3 SCC 204, this court after referring to *Piara Singh v. State of Punjab*, (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

15. As discussed above, if the court is satisfied that if the confession is voluntary, the conviction can be based upon the same. Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated. In the case at hand, as pointed out by the trial court as well as by the High Court, *R.K. Soni* (PW-2) and *R.C. Chhabra* (PW-3) were the senior

officers of the bank and when they reached the bank for inspection on 23.04.1994, the accused submitted his confessional statement (Ex.-PW-2/A). Likewise, in the enquiry conducted by R.C. Chhabra (PW-3), the accused had given confession statement (Ex.-PW-3/A)."

32. Keeping the above principles laid down by the Apex Court, a careful perusal of the materials available on record would lead this Court to the irrefutable conclusion that the above contention placed on behalf of A-2, deserves a rejection outright for the simple reason that not only the said statement has been given by A-2 in a sound and disposing state of mind and out of his free will and volition and that there was no threat, coercion or undue influence, but also that A-2, at no point of time during the trial, has retracted the said statement, claiming coercion or undue influence. Further, the extra-judicial confession of A-2, Ex.P-15, is not only voluntary, but it inspires the confidence of this Court and that the same has been proved through P.W.s 5 and 6, who are independent witnesses and employees of the hospital, who have no axe to grind against A-2.

33. Though it is contended by the learned counsel for A-2 that the said statement cannot partake the character of a statement recorded u/s 161 Cr.P.C., and, therefore, the same cannot be equated with a statement u/s 161 Cr.P.C., to implicate the person, who gave the said statement, however, it is to be pointed out that the statement is a confession given by A-2, out of his free will and volition and without any coercion in the presence of independent witnesses, two of whom have been examined as P.W.s 5 and 6 and in the absence of any specific retraction by A-2 before or during trial, equating the said statement to a statement recorded u/s 161 Cr.P.C. cannot be found fault with. The absence of retraction and the nature of the confession given by A-2 clearly and definitely fastens the criminal liability on A-2 and, therefore, A-2 cannot seek umbrage under the ratio laid down by the Apex Court in Ram Kumar's case and Shailendra Pratap's case (supra) and, therefore, this Court, taking cue from the decision in Ram Lal's case (supra), is left with no other alternative, but to accept the extra-judicial confession given by A-2, as a valid piece of documentary evidence against A-2, through his own lips, to overturn the verdict of acquittal recorded by the trial court against A-2.

34. On a careful analysis, as made above, this Court is of the considered view that the prosecution has not only failed to prove the case against A-1 beyond reasonable doubt, but it is a case of no evidence as against A-1. The failure of the prosecution to prove the case as against A-1 absolves her of collusion with A-2 and Udayan. The prosecution, in fine, has failed to prove the case against A-1 and, therefore, the verdict of acquittal, recorded by the trial court as against A-1, deserves to be confirmed. However, the prosecution, on the materials available on record, as discussed above, has clearly proved the culpability of A-2 in the commission of the act of misappropriation and collusion with Udayan and, therefore, the acquittal of A-2 by the trial court deserves interference.

35. Since this Court is reversing the acquittal recorded by the trial court and, thereby, convicts A-2 of the charges framed against him, as mandated u/s 235 (2) Cr.P.C., this Court heard A-2 on the question of imposition of sentence.

36. The 2nd respondent herein/A-2 appeared before the Court and pleaded that he has not committed any offence and that the statement was obtained from him against his volition. However, he further pleaded that if this Court proposes to sentence him, lesser sentence may be awarded to him.

37. This Court, after taking into consideration the submissions of the 2nd respondent/A-2 and also considering his age and also the fact that the offence was committed during the period 1998 and 1999 and that almost two decades have passed since the commission of the offence, this Court is of the considered view that the statute did not prescribe minimum sentence, hence, it would meet the ends of justice if the 2nd respondent/A-2 is sentenced to a period of simple imprisonment for a period of fifteen days.

38. Accordingly, this appeal is allowed in part. The appeal insofar as the 1st respondent/A-1 stands dismissed confirming the order of acquittal passed by the trial court. The acquittal of the 2nd respondent/A-2 is set aside and he is convicted of the charges framed against him and is hereby sentenced to undergo simple imprisonment for a period of fifteen days for each of the charge. The sentences are directed to run concurrently. The 2nd respondent/A-2 is entitled for set off u/s 428 Cr.P.C. The 2nd respondent/A-2 undertakes to surrender before the trial court within a week from today. Accordingly, the 2nd respondent/A-2 is directed to surrender before the trial court on or before 18.12.2019 and on such surrender, the trial court is directed to commit the 2nd respondent/A-2 to prison to

serve the sentence imposed upon him by this Court. If the 2nd respondent/A-2 does not surrender, as undertaken above, the trial court is directed to secure the presence of the 2nd respondent/A-2 and commit him to prison to serve the sentence imposed upon him.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II
Vellore.

2. The Chief Judicial Magistrate,
Vellore.

3. The Inspector of Police,
District Crime Branch,
Vellore.

4. The Public Prosecutor
High Court, Madras.

+2cc to M/s.C.Subramaniam, Advocate SR.No.102864

AKM/11.12.19/17P- 7C /

सत्यमेव जयते

CRL. A. NO. 349 OF 2009

WEB COPY