

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
Y. BASAVADEVUDU AND ANR.

DATE OF JUDGMENT 26/03/1992

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
KULDIP SINGH (J)

CITATION:
1992 SCR (2) 344 1992 SCC (3) 30
JT 1992 (2) 399 1992 SCALE (1) 730

ACT:

Criminal Law :
Indian Penal Code, 1860 :
Sections 409, 467, 471 and 477-A-Embezzlement-
Encashment of fake RBI Demand Drafts in the name of
fictitious persons-Falsification of accounts-Connivance of
Sub-Treasury Officer with other employees-Trial Court
holding accused guilty of offences charged-High Court
acquitting accused by giving benefit of doubt-Whether
justified-Held : prosecution had discharged its burden of
establishing charges levelled against accused beyond
reasonable doubt by unimpeaching oral and documentary
evidence-Duty of accused to produce defence evidence to
establish their innocence especially when facts relating to
payment of huge amount without receiving any advice from
R.B.I. and names and identity of persons who had identified
the payees were within their knowledge-Evidence Act, 1872 :
Section 106.

HEADNOTE:

Respondents Nos. 1 and 2 and PW. 18 were working as
Sub-Treasury Officer, Shroff and Upper Division Accounto-
cum-Double Lock Officer respectively in a non-Banking
Treasury. The State Government ordered the conversion of
the said Treasury into a Banking Treasury by handing over
cash business to a local Bank from a particular date.
However, on the report of respondent No. 1 that the case
chest was not working as the key was stuck-up in the Reserve
Bank of India chest and it was not possible to hand over the
case business on the date ordered by the Government, the
State Government fixed another date, and the conversion
materialised, on the revised date, about a month after the
original date.

After sometime, the Accountant General and also the
regional office of the Reserve Bank of India detected that
seven demand drafts alleged to have been issued by the
Reserve Bank of India were encashed in the Sub-Treasury on
the last two days of its being handed over. It was found
that no such demand drafts had at all been issued by the
Reserve Bank of

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India for being encashed at the Sub-Treasury in question,

and that altogether different drafts were issued relating to other places outside the State, and except the serial numbers, all other particulars, namely the date, amount, name of the payee etc. were not at all tallying with the payment certificate sent by respondent No. 1, the then Sub-Treasury Officer. It was found that there was an embezzlement to the tune of Rs. 1,22,500 out of the case of the Sub-Treasury and all entries with regard to the payment of such amount and the signatures of the payees in token of receipts of money were all fake and forged by the accused persons.

PW. 18 was granted pardon and declared an approver by the District Magistrate.

The two respondents were charged for offences under Section 409, 467, 471 and 477-A I.P.C. The prosecution examined 27 witnesses and produced 113 documents in support of its case. The respondents denied the charges but did not lead any evidence in defence.

The trial court held that the prosecution had proved beyond all reasonable doubt that the two respondents and PW.18, the approver, together made falsification of the accounts by writing false entries in the relevant registers as if some payments were made on the two dates in question to the fictitious persons whose names were mentioned in the payment register and other registers, and that both the accused persons and PW.18 connived in making false entries with dishonest intention of covering up of misappropriation of the public funds committed by them to the tune of Rs. 1,22,500. According it found that the respondent were guilty of the offences under Section 409, 467, 471 and 477-A I.P.C. It acquitted the approver of all the charges levelled against him.

On appeal, the High Court acquitted the respondents on the ground that the prosecution had failed to prove the case beyond reasonable doubt, and that though a huge amount had been embezzled, nevertheless it would not be proper to convict the accused when doubt was cast and benefit of doubt had to be given to the accused.

Allowing the appeals of th State, this Court,

HELD : 1.1 The High Court totally misdirected itself and did not go deep into the matter, nor analysed the clinching oral and documentary

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evidence produced by the prosecution and gave benefit of doubt to the respondents in a superficial manner. It did not deal with the detailed reasons given by the trial court and ignored the almost admitted facts and circumstances of the case. The accused persons had not received any demand drafts from the R.B.I. and all the entries in the relevant registers at the Sub-Treasury regarding payment of seven demand drafts amounting in all to Rs. 1,22,500 are fake, false forged and the accused persons were the authors of such entries. The prosecution has discharged its burden of establishing the charges levelled against the accused persons beyond any manner of doubt and the findings and conclusion drawn by the trial court and the conviction and sentence awarded by it are upheld. [350H, 357A-H]

1.2. It is clearly proved on record that the real and genuine demand drafts were Exhibits P.82 to P.88 issued from the regional office of the Reserve Bank of India and the same were not drawn to be payable at Sub-Treasury in question or at any other Sub-Treasury situated in the State. The amounts, the dates and the payees were entirely different from those demand drafts which have been entered and shown encashed from the said Sub-Treasury. Since the

respondents had taken the stand that the payments or encashment of the demand drafts and the entries found the Exhibits P.2., P.3, P.5, P.6, P.8 and P.9 were all correct, and it may be that fake or spurious or bogus Reserve Bank of India demand drafts might have been presented by the payees, it was necessary for them to disclose the identity of the person who identified the payees at the time of encashment of the fake drafts. Admittedly, no advice for payment of the demand drafts had been received before the encashment of the demand drafts and even the alleged demand drafts after payment are not available on the record and the respondents took a false stand that they sent the paid drafts to the office of the Accountant General. Indisputably the amount of Rs. 1,22,500 was withdrawn by the respondents and the same has been shown to have been paid against fake and spurious demand drafts to unknown persons. [356C-F]

1.3. The High Court went wrong in throwing the burden on the prosecution to prove that the entries in column 5 of Exhibits P.8 and P.9 containing the signatures or thumb impression of the payees was made by the respondents. In the facts and circumstances of this case, it was totally wrong to place such burden on the prosecution. The prosecution has discharged its burden by leading unimpeaching oral and documentary

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evidence that no demand drafts were issued from the R.B.I., against which payments have been shown on the two dates in question in the record of Sub-Treasury and the names of the payees were also of unknown and unidentified persons. The entries in columns 1 to 4 of Exhibits P.8 and P.9 are admitted to be correct by the accused persons. These entries showing the names of the payees and the amount are proved to be false and incorrect beyond any shadow of doubt. In this background, it was no longer the duty of the prosecution to show as to who made the entries in column 5 of Exhibits P.8 and P.9. A.1 had put his signatures on Exhibits P.8 and P.9 and according to him the payments were made after getting the identity of the payees verified by a person well known to him. [356G-H, 357A-B]

1.4. When the payment of a huge amount of Rs. 1,22,500 was being made without receiving any advice from Reserve Bank of India, it was all the more necessary to make thorough enquiry regarding the correct identity and genuineness of the payee. These facts being in the special knowledge of the respondents, it was incumbent on them to disclose the names and identity of the person who had identified the payees and to establish their innocence by producing such person or the payees in defence evidence. Section 106 of the Evidence Act clearly provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. [357C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 384-385 of 1982.

From the Judgment and order dated 11.7.80 of the Hyderabad High Court in CrI. Appeal No. 459/78 & Transfer CrI. Appeal No. 700 of 1978.

A.S. Nambiar and Guntur Prabhakar for the Appellants.

Mrs. K. Amareswari, C.S. Srinivasa Rao and B. Kanta Rao for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J. These appeals by grant of special Leave

are directed against the judgment of the Andhra Pradesh High Court dated 11.7.1980 in Criminal Appeal Nos. 459 & 700 of 1978.

Y. Basavadevudu (in short 'A.1') and S. Subha Rao (in short 'A.2')

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accused-respondents were tried for offences under Sections 409, 467, 471 and 477-A of I.P.C. The learned Assistant Sessions Judge, Kammam found both the accused persons guilty for the above offences and awarded various terms of imprisonment and fine for the aforesaid offences. The accused persons aggrieved against their conviction and sentence filed appeals before the High Court. The High Court by its judgment dated 11.7.1980 gave benefit of doubt and acquitted the accused persons of all the charges levelled against them. Fine, if paid, was directed to be returned to the accused persons. The State of Andhra Pradesh aggrieved against the order of acquittal has come before this Court by grant of special leave.

The prosecution story is that A.1 was Sub-Treasury Officer (hereinafter referred to as the 'S.T.O.') and A.2 was working as shroff in the non-banking Sub-Treasury at Venkatapuram. The said non-banking Sub-Treasury was converted into a banking Sub-Treasury from 18.6.1973 by an order of the Finance Department dated 14.6.1973. A.1 who was working as S.T.O. reported to the then District Treasury Officer (PW.14) that the key was stuck up in the Reserve Bank of India chest and as such it was not possible to convert the Sub-Treasury into a banking Sub-Treasury on the above date. The Government, therefore, issued another order and the Sub-Treasury Venkatapuram was converted into a banking Sub-Treasury in the afternoon of 17.7.1973. After sometime the Accountant General of Andhra Pradesh at Hyderabad as well as the Reserve Bank of India office at Madras detected that seven demand drafts alleged to have been issued by the Reserve Bank of India were encashed on 16.7.1973 and 17.7.1973 in the Sub-Treasury of Venkatapuram. It was found that no such demand drafts had at all been issued by the Reserve Bank of India office Madras for being encashed at the Sub-Treasury at Venkatapuram. In fact, altogether different drafts were issued relating to other place outside the State of Andhra Pradesh and except the serial numbers, all other particulars, namely, the date, amount, name of the payee etc. were not at all tallying with the payment certificate sent by the then Sub-Treasury Officer (A.1). It was found that there was an embezzlement to the tune of Rs. 1,22,500 out of the cash of the Sub-Treasury and all entries with regard to the payment of such amount and the signatures of the payees in token of receipts of money were all fake and forged by the accused persons. It may be stated that PW.18 Sh. N. Venkata Swamy who was working as Upper Division Accountant-cum-Double Lock Officer, in the Sub-Treasury Venkatapuram at the relevant time was granted pardon and declared an

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approver by the District Magistrate.

The prosecution examined 27 witnesses and produced 113 documents in support of its case. The accused persons denied the charged but did not lead any evidence in defence. During the course of their explanation recorded under Section 313 Cr. P.C., A.1 stated that there was no embezzlement of any public funds and the payments made of the drafts on 16.7.1973 and 17.7.1973 were genuine payments and there was no falsification of accounts nor defalcation of any amounts. A.1 also stated that he sent the said

demand drafts to the Accountant General of Andhra Pradesh directly and he later on also sent payment certificates. As he did not know the payees of such demand drafts, they were not identified by a person known to him. A.2 also took a similar stand. Thus, the main defence of the accused persons was that the payments or encashments of the demand drafts on the respective dates as found in Exhibits P.2 and P.3 were genuine. The relevant entries in the Reserve Bank of India remittance register (Exhibit P.1), relevant entries in Exhibits P.5 and P.6 in the Sub-Treasury office number book (Exhibit P.4) and also the entries in Exhibits P.8 and P.9 in the shroff chitta book (Exhibit P.7) were all correct and it may be that fake or spurious demand drafts of R.B.I. might have been presented by the payees, but the accused persons did not embezzle any public funds on any dates, much less on 16th and 17th July, 1973.

The Learned Assistant Sessions Judge after elaborate discussion of the oral and documentary evidence arrived at the conclusion that the prosecution had proved beyond all reasonable doubt that A.1 and A.2 and PW. 18 together made falsification of the accounts by writing false entries in the relevant registers as if some payments were made on 16th and 17th July, 1973 to the fictitious persons whose names were mentioned in the payment register and other registers. It was also found that both the accused persons and PW.18 connived in making false entries with dishonest intention of covering up of misappropriation of the public funds committed by them to the tune of RS. 1,22,500. Hence the Learned Assistant Sessions Judge found both the accused persons guilty for the offences under Sections 409, 467, 471 and 477-A I.P.C. The Learned Assistant Sessions Judge also held that after having gone through the evidence of PW.18 it was quite clear that he had not violated any of the conditions of pardon given to him and as such he acquitted the approver of all the charges levelled against him.

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The High Court as regards PW.1, who was deputed by the Reserve Bank of India Madras to enquire into the matter, observed that PW. 1 had stated that he identified the signatures of A.1 in Exhibits P.2 and P.3. But, having regard to the provisions of Section 47 of the Indian Evidence Act, unless and until foundation was laid with regard to the capacity of this witness to identify the signatures of the Sub-Treasury Officer, his statement was of no consequence. It was further observed by the High Court that even the accused in their statements stated that they received these drafts and after complying with the formalities they were encashed and amounts paid to the respective payees and those drafts were sent as would be evident from the despatch register. Even Reserve Bank of India Form No.11 was sent to the office of the Accountant General and as such they had not committed any offence. The High Court held that from the evidence of PW.1 alone, it could not be said that the prosecution had proved all these entries in the various books to be in the handwriting of either A.1, A.2 or the approver. As regards the evidence of the handwriting expert PW.24 the High Court observed that in the cross-examination PW.24 stated "As the blue enclosures in Exhibits P.8 and P.9 are different from the received writing, I did not compare them at all". From the above statement the High Court observed that so far as column 5 of Exhibits P.8 and P.9 was concerned, it can safely be said that the prosecution had not proved the handwriting therein. It was the duty of the prosecution to have asked PW.24 to verify the signatures in Exhibits P.8 and P.9 column 5 to

find out as to whether the handwriting in that column in those Exhibits was actually handwriting of the accused. According to the High Court column 5 meant for the signatures of the payees had not been proved by the prosecution to be in the handwriting of either A.1 or A.2 to show that such signatures were of bogus persons. It was further observed by the High Court that even the Investigation Officer (PW.26) stated that "the investigation did not reveal that any amount is misappropriated by A.2 or PW.18 at all". The High Court ultimately arrived at the conclusion that the prosecution failed to prove the case beyond reasonable doubt. Though a huge amount has been embezzled, nevertheless it would not be proper to convict the accused when doubt is cast and benefit of such doubt will have to be given to the accused.

We have heard learned counsel for the parties and have thoroughly perused the record. In our view the High Court totally misdirected itself and did not go deep into the matter, nor analysed the clinching oral and documentary evidence produced by the prosecution and gave the benefit

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of doubt to the accused persons in a superficial manner. The High Court did not deal with the detailed reasons given by the trial Judge and ignored the almost admitted facts and circumstances of the case.

Admitted facts of the case are that A.1 was working as S.T.O., A.2 as shroff and PW. 18 the approver as Upper Division Accountant-cum-Double Lock Officer in the Sub-Treasury Venkatapuram at the relevant time. The Government vide dated 14.6.1973 ordered for the conversion of the non-banking Sub-Treasury into a Banking Sub-Treasury by handing over cash business to the local State Bank of Hyderabad on 18.6.1973. This was delayed on the report of the accused A.1 to the effect that the cash chest was not working as the key was stuck-up in the chest and it was not possible to do so on the above date. The Government, therefore issued another order and the conversion process materialised on 17.7.1973. The accused A.1 and A.2 handed over the cash balance of R.B.I. chest as per the records on 17.7.1973. After sometime the Accountant General of Andhra Pradesh at Hyderabad as well as the Reserve Bank of India Office at Madras detected that 7 fake demand drafts alleged to have been issued by the Reserve Bank of India were shown to have been encashed and paid on 16.7.1973 and 17.7.1973 in the records of the Sub-Treasury of Venkatapuram.

The details of the seven drafts in all amounting to Rs.1,22,500 alleged to have been encashed and paid on 16th and 17th July, 1973 from the Sub-Treasury of Venkatapuram are mentioned as under :-

Ex P.2

R.B.I	July -1973
16.7.73 Madras 2.7.73 B.D Sri Edara Ramaiah	C-659307
20,328.00 IIId./16.7.73	
16.7.73 do 3.7.73 B.D. Sri Kothapalli Verraju	C-659308
21,785.00 IIId./16.7.73	
16.7.73 do 3.7.73 B. D. Sri desari Venkata Rao	C-659309
18,891.50 IIId./16.7.73	
16.7.73 do 3.7.73 B. D. Sri Botigam Surya- narayan Rao	C-659310
18,236.00 IIId./16.7.73	

79,240.50

Rupees Seventy nine thousand two hundred and forty and paise

fifty.

Ex.P.3

17.7.73 R.B.I. 7.7.73 B.D Sri Vasam Veeranna C-659311
Madras

14,430.50 IId./17.7.73

17.7.73 do 7.7.73 B.D. Sri Gattala Satyam C-659312

13,260.00 IId.17.7.73

17.7.73 do 7.7.73 B.D. Sri Vanga Sani Ranu C-659313

15,569.000 IId./17.7.73

43,259.50

Monthly Total 1,22,500.00

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The payment of the above drafts is admitted to have been made by the accused persons and signatures or thumb impressions of the payees has been shown in the record of the Sub-Treasury. It has however been proved on record by the prosecution that no such drafts were at all issued from the Reserved Bank of India, Madras. Neither, the dates, nor amount, nor the name of the payees tally with the genuine drafts issued from the Reserve Bank of India, Madras. The drafts issued by the R.B.I., Madras were not even payable by Sub-Treasury Venkatapuram, rather the same did not belong to any place in the State of Andhra Pradesh. The details of such drafts are given as under :-

Ex. P.82.dt.28.6.73 D.D No. C.659307 for Rs. 3,106 issued by P. Manager, R.B.I. Madras, to Sub-Treasury Officer, Keernur.

Ex. P.83/dt.29.6.73 D.D No. C.659308 for Rs. 875.96 ps. issued by P. Manager R. B.I., Madras to the Sub-Treasury Officer, Car-Nicobar.

Ex. P.84/dt.3.7.73 D.D. No. C.659309 for Rs.1,261.65ps. issued by P. Manager R.B.I. to the Sub-Treasury Officer, Denkanikottah.

Ex. P.85/dt/6.7.73 D.D. No C.659310 for Rs. 153.55 ps. issued by P. Manager R.B.I., Madras to the Sub-Treasury Officer, Denkanikottah.

Ex. P.86/dt.6.7.73. D.D. No C.659311 for Rs. 2,800 issued by P. Manager R.B.I., Madras to the Sub-Treasury Officer, Denkanikottah.

Ex. P.87/9.7.73 D.D. No. C659312 for Rs. 52.00 issued by the P. Manager R.B.I. Madras to the Sub-Treasury Officer, Car-Nicobar.

Ex. P.88/dt.12.7.73 D.D. No. C. 659313 for Rs. 315.12 ps. issued by the P. Manager, R.B.I., Madras to the Sub-Treasury Officer, Vayithiri.

The Learned Assistant Sessions Judge after analysing the oral and documentary evidence produced by the prosecution considered the explanation given by the accused persons recorded under Section 313 of the

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Code of Criminal Procedure, 1973. According to the Learned Assistant Sessions Judge A.1 had stated that the drafts were presented by the parties on 16th and 17th July, 1973 and their signatures were identified by some well known person on the drafts themselves and they had drawn Rs.1,22,500 from the R.B.I. currency on 16th and 17th July, 1973 and the entries were made in the relevant books and the same were withdrawn in the presence of the approver (PW.18). They sent R.B.I. Form No.11 along with the paid drafts to the Accountant General, Hyderabad. A.1 further stated that the initials in Exhibit P.3 were of himself, Exhibit P.14 was in

his handwriting and the initials in Exhibits P.12 and P.13 were also made by him. A.2 also stated that no amounts were embezzled by him or A.1 or anybody and they had sent the paid drafts directly to Accountant General of Andhra Pradesh. The payments mentioned in the payment register and other registers on 16th and 17th July, 1973 were true and correct. He further stated that the writings in Exhibits P.100, P.102, P.103, 10, 8, 9, 13 were made by himself. The main contention of the accused person made before the trial court was that the payments or encashments of the demand drafts on the respective date as found in Exhibits P.2 and P.3 which are the relevant entries in the Reserve Bank of India remittance register (Exhibit P.1) and the relevant entries in Exhibit P.5 and Exhibit P.6 in the Sub-Treasury Officer number book (Exhibit P.4) and also the entries in Exhibit P.8 and Exhibit P.9 in the shroff 'chitta' book (Exhibit P.7) were all correct and it may be that fake or spurious or bogus Reserve Bank of India demand drafts might have been presented by the payees, but the accused did not defalcate any public funds on any dates much less, on 16th and 17th July, 1973. The trial court considered the statement of PW.18, according to which the entries with regard to the payments of the Reserve Bank of India drafts said to have been made on 16th and 17th July, 1973. The trial court considered the statement of PW.18, according to which the entries with regard to the payments of the Reserve Bank of India drafts said to have been made on 16th and 17th July, 1973 in all the relevant books of the Sub-Treasury were made only on 17.7.1973 at the instance and suggestion of accused number 1. It was also stated by him that there were no persons as those mentioned on 16th and 17th July, 1973 in Exhibits P.2 and P.3 as well as Exhibits P.5, P.6, P.8 and P.9, they were all fictitious and bogus persons whose names were mentioned in order to give a show of payments made to certain persons so as to cover up the shortage of cash found in R.B.I. chest on 17.7.1973. The trial court has observed that it was admitted fact that whenever a demand draft is issued by the Reserve Bank of India to particular persons drawn

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on a particular Sub-Treasury, the concerned Reserve Bank will send advices in advance and when the demand draft is presented by the bearer, it has to be verified whether the advices from the concerned bank is received or not and the payee has to be identified by the Sub-Treasury Officer and is the responsibility of the S.T.O. for payment of the money to the payee and if the payee is not personally known to the S.T.O., such payee has to bring an attestor, who is known to the S.T.O. It is also in the evidence of PW.1 PW.14 and PW.18 that whenever advices are received, they should be carefully examined and observed. When there is no advice, the draft cannot be encashed except under special circumstances or on the satisfaction of the genuineness of the drafts presented for encashment. The S.T.O. has to identify the payee also. If the S.T.O. pays without the advices, he should write immediately to the issuing authority for sending the advices. In the case of payee to bring a person known to the S.T.O. for his or her identification before actual payment is made and after the payments are made at the end of the same day, the S.T.O. should enter the paid drafts in the Reserve Bank of India form No. 11 and dispatch such certificate under certificate of posting to the Accountant General directly, sending copy of the same to the District Treasurer. In the present case according to Exhibit P.12 it is mentioned that the paid

drafts along with Reserve Bank of India Form No. 11 were posted to the address of the Accounted General, but the same were not sent under certificate of posting. The trial court also took notice of the fact that the alleged posting was shown to have been done on the next day. It was also clear from Exhibit P.14 a letter written by S.T.O. (A.1) that he mentioned therein that he would trace out the records and submit encashment schedules. It was also clear from the evidence of PW.1 that the denominations of the currency notes found in Exhibit P.17, the the relevant entry in Exhibit P.15 currency chest book Form T.E.T.1 of the Sub-Treasury Office Venkatapuram were not tallying with the denomination of the currency notes mentioned in the double lock register. The trial court held that it was quite clear that the serial numbers of the drafts mentioned in the relevant records of Sub-Treasury Venkatapuram were not in fact the demand drafts that were issued by the Reserve Bank of India at Madras and the real demand drafts were Exhibits P.82 to P.88 which were issued to Sub-Treasury Officers outside the State of Andhra Pradesh. Thus, it was clear from the evidence of PW.2, PW.18,

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PW.20, PW.21 and PW.22 that the real demand drafts that were issued by the R.B.I. at Madras were neither received nor encashed at Sub-Treasury Venkatapuram. Even the accused persons do not say that Exhibits P.82 to P.88 were received and got encashed by the payees at the Sub-Treasury Venkatapuram. It was further clear that the entries found mentioned in Exhibits P.2, P.3, P.5, P.6, P.8, P.9, P.16 and P.17 were quite incorrect entries and they were made by the concerned persons who were the authors of those entries so as to give a colour or show of payments of the amounts to certain persons to cover up the shortage. The trial court thus, held that in the above circumstances, when the payments mentioned on 16th and 17th July, 1973 under the alleged Reserve Bank of India demand drafts were proved to be false and bogus and the payees were fictitious persons, it was the bounden duty of accused numbers 1 and 2 and the approver to explain for the shortage of Rs. 1,22,500 from the cash balance of the Reserve Bank of India chest in the Venkatapuram Sub-Treasury. The trial court took into consideration that though the accused number 1 had stated in his explanation that a well known person identified the payees, but he has failed to give his name, much less, examined him to prove or substantiate his contention. The payment register did not show that the payees were identified by a particular person at the time of relevant payments said to have been made to them. It has come in the evidence of PW.18 that there were no such persons whose names were mentioned in the payment register and all those persons were fictitious. It was further held by the trial court that it was quite clear from the documents placed on record that the S.T.O. had nowhere stated that the advices were lost or misplaced. Accused number 1 in this regard had given the explanation that the records in the strong room had been shifted and replaced for white washing purposes and the register could not be traced out inspite of diligent searches and after the March accounts are over, necessary efforts will be made to trace out the records. The trial court found that inspite of several letters and reminders sent to A.1 the record was not made available. The learned trial court in the end arrived at the conclusion that in view of the evidence adduced by the prosecution including the evidence of PW.18 approver and also in view of the fact that the accused numbers 1 and 2 have admitted that they

have made the relevant entries in their own handwriting in the relevant registers, it is proved that accused number 1, accused number 2 and PW.18 (approver) colluded together and have defalcated an amount of Rs. 1,22,500 from the cash

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balance of Reserve Bank of India chest in the Sub-Treasury Venkatapuram and made false entries in the relevant registers and brought into existence false accounts so as to cover up the shortage in the cash balance in the Reserve Bank of India chest of the Sub-Treasury Venkatapuram and thus they have committed grave offences punishable under Section 409, 467, 471, and 477-A I.P.C.

We have considered the arguments made by learned counsel for the parties and have gone through the record. It is clearly proved on record that the real and genuine demand drafts were Exhibits P.82 to P.88 issued from the Reserve Bank of India Madras and the same were not drawn to be payable at Sub-Treasury Venkatapuram or at any other Sub-Treasury situated in the State of Andhra Pradesh. The amounts, the date and the payees were entirely different from those demand drafts which have been entered and shown encashed from the Sub-Treasury at Venkatapuram. The stand taken by the accused persons is that the payments or encashment of the demand drafts and the entries found in Exhibits P.2, P.3, P.5, P.6, P.8 and P.9 were all correct and it may be that fake or spurious or bogus Reserve Bank of India demand drafts might have been presented by the payees. In such circumstances it was necessary for the accused persons to disclose the identity of the person who identified the payees at the time of encashment of the fake drafts. It is worthwhile to note that admittedly no advice for payment of the demand drafts had been received before the encashment of the demand drafts and the accused persons took a false stand that they sent the paid drafts to the office of the Accountant General. It is no longer in dispute that the amount of Rs. 1,22,500 was withdrawn by the accused persons and the same has been shown to have been paid against fake and spurious demand drafts to unknown persons.

We have considered the reasoning given by the High Court and we are clearly of the view that the High Court went wrong in throwing the burden on the prosecution to prove that the entries in column 5 of Exhibits P.8 and P.9 containing the signatures or thumb impression of the payees was made by the accused person. In our view in the fact and circumstances of this case, it was totally wrong to place such burden on the prosecution. The prosecution has discharged its burden by leading unimpeaching oral and documentary evidence that no demand drafts were issued from the R.B.I., Madras against which payments have been shown on 16th and

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17th July, 1973 in the record of Sub-Treasury Venkatapuram and the names of the payees were also of unknown and unidentified person. The entries in columns 1 to 4 Exhibits P.8 and P.9 are admitted to be correct by the accused persons. These entries showing the names of the payees and the amount are proved to be false and incorrect beyond any shadow of doubt. In this background, it was no longer the duty of the prosecution to show as to who made the entries in column 5 of Exhibits P.8 and P.9. The S.T.O. (A.1) has put his signatures on Exhibits P.8 and P.9 and according to him the payments were made after getting the identity of the payees verified by a person well known to him. When the payment of a huge amount of Rs. 1,22,500 was being made without receiving any advice from Reserve Bank of India,

Madras, it was all the more necessary to make thorough enquiry regarding the correct identity and genuineness of the payee. The above facts being in the special knowledge of the accused persons, it was incumbent for them to disclose the names and identity of the person who had identified the payees and so to establish their innocence by producing such person or the payees in defence evidence. Section 106 of the Evidence Act clearly provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

This leads us to irresistible conclusion that the accused persons had not received any demand drafts from the R.B.I. Madras and all the entries in the relevant registers at Sub-Treasury Venkatapuram regarding payment of seven demand drafts amounting in all to Rs. 1,22,500 are fake, false and forged and the accused persons were the authors of such entries. We are fully satisfied that the prosecution has discharged its burden of establishing the charges levelled against the accused persons beyond any manner of doubt and the findings and conclusion drawn by the trial court are upheld.

In the result, we allow these appeals, set aside the judgment of the High Court and affirm the judgment of the Assistant Sessions Judge, Khammam dated 13th March, 1978. We uphold the conviction as well as the sentence awarded by the learned Assistant Sessions Judge. The accused-respondents shall surrender to the bail bonds forthwith.
N.P.V.

Appeal allowed.

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