

State of Karnataka Vs. Mutha Nayak

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Court : Karnataka

Decided On : Dec-10-1993

Reported in : 1995(1)ALT(Cri)93; ILR1994KAR500; 1994(2)KarLJ186

Judge : D.P. Hiremath and ;M.M. Mirdhe, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 293 and 294

Appeal No. : Crl. Appeal No. 590 of 1989

Appellant : State of Karnataka

Respondent : Mutha Nayak

Advocate for Pet/Ap. : Y.R. Jagadeesh, HCGP

Disposition : Appeal dismissed

Judgement :

Hiremath, J

1. Heard. The case of the prosecution in brief is that both the accused - respondents forged the signature of Rajeeva Poojary with common intention and cheated the Karnataka Bank. Hence, committed offences under Sections 465, 120B, 109 and 419 I.P.C. The President, Taluk Development Board, Kundapur and the complainant, Chief Executive Officer of the Taluk Development Board had together issued two cheques to one Rajeeva Poojary of Rs.1,000/- each towards

flood relief to be paid on 28.3.83. These cheques were numbered 060646 and 060647. When the mistake was realised, Rajeeva Poojary was approached, but he told that he had encashed only one cheque. The entire case is now confined to Exhibit P-1 bearing No. 060647. Bank officials gave evidence that both the accused had come to the Karnataka Bank Office and they were supplied with forms to open an account and one Krishna Prabhui identified them by putting his signature but not being personally present. Some of the officials also deposed about the accused putting signatures in the forms while opening account in the name of Rajeeva Poojary and particularly they referred to the signature put by accused No. 2 as Rajeeva Poojary. The specimen signatures were not proved to have been taken from accused No. 2 according to the Trial Court as the Panchas did not support the case of the prosecution in this behalf. The Handwriting Expert to whom the disputed signatures were sent for his opinion along with alleged specimen signatures was also not examined. The Trial Court held that the prosecution has failed to prove forgery by either of the accused and much less, cheating. Thus, Judgment of acquittal came to be rendered.

2. In challenging this Judgment of acquittal it is contended for the State that the Trial Court ought to have believed the evidence led in Court. On reappraisal of evidence, we find that there is a serious lapse on the part of the prosecution in not examining the Handwriting Expert to whom the disputed signatures and the alleged specimen signatures of accused No. 2 were sent for comparison. Though P.W.2 gave evidence that on 7.4.83 both the accused had gone to open account and that A.2 while opening account he signed in the name of Rajeeva Poojary, the fact remains that the Handwriting Expert to whom these signatures were sent for comparison was not examined and it is only in the evidence of the Investigating Officer that his opinion came to be marked. Section 293 Cr.P.C. provides for report of certain Government Scientific Experts to be used as evidence without formal proof and Handwriting Expert does not fall in the category of the Experts contemplated therein. Section 294 Cr.P.C. lays down the procedure to be followed where no formal proof may be required and in that event the prosecution or the accused's Pleader shall be called upon to admit or deny the genuineness of any such document. Therefore when neither the Expert is examined to give evidence with regard to his opinion and ground for such opinion, nor the accused has

admitted being called upon by the Court to do so as required under Section 294 Cr.P.C., such opinion cannot be led in evidence without proof by examining the Handwriting Expert. What follows is that as the prosecution having availed of the opinion of the Expert did not prove it, an adverse inference will have to be drawn against the prosecution. When such opinion is not proved, the evidence of the interested witnesses like the Bank officials or the Government officials alone cannot be relied upon as in such a case everyone of the officials would be interested in washing off his hands out of the muddle created as has been done by one of the Block Development officials who wrote two cheques in the name of the same person instead of one and it is not for us to go deeper into the propriety of writing two cheques by such officials where only one is required to be given. It is for the Government to consider whether the action of such official was bonafide or not. As far as proof is concerned, it is seriously wanting in this case for the reasons aforesaid. Though the Trial Court did not advert to this aspect while rendering the verdict of acquittal, we are of the view that on this ground also the case against the accused - respondents must fail. Appeal fails and is dismissed.