

In Re: K. Rama Rao

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Court : Andhra Pradesh

Decided On : Oct-22-1959

Reported in : AIR1960AP441; 1960CriLJ1181

Judge : Munikanniah, J.

Acts : [Evidence Act, 1872](#) - Sections 35; [Indian Penal Code \(IPC\), 1860](#) - Sections 415 and 416

Appeal No. : Criminal Revn. Case No. 40 of 1959 and Cr. Revn. Petn. No. 38 of 1959

Appellant : In Re: K. Rama Rao

Advocate for Def. : R. Sudhakar Rao for ;Public Prosecutor

Advocate for Pet/Ap. : K. jayachandra Reddy, Adv.

Judgement :

ORDER

Munikanniah, J.

1. This revision petition is filed by the sole accused who had been convicted by the Judicial First Class Magistrate, Adoni, for offences under Sections 419 and 420 I. P. C., and sentenced to rigorous imprisonment for two years on each count. The sentences were ordered to run consecutively.

2. The facts admitted by the accused may first be set out. On 1-11-1948, the accused applied to the Madras Public Service Commission for the post of a supervisor (Civil Engineering) and stated in his application Ex, P-41 the following:

'Kunigal Ramarao, son of K. Narayana Rao, occupation landlord, residing in Basant Road, Bezwada; place and date of birth Nellore and 11-6-1922; highest qualification possessed in Engineering (Col. 8) held the decree of B. E. (Civil), Mysore University and enclosed a provisional certificate obtained from the University of Mysore and because of the degree claimed to be qualified for service.' The Public Service Commission considered this application of the accused before whom he appeared on 17-2-1949 and selected him as one of the candidates for appointment. Soon after he applied to the Public Service Commission i. e., on 6-11-1948, he had been appointed by the Chief Engineer temporarily as supervisor, and when he appeared before the Public Service Commission, the accused held this temporary post. He was employed as the supervisor and promoted as junior Engineer and held the post till 12-3-1956, when he was arrested at Adoni.

3. It may be mentioned that the findings of both the lower courts established two sets of circumstances against the accused. The first is that the accused representing himself to be K. V. Rama Rao holding the qualifications of a licentiate in Civil Engineering from the Engineering College, Guindy, Madras, secured the post of an overseer and was appointed as such in D. O. No. 2173/GL/ 47 on 2-5-1947.

The accused was then made himself known as K. V. Ramarao and was first posted to Jagannadhagiri Section and later transferred to Western Division (West Godavari District). While so in employment, it happened on 28-6-1948 that the accused was beaten, by his laskers and this led to his suspension and discharge from service. His whereabouts thereafter were not known. In respect of this P. Ws. 1, 2, 3. 8 and 17 have been examined. P. W. 1 was the Chief Engineer to whom K. V. Rama Rao applied for the post. P. W. 2 worked as Irrigation Gumasta in P. W. D. from 1-2-1948 to June 1950,

He resided at Chilkampadu where the accused worked as Overseer in the same section and used to reside in a house adjacent to that of the accused. He conveyed the news of the accused being beaten by the laskers to the Assistant Engineer by telephone, The accused left the place and was not heard of thereafter. P. W. 3 was the overseer of Madapeta Section from October 1946 to June 1949.

He knew that the accused was working as an overseer and that the accused was known as K. V. Rama Rao. He speaks to the taking of a group photo Ex. P-16 on the eve of retirement of an overseer Sri P. A. B. Ramamurthy. He identified that he was sitting first from the left while the accused was sitting third from the left, and Sri P. A. B. Ramamurthy was third from the right. P. W. 8 who is a landlord and contractor of P. W. D. knew the accused who then styled himself as K. V. Rima Rao. He stated that he was the contractor for the work as noted in Exs. B-16 and P-37 and that the bill Ex. P-38 was prepared by the accused and that he had been paid by cheque a sum of Rs. 124/- in payment of the bill. P. W. 17 is a Retired Assistant Engineer of P. W. D. who was the sub-divisional Officer-in-charge of the Undi Sub-Division in West Godavari during the period between 1947 and 1948.

He knew the accused as a Section Officer known by the name of K. V. Rama Rao and he corroborated P. W. 8 in regard to his work as a contractor. He also made the report about the beating of the accused by the laskers and says that the accused was subsequently placed under suspension. Both the lower courts accepted the evidence of these witnesses as proving that the accused was identified as the person who held the post as an overseer though the accused does not admit any of these facts. Thus it must now be taken that the question of identity of the accused as the person who worked earlier as overseer is beyond doubt.

It also becomes clear that this person who served the P. W. D. as an overseer and was known as K. V. Rama Rao is the person who applied to the Service Commission for selection as supervisor and made the application Exhibit P-41; and further there is no gainsaying that the accused offered himself for selection to the Service Commission not as K. V. Rama Rao, but as K. Rama Rao, an

Engineering Graduate of the Mysore University.

4. The second is with respect to obtaining the provisional certificate which the accused relied upon as entitling him to B.E., degree. It is found that P. W. 15, one Kunigal Rama Rao had studied in the Mysore University and, though he passed the B.E. Examination, he did not take the degree in person, but sought employment at Bombay making use of the certificates given to him by the professors and the Principal of the Engineering and other colleges. The clerk of the University Office, examined as P. W. 11 produced Exhibit P-48. the specimen blank form of the provisional certificates Exs. P-45 and P-46.

It is stated that any person other than the candidates concerned can obtain these certificates on payment of Rs. 2/-. It is also stated that the provisional certificates could be obtained by any one from the University office by posing himself as the person entitled thereto and make use of them as if that person is the degree holder. P. W. 16 was a contemporary of P. W. 15 in the University who stated that P. W. 15 studied in the B.E. class and that he knew him. The Admission Register Ex. P-28 which has also been produced contains the, entry Exhibit P-29 as relating to the admission of one K. Rama Rao, son of Putturao.

The clerk (P. W. 17) of the Engineering College deposed that no person other than K. Ramarao, son of Puttu Rao, is found entered in the Admission Register. The argument pressed on behalf of the prosecution that K. Rama Rao, son of Narsing Rao could not be a student of the B.E. Class of the Mysore University, and the provisional certificate which the accused produced before the Service Commission should have been that of K. Rama Rao, son of Puttu Rao, has found favour with the lower court.

5. But the accused stoutly denied that he ever presented the certificate of K. Rama Rao, son or Puttu Rao, and that the provisional certificate had been granted to him by the Mysore University as he was entitled to it. Mr. Jayachandra Reddy, the learned counsel for the accused has contended that the want of an entry pertaining to K. Rama Rao, son of K. Narsing Rao in Ex. P-28 cannot be relied upon to prove that the accused did not study, in the Mysore University, and that the mere fact that the entry Ex. P-29 relates to K. Rama Rao, son of Puttu Rao,

cannot establish that while the accused applied for the post of a supervisor he made his Application Ex. P-41 personating P. W. 15.

He also relied upon the decision of Krishna Raff. J., in *Siramreddi Simhachalam*. In re. : AIR 1960 AP253 , in which the value to be attached in criminal cases to the absence of entries in the School Admission Register had been dealt with, Krishna Rao, J., after pointing out that it was observed in *Queen Empress v. Grees Chunder Banerjee*, ILR 10 Cal 1024 that a book of account itself is not relevant under Section 34 of the Evidence Act to disprove the alleged transaction by the absence of any entry concernitog it, extracted a passage from the case of *In Re Juggun Lall*, 7 Cal LR 356 which stated thus :--

'Section 35 only provides that 'any entry in an official or public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact' but does not make the public book evidence to show that a particular entry has not been entered in it.'

The learned Judge went on to say:

'It is only as a matter of probability and on the ground that the public servant, who maintained the register, would not have omitted any transaction which has to be entered in it that the absence of the entries becomes relevant under Section 9 or Section 11 of the Evidence Act. But the absence of entries by itself may be capable of some other explanation such as that the public servant was not enjoined to enter every transaction or was negligent or had some motive to omit some of the transactions.'

On the strength of this it is argued that the fact that P. W. 15 studied in the Mysore University, though borne out by Ex. P-29, does not make out that the accused did not study in the Engineering College of the Mysore University. If this is the only circumstance by which the charge of personation has to be substantiated by the prosecution, then I would certainly consider that there is much to be said in favour of this contention; but the proof in regard to this, particular draws its support and strength for the case of the prosecution also from other factors which establish the guilt of the accused. Therefore, such a consequence arising out of the absence of

an entry cannot, in the circumstances of this case, but be considered as the most probable, and as one leading assurance to conclude that the charge has been proved.

6. The next contention that in any case no offence has been established as against the accused even on the findings of the lower court could now be taken up. The learned counsel for the accused invited my attention to the charge and argued that the absence of mention or reference to the incident concerning the employment of the accused as an overseer when he was known by the name of K. V. Rama Rao disentitles the prosecution to make use of this particular or to rely upon the evidence of P. W. 1, 2, 3, 8 and 17 in regard to that affair as proving the charge of personation. To deal with this contention a reference to the charge itself is necessary. It is in the following terms:--

'That you on or about 17-2-1949 at Madras before the Public Service Commission wrote that you were K. Rama Rao who passed in 2nd Class with register No. 903 the B.E. (Civil) Degree examination of March 1947 through College of Engineering Bangalore, of Mysore University and thereby committed an offence punishable under Section 419 I.P.C. Secondly, that you on or about 17-2-1949 at Madras cheated the Public Service Commission by dishonestly inducing them to deliver to you their order of selecting you as Supervisor in the Madras Engineering Subordinate Service, 1949 and thereby committed an offence punishable under Section 420 I. P. C.'

No doubt, it is not mentioned therein that the accused posed himself as K. V. Ramarao while getting the post of an overseer in 1947 and that he posed differently while applying to the Public Service Commission for the post of a supervisor. But in my view that charge as framed does not preclude the prosecution from substantiating the charge by showing that K. V. Rama Rao the erstwhile overseer had induced the Public Service Commission by posing himself as K. Rama Rao, as Graduate of the Mysore University, and got himself selected, and that in such a case the proof of prior appointment of the accused as an overseer and the personation of himself as K. Rama Rao while on the former occasion he made himself known as K. V Rama Rao could not be objected to or

be considered as either irrelevant or unnecessary,

In any case those facts relating to the earlier appointment in my view would constitute the proof of the fact that the accused K. V. Rama Rao was not the Graduate and could not also be K. Rama Rao the graduate. Even assuming for the sake of argument that it is not necessary to consider who it was actually the holder of the degree i.e., accused or P. W. 15, it is clear to my mind that the proved facts in this case go to make out that the accused who is K. V. Rama Rao has sought the selection at the hands of the Public Service Commission by falsely representing himself to be another person possessing the degree of the Mysore University.

As is well known as Section 416 itself mentions that it is not necessary for the prosecution to make out whom the accused has been personating, for the one personated may be imaginary or non-existent or unknown. Nothing has been made out against the prosecution witnesses who speak about the accused's employment in 1947 as Overseer and there is no reason why they should falsely depose that they have seen and known the accused as K. V. Rama Rao. The random suggestion on behalf of the accused that the evidence of the prosecution witnesses in regard to the identification could not be relied upon cannot be accepted as there is absolutely no motive or reason for so many officers to swear in the manner they did. Therefore, inasmuch as the prosecution has established that K. V. Rama Rao the overseer has by his representation that he is K. Rama Rao the graduate had induced the Public Service Commission to select him, it cannot but be said that the ingredients of the offence of cheating by personation has been made out.

7. It is however urged that the latter part of Section 415 which concerns with the offence of cheating makes it incumbent upon the prosecution to establish that the Public Service Commission being the person deceived had suffered damage or harm in body, mind, reputation or property; and also relying upon the decision In re: Manikkam Pillai, 19 Mad LI 271 it was argued that almost in similar circumstances as in the instant case, not only proof that the representation made by the accused caused or likely to cause damage or harm to the officer was strictly

insisted upon,

There the production of a certificate by a Karnam who prayed for reinstatement was proved to be the certificate given to another, and therefore it was considered that an offence falling under Section 182 I.P.C. and not under Section 419 I.P.C. might have been committed. An analysis of that reported case would indicate the limitations within which that decision could be treated as an authority. The Karnam was attempting to get himself reinstated after seeking to prove the requisite qualifications by producing a certificate of having passed certain examination. The karnam in those circumstances cannot be said to have personated any other person; when he made use of a certificate with an identical name.

This therefore would be a case, where a person by making a representation that he held a certificate did not represent himself as any other person but made use of a false certificate. This decision is therefore intelligible on these facts as ruling that in such a case there being no personation by that accused the offence would not fall under Section 419 I.P.C. This distinction in my view is real, and that decision for that reason is inapplicable to the facts of the present case. The decision reported in the case of Mohammad Bakhsh v. Emperor, AIR 1941 Lah 460 and another in Supdt. and Remembrancer of Legal Affairs, Bengal v. M. B. Chatterjee, AIR 1924 Cal 495 also cited by the learned counsel for the accused, are also distinguishable. In the former case the facts reveal that upon mutation it is only a representation that had been made use of by the accused and in the latter one the Court made the decision to depend on whether the damage was one resulting or likely to result as a natural consequence of the induced act.

8. Then the further question whether the Public Service Commission suffered damage or harm as specified in Section 415 I.P.C. need be taken up, It cannot be said that the Public Service Commission is one physical body, though a mind for it may not be strictly wanting; nevertheless, it would be indisputable that it has a reputation as an entity and that it would consist in its ability to make the right selection of candidates after due consideration of the applications before it. In such a case, if it is led or beguiled to make an unworthy selection or to select a person who is incompetent or disqualified, such an act cannot but be held to affect

the reputation of the Public Service Commission.

As a consequence thereof damage or harm would, it could be said unhesitatingly, follow as a sheer consequence of the statutory body suffering in its reputation. No special proof of damage or loss need he insisted upon, as the Body deceived in any case had been banned. In this case where there is fraudulent inducement by the accused to select him by mentioning false details in his application to the Public Service Commission, there is no gainsaying that the ingredients of Section 415 I.P.C. as contained in the latter part of that Section, are also fully found.

9. Although as opined by me that the facts established by the evidence of P. W. 15 may not be the sole material in arriving at the conclusion that the accused is guilty under Section 419 of having cheated by personation, still as already pointed out they also render the findings of the court below in holding that the guilt of the accused is established beyond reasonable doubt.

10. It is now necessary to have to advert to the conviction of the accused under Section 420 I.P.C. Mr. Jayachandra Reddy, learned counsel for the accused, has pointed out that this is not a case in which on account of any deception any person has been induced to deliver any property. The ground that has been taken is that it is the Government that has appointed that accused and even if the posting of a person to any service is property, the mere selection by the Public Service Commission for appointment by Government would not constitute the delivery of any property to the accused by the Public Service Commission.

Indeed as contended by the learned Advocate, the appointment is not by the Public Service Commission; but the Public Service Commission acted as the agents of the Government and made the selection for appointment by Government, though the Public Service Commission as such does not directly order the applicant to occupy a post. But it is not necessary to have to get into niceties of this question, inasmuch as the restrictive scope of Section 420 creates difficulties in the matter of application of that section to the facts of this case. It therefore stands to reason that the conviction of the accused under Section 420 I.P.C. need not be upheld. The accused has therefore to be acquitted of the offence under Section 420 I.P.C.

11. In the result, the conviction of the accused under Section 419 I.P.C. does not call for interference while that under Section 420 I.P.C. is set aside. As to the question of sentence, having regard to all the circumstances of the case, I consider that interests of justice will be met if it is modified into one of rigorous imprisonment for a period of one year and three months. The sentence is accordingly reduced.

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