

The State of Madhya Pradesh Vs. K.K. Shivhare

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Court : Madhya Pradesh

Decided On : Aug-08-1968

Reported in : 1968CriLJ1373; 1969MPLJ34

Judge : Shiv Dayal and ;R.J. Bhawe, JJ.

Appellant : The State of Madhya Pradesh

Respondent : K.K. Shivhare

Judgement :

1. This is an appeal against acquittal of the respondent Krishna Kumar Shivhare or K.K. Shivhare alias K.K. Gupta of the offences punishable under Sections 417 and 471, Penal Code. The trial Court convicted him of both these offences and sentenced him to suffer rigorous imprisonment for six months and one year respectively. The appellate Court acquitted him.

2. Case for the prosecution was that in July 1960, the accused secured admission to the L.L.B. (Previous) Class of the Hamidia College, Bhopal, by representing to the College authorities that he had obtained the degree of Bachelor of Arts from the Agra University, and the degree of Master of Arts from the Punjab University, and by producing a false copy purporting to have of the degree of Master of Arts. In fact, the accused had not passed any of these examinations and did not possess either of these degrees. When suspicion arose about the eligibility of the accused for admission to the L.L.B. (Previous) Class, he approached the Principal

for a transfer certificate. The Principal, on making preliminary enquiries confidentially, came to know that the attested copy of the degree of Master of Arts was bogus. Therefore, on 9 November 1960, he issued a notice to the accused to produce his original certificate. The accused told the Principal on the phone that he would do so on the 11th November as he had sent a man to get the same from his home at Bina. He also insisted on being granted a transfer certificate. Then the accused suddenly disappeared from Bhopal.

3. The defence was that the accused is not that Krishna Kumar Shivhare who applied to the Hamidia College for admission and who produced the attested copy of the M.A. degree. He asserted that he had already been practising as an Advocate from 1953 so that the question of his seeking admission to a Law College in 1960 did not arise.

4. The trial Court held that it was the accused who had applied for admission to the L.L.B. (Previous) Class of the Hamidia College and had tiled the copy (Ex. P. 4), purporting to be an attested copy of the M.A. degree; that the accused had passed neither the M.A. examination of the Punjab University, nor the B.A. examination of the Agra University and the declaration made in the application for admission (Ex. P-2) to that effect were false; that the accused was a resident of Bina and not of Indore, as stated by him in his examination under Section 342, Criminal Procedure Code; that the contention of the accused that he had passed the L.L.B. examination in the year 1958 was not proved; that although the attestation purporting to be of Shri Lal Harchandani (P.W. 18) was forged, it was not proved that it was the accused himself who committed that forgery, yet it was proved that it was the accused who knowing full well that Ex. P-4 was a forged document, used it as genuine with the intention of deceiving the Principal of the Hamidia College, and, by practicing such deception, he secured admission to the L.L.B (Previous) Class of that College; and that the accused was guilty of the offences punishable under Sections 417 and 471, Penal Code. Accordingly, he convicted the accused of both these offences and sentenced him to suffer rigorous imprisonment for six months and for one year respectively. He acquitted the accused of the charge under Section 468, Penal Code.

5. In the application for admission (Ex. P-2) the candidate had given the following detail:

Full name of scholar (in block letters):

Krishna Kumar Shivhare. Date of birth (As entered in High School Certificate): - 25th July '38.

Examinations Year University/ Division passed : Board (a) High School 1951 U.P. Board 1st. (b) B.A. 1955 Agra University 1st. (c) M.A. 1958 Punjab University Last College attended :- New Delhi Un. College Jalandhar, Punjab.

Last examination passed - M.A. History,

University of Punjab, Year 1958, Roll No. 1538 (Certified copy of marks sheet to be attached). Subjects, (1) History (2) (3) (4) (5)....

From the University record produced by Shri Jagjit Singh (P.W. 12), it was proved that in the year 1958 it was Rameshwar Calla whose Roll No. was 1588 for the M.A. examination of 1953 and that his subject was Economics. No candidate for M.A. in History was allotted that Roll No. Shri Rameshwar Calla (P.W. 13), Assistant Director, Central Statistical Organisation, Cabinet Secretariat, New Delhi, says that he passed M.A. in Economics from the Punjab University in 1958 and that his Roll No. was 1538. He produced his original degree of Master of Arts in the trial Court (true copy Ex. P-11).

6. Shri Madan Mohan Malhotra (P.W. 17), Deputy Registrar, Agra University, says that no Krishna Kumar Shivhare passed B.A. examination from Agra University.

7. Let it be mentioned at once that the accused has not produced in the trial Court, or at any other stage, either the M.A. or B.A., or L.L.B. degree nor did he apply for summoning any record of any University to show that he has passed any of these examinations. He says, and he led evidence to prove, that he appeared as an Advocate in some Courts at Indore, but there is no material on record to show on what basis he could lawfully do so.

8. In reaching the conclusion that Krishna Kumar Shivhare, who secured admission to the L.L.B. (Previous) class of the Hamidia College and who produced the copy (Ex. P-4), is the accused and no one else, the learned trial Magistrate strongly relied on the evidence of Laxmichand Garg (P.W. 10), Shri Lal Harchandani (P.W. 18) and Inayat Hussain (P.W. 8), besides the evidence of Mohammad Isa Siddiqui (P.W. 2).

9. The 1st Additional Sessions Judge, Bhopal, in a very perfunctory judgment and without discussing important evidence, acquitted the accused. In his entire judgment, far from any discussion of their evidence, even the names of Laxmichand Garg (P.W. 10) and Shri Lal Harchandani (P.W. 18) do not find a mention. Similarly, the learned Additional Sessions Judge does not appear to have all perused the deposition of Inayat Hussain (P.W. 8), although his name has been mentioned in the judgment. The evidence of these three important witnesses was relied on and discussed by the learned trial Magistrate in his judgment. From the evidence of these three witnesses, the identity of the accused with the person who secured admission to the L.L.B. (Previous) Class of Hamidia College in 1960 and who filed the false copy of an imaginary M.A. degree, was fully established.

Likewise, the learned Additional Sessions Judge completely ignored significant circumstances against the accused. The reasons for which he acquitted the accused are merely these. He rejected the evidence of Mohammed Isa Siddiqui (P.W. 2) and relied on the evidence of Shri Masurkar (D.W. 5) and Sari Balchandra Deodhar (D.W. 3). Shri Masurkar (D.W. 5), 2nd Additional District Judge, Bhopal, stated that the accused had appeared before him as an Advocate twice between 1960 and 1963, Shri Balchandra Deodhar (D.W. 3), retired Deputy Inspector General of Prisons, said that he was Superintendent, Central Jail, Indore, from July 1959 to November 1962, during which period the accused visited the jail in the capacity of an Advocate. The third ground stated by the learned Additional Sessions Judge is that 'the manner in which the identification parade was held and the inordinate delay which occurred, does not inspire any confidence. The learned Government Pleader too, had to admit that irregularities occurred in holding test identification parade.'

10. Shri Masoorkar (D.W. 5) merely stated that he was Additional District Magistrate at Ratlam from 1960 to 1963 and that once or twice the accused appeared before him as a, legal practitioner. It is obvious enough that his evidence does not, in any manner, damage the prosecution case. Similarly the statement of Shri Balchandra Deodhar (D.W. 3) that the accused had once gone to the jail to meet an under trial prisoner, while he was Superintendent of the Central Jail, Indore, (from 14.7.1959 to 20.11.1962 1962), is neither here nor there. Neither of these two witnesses says that he had seen either the M.A. or B.A. or L.L.B. degree with the accused nor does their evidence, in any way, disprove that the accused had sought admission to the L.L.B. (Previous) Class of the Hamidia College and had filed the false copy (Ex. P-4). The learned Additional Sessions Judge did not even care to point out what irregularities, according to him, were committed in holding the (sic)eat identification parade; nor did he mention (sic)he material dates to show that there wag inordinate delay in holding the identification parade. We shall later on refer to the evidence of Mohammed Isa Siddiqui.

11. Before the learned Additional Sessions-Judge the accused frankly conceded that if it was found that the person who sought admission to the Hamidia College on the strength of the certificate (Ex. P-4) was he, he did not challenge the conviction under Sections 417 and 471, Penal Code. The appellate Court, therefore, dealt merely with the question of identity. Before us also, the accused in his reply merely contended that the person who sought admission and who filed Ex. P-4 was not he.

12. The learned Government Advocate took us through the evidence of Laxmichand Garg (P.W. 10), Shri Lal Harchandani (P.W. 18) and Inayat Husaain (P.W. 8). But before we advert to their evidence, we shall refer to the statement of Shri Prem Chand Malhotra (P.W. 4), Principal, Hamidia College. He says that on faith of the attested copy. (Ex. P. 4), admission was granted to the candidate, Krishna Kumar Shivhare, to the L.L.B. (Previous) Class. He says that he lodged the report (Ex. P-6). There, he says that at the time of admission, Krishna Kumar Shivhare had declared himself to have passed B.A., examination of Agra University in 1955 and M.A. in History of Punjab University in 1958. With his application for admission, ha had attached an attested copy of the degree of

Master of Arts of the Punjab University. Then he stated the circumstances in which suspicion arose and he himself looked at the attested copy of the supposed certificate. There, 'U. Gadgil' was named as the Chancellor of the Punjab University. As he happened to know the initials of the Chancellor of the Punjab University, he himself became suspicious about the correctness of the attested copy.

He further noticed that the signature of the Tahsildar on the certificate of attestation was cancelled and there was over-writing on it. On enquiring from the Tahsildar, the latter replied that he had actually put his signature but as Shivhare could not produce before him the original certificate, he (Tahsildar) struck off his signature, and that the other signature above it was not his but was forged. The Principal then enquired from Laxmichand Garg, who replied that he had not seen the original before attesting the typed copy of the degree but was 'taken in by the pleadings of Shivhare regarding the urgency of the matter for the purpose of admission.' Then he issued to him a notice on 9th November, 1960 to produce the original degree, the accused told him on the telephone that he would do so on the 11th November. By his letter dated 14th November 1960, he reported the matter to the Police.

13. Laxmichand Garg (P.W. 10) was, on the material date, Superintendent, Revenue Department. He says that he attested the copy (Ex P. 4) in these circumstances. They were already acquainted with each other. The accused went to him in his office and represented to him that it was the last date for admission to the law classes and that an attested copy was required to be attached with the application for admission. The accused requested him to attest it. He suggested to the accused that such attestation could be done by a gazetted officer which he was not but the accused said that his attestation would be good enough. He, therefore attested the copy, but while he was doing so, he asked the accused to show him the original. The accused promised to show it to him on the following day. He proved his signature of attestation on Ex. P. 4. He admits that he committed a mistake in attestation Ex. P. 4 without comparing it with the original. We have carefully perused his deposition. We see no reason not to believe him. People sometimes fall a prey to such deception, when there is no suspicion of foul

play. Although the action of the witness in attesting the copy merely on the word of the accused was highly objectionable and irresponsible, yet that does not detract from the truth of his abatement that it was the accused who had taken the copy (Ex.P-4) to him for attestation and it was in fact attested by him.

14. Shri Lal Hirchandani (P.W. 18) was a Deputy Collector, when his deposition was recorded. On the material date, he was Tahsildar and Magistrate 2nd Class, Bhopal. He says that the accused approached him to attest the copy (Ex. P-4). He found that his seal had already been put on it and had been initialed by his Header. He, therefore, put his signature but when he found that the original was not there, he asked the accused about it. The accused replied that he had left the original on the table of the Superintendent, Revenue Department, by whom he had got it attested first. The accused told him that as the College authorities insisted that attestation should be by a gazetted officer, he came to him.

It may here be mentioned that Laxmichand Garg (P.W. 10) had attested the copy on the 26th July, while this witness attested it on the 27th July and this fits in with the evidence of Bitnanand (P.W. 5), Head Clerk, Hamidia College. He says that with his application form for admission, Shivhare had attached a true copy (Ex. P. 4) of the M.A. degree, but it was attested by the Superintendent, Revenue Department. Since attestation by a gazetted officer was required, he returned it to the candidate. On the following day, the candidate resubmitted the copy (Ex. P. 4) after having been attested by the Tahsildar. This witness was not cross-examined.

Reverting to the evidence of Shri Lal Harchandani, he insisted on the production of the original certificate. The accused suggested that he could ask the Superintendent, Revenue Department, on the telephone. On this he remarked that it was none of his business. He then called this Reader and asked him how he could initial it without comparing it with the original. The reader replied that he had done so on the representation of the accused. He then struck off his signature. He returned Ex. P. 4 to the accused saying that he would attest it when the original was brought to him. He says that the other signature (over the signature which he had struck off) is not his. It is clear from his evidence that he too was about to fall a prey to the deception practised upon him by the accused, but fortunately he became

scrupulous and he struck off his signature forth with, Naturally, when the Principal made an enquiry from him, he recollected the incident as it was fresh in his mind and told the Principal what had happened.

15. There is absolutely no reason why these two witnesses. Laxmichand Garg (P.W. 10) and Shri Lal Harchandani (P.W. 18) would falsely implicate the accused. We believe their testimony the trial Court also believed them. The learned Additional Sessions Judge has not disbelieved them; in fact, he has not even touched their evidence. Belying on the evidence of these two witnesses, we hold that the question of identify is proved.

16. Inayat Hussain (P.W. 8) says that in July 1960 he was admitted to the L.L.B. (Previous) Class of the Hamidia College and left the College in September or November of the same year. During that period he contested election to the College Union. The accused also contested the election. The accused too had taken admission to the L.L.B (Previous) Class in July 1960. In connection with the election, he and the accused met every day.

17. Mohammed Isa Siddiqui (P.W. 2) mentioned 1961-62 as the academic year when he contested the election with the accused. He may have committed a mistake in mentioning the academic year as 1961-62, but the benefit: of i(sic) would go to the accused so that the evidence o(sic) this witness may be discarded. However, the fact remains that the learned Additional Session Judge erroneously clubbed Inayat Hussain (P.W. 8) with Mohammed Isa Siddiqui (P.W. 2), although the former definitely said that the said election was contested in the year 1960 (between July and September/November).

18. The result of this discussion is this. The person who, as Krishna Kumar Shivhare, sought admission to the L.L.B. (Previous) Class of the Hamidia College, Bhopal, in July 1960 and w(sic) attached the false copy (Ex. P-4) of the degree Master of Arts with the application, was no other than the accused Krishna Kumar Shivhare. The identity is fully established beyond doubt by the evidence of Laxmichand Garg (P.W. 10) and Shri Lal Harchandani (P.W. 18). The copy (Ex. P. 4) is absolutely bogus because it has been proved that the candidate, whose Roll No. was 1538 for the examination of M.A. held by the Punjab University in 1953,

was not the accused but Rameshwar Calla (P.W. 13).

19. In his statement under Section 342, Criminal P.C., the accused does not say that he passed M.A. examination and was admitted to that degree of the Punjab University, or any other University. He does not say that he passed B.A. examination and was admitted to that degree of the Agra University or any other University. But he says that he passed the L.L.B. examination in 1953. However, he was clever enough not to name the University from which he claims to have passed the L.L.B. examination; otherwise, the trial Court would have ascertained its truth by summoning the record of that University. He says that seeking admission to the L.L.B. (Previous) Class of the Hamidia College in 1960 was out of the question. This was undoubtedly a very strong argument, but neither in the trial Court, nor at any other stage could he produce the degree of L.L.B. or any equivalent degree.

20. Referring to his statement under Section 342, Criminal P.C., that he had been practising as an Advocate in the Courts at Indore and had appeared as a defense counsel in the Sanyal murder case, Ku. Rama Gupta, learned Government Advocate, told us in her address that the accused was never enrolled as an Advocate of the Madhya Pradesh High Court and that if he was enrolled as an Advocate elsewhere it would be a matter for scrutiny and perhaps fresh prosecution. She emphasises that so far the accused has not produced the M.A. or L.L.B. or B.A. degree of any University, which means that he never passed any of these examinations. In the course of his reply, the accused-respondent told us that he passed the L.L.B. examination from the Delhi University, but he did not commit himself in writing and asked us not to detain the decision of this appeal. On 4 March 1968, he filed before me an application (which bears the date 27th February 1968) for summoning the list of Supreme Court Advocates of 1961. On 5th March 1968, on the conclusion of the hearing of the appeal, we dismissed that application.

In our opinion, the decision of this appeal must be confined to the question whether the accused had sought and secured admission to the L.L.B. (Previous) Class of the Hamidia College, Bhopal, in 1960 by producing a false copy of (sic) his

non-existing degree of M.A. It is not for (sic)us, much less in this case, to enquire in what circumstances his name is included, if at all, in (sic) the 1961 list of Supreme Court Advocates. He does not say that he was an Advocate of the Supreme Court in 1960.

21. Learned Government Advocate referred to the orders dated 10th February 1966 and 29th April 1966 passed by the Additional District Magistrate (Judicial), Bhopal, on the applications made by the accused for transfer of the case from the Court of Shri S. Nawalakha, Magistrate 1st Class, Bhopal. By the former, the transfer application was rejected while by the latter it was allowed and the case was transferred to the Court of Shri D.C. Arya, Magistrate 1st Glass, Bhopal. Both these orders show that the accused in both the applications described himself as son of Fadali Ram. It was for the first time that in his statement under Section 342 Criminal P.C., which was recorded on 28th September 1966, he gave out his father's name as Baharilal Gupta.

22. While dealing with this appeal against acquittal, we have kept before us their Lordships' observations in Shersingh v. State of U.P. : 1967 CriLJ1213 ; M.G. Agrawal v. State of Maharashtra : [1963]2SCR405 ; Sanwat Singh v. State of Rajasthan : 1961 CriLJ766 and Sheo Swarup v. King Emperor 61 Ind App 398 : AIR 1934 PC 227 (2). The trial Court convicted the accused. The learned Additional Sessions Judge acquitted him, but his judgment is not only very perfunctory but also it is not in accordance with law. He completely overlooked the evidence of Laxmichand Garg (P.W. 10) and Shri Lal Harchandani (P.W. 18), who were material witnesses and whose evidence had been discussed by the trial Court and had been relied on by it. The learned Additional Sessions Judge completely ignored the attending circumstances which significantly pointed to the guilt of the accused. He laid stress on the evidence of Shri Masurkar (D.W. 5) and Shri Deodhar (D.W. 3) which had no real bearing on the crucial point upon which the decision of the case turned. We have agreed with the conclusions reached by the trial Court.

23. In the result, we hold that the learned trial Magistrate was right in finding the accused guilty of the offences under Sections 417 and 471, Penal Code. In our

opinion, the offence under Section 471, Penal Code, such as the one committed by the accused-respondent deserves a severe and deterrent punishment. But the State did not file any revision from the judgment of the trial Court for enhancement of sentence. Nor did it file an appeal from the order of acquittal of the charge under Section 463, Penal Code. The order of acquittal passed by the learned Additional Sessions Judge is patently wrong and erroneous and cannot be sustained. It must be set aside. We would, therefore, restore the order passed by the trial Court.

24. The appeal is allowed. The order of acquittal passed by the 1st Additional Sessions Judge, Bhopal, is set aside. Upholding the order passed by the trial Court, the respondent accused is convicted under Sections 417 and 471, Penal Code, and sentenced to suffer rigorous imprisonment for six months and rigorous imprisonment for one year respectively. Sentences shall run consecutively, that is, the sentence under Section 417 shall commence after expiration of the sentence under Section 471, Penal Code.

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