

Calcutta Singh Vs. the State

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Court : Punjab and Haryana

Decided On : Aug-01-1977

Reported in : 1978CriLJ477

Judge : Harbans Lal, J.

Appellant : Calcutta Singh

Respondent : The State

Judgement :

Harbans Lal, J.

1. This appeal is directed against the judgment of the Second Additional Sessions Judge, Ludhiana, dated 16th July, 1973, whereby the present appellant, Calcutta Singh, was convicted Under Section 467, read with Section 114, IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/-, or in default of payment of fine to suffer further rigorous imprisonment for one year. He was, however, acquitted of the charge Under Section 471, IPC His brother, Jawala Singh, accused, was acquitted of the charge for both the offences Under Sections 467 and 471, IPC

2. The prosecution story in brief is that the present appellant, Calcutta Singh, who is the real brother of the wife of Bachan Singh complainant, sold truck No. PNL. 3676 to the complainant and the same was transferred in the latter's name on 1st

July, 1964. However, on account of mutual confidence and relationship, the appellant was allowed to manage and ply the truck thereafter as agent of Bachan Singh. In 1965, during the Indo-Pak conflict, this truck was requisitioned by the Army. The appellant was authorised to recover the amount in respect of this truck on behalf of Bachan Singh. However, the amount collected by the appellant from the Military Authorities from time to time was not paid to Bachan Singh, nor was any account submitted despite repeated demands. Ultimately Bachan Singh filed a suit for rendition of accounts against the appellant. In his written statement the appellant set up a false plea that the truck in question had been sold by Bachan Singh to the appellant's son, Malkiat Singh (who died during the trial of this case) and his brother, Jawala Singh, accused-acquitted for Rs. 22,000/-. This false plea of the appellant aroused the suspicion of Bachan Singh complainant who started making enquiries in the matter, as a result of which he came to know sometime in October, 1969 that the appellant, his son, Malkiat Singh, and his brother Jawala Singh accused-acquitted had forged a fictitious affidavit at Samrala on 22nd April, 1968 purporting to be sworn by Bachan Singh complainant, which was got attested from an Oath Commissioner at Samrala. The said affidavit was attested on the basis of false identification of the deponent as Bachan Singh by the present appellant. This false affidavit was made the basis for getting the truck owned by Bachan Singh transferred in favour of Malkiat Singh and Jawala Singh (accused-acquitted) by producing the same in the office of the Licensing Authority, Mansa (Sub-Divisional Officer (Civil), Mansa). In fact Bachan Singh complainant had never presented any such affidavit for attestation by any Oath Commissioner, nor had he sold the truck in question to any person. Consequently a complaint was filed in the Court of Shri Laljit Singh Chatha, Magistrate 1st Class, Samrala, against Jawala Singh (accused-acquitted) for offences Under Sections 471, 419, 465 and 467, read with Section 109, IPC and against the present appellant for offences Under Sections 418, 419, 465, 467 and 471, read with Section 409, IPC. After preliminary enquiry, both the accused were summoned Under Sections 467, 465 and 471, IPC. They were committed to the Court of Session to stand their trial for these offences, by the order of the committing Court, dated 14th December 1972. The prosecution evidence comprised of Mastan Singh (P. W. 1), Surjan Singh (P. W. 2), Atma Singh (P. W. 3), Baldev Singh Dhmdsa (P. W. 4), Surat

Ram (P. W. 5), Beant Singh (P. W. 6), Bachan Singh complainant (P. W. 7) and Gian Parkash Sharma, Handwriting and Finger-print Expert (P. W. 8).

3. In his- statement Under Section 342. Cr.PC the appellant, though admitted his relationship with Bachan Singh complainant, denied the main allegations of the prosecution against him. It was stated by him that Bachan Singh had only 1/4th share in the truck in question, while 3/4th share was of the appellant and his brother Jawala Singh (accused-acquitted), that after this truck had been plied by the appellant for 2 years, its registration was transferred in favour of Bachan Singh complainant, who plied it for 2 years and then the truck was transferred in the name of Bachan Singh's father's sister's son, known, as Bachan Singh, who plied it for one year but did not pay any amount out of the income either to Bachan Singh complainant or to the appellant or Jawala Singh accused-acquitted. Requisition of the truck by the Military authorities was admitted, but it was denied that the appellant received any amount from the Army authorities. The institution of the suit by Bachan Singh complainant against him for rendition of accounts was also admitted as well as the written statement (certified copy Exhibit P. B.) filed by the appellant in that case. The appellant also admitted his signature marked 'DJ on the back of the affidavit marked 'Y purporting to have been executed by Bachan Singh complainant, under the endorsement of identification and attestation, but according to him he had affixed his signature at the instance of Bachan Singh complainant who had already affixed his thumb-mark before the appellant put his signature. Mohinder Singh D.W.I was examined in defence.

4. After the completion of the trial, Jawala Singh accused was acquitted, but the appellant, Calcutta Singh, was convicted and sentenced as mentioned above.

5. It is clearly established from the statement of Bachan Singh complainant as P. W. 7, and from Exhibit P. A., which is a copy of the transfer entry in the records of the Licensing Authority, Samrala in favour of Bachan Singh regarding the truck in question, that the said truck was transferred by the appellant in favour of Bachan Singh on 1st July 1964. The transfer entry was proved by Mastan Singh P. W. 1. In fact, the factum of transfer of the truck by the appellant in favour of Bachan Singh complainant was not disputed by the learned counsel for the appellant

during the arguments. The material document for the purposes of the present appeal is the affidavit marked 'Y' dated 22nd April 1968 purporting to be executed by Bachan Singh complainant according to which this truck was transferred in favour of Malkiat Singh and Jawala Singh, son and brother respectively of the appellant. Its attestation is proved by Shri Baldev Singh Dhindsa, Advocate and Oath Commissioner (P. W. 4), and his Clerk Surat Ram (P. W. 5). Complainant Bachan Singh in his statement as P. W. 7 categorically disowned, his thumb-mark on this affidavit. According to P. W. 8 Gian Parkash Sharma, Handwriting and Finger-print Expert, the thumb-impression on the affidavit marked 'Y' purporting to have been executed by Bachan Singh complainant, did not tally with the specimen thumb-impression of the complainant. This affidavit was attested by the Oath Commissioner after the alleged author of this affidavit had been identified by the appellant as Bachan Singh. The endorsements on this affidavit clearly show that the Oath Commissioner attested the same after the appellant had identified the deponent as Bachan Singh, who was made to affix his thumb-impression marked 'C1' before the Oath Commissioner and his clerk Surat Ram (P. W. 5). According to the statement of the Oath Commissioner Baldev Singh Dhindsa (P. W. 4), he did not remember if the appellant put his signature for the purpose of identifying the deponent in his presence and in cross-examination he further stated that sometimes the stamp of endorsement regarding attestation and identification was put by his clerk Surat Ram (P. W. 5). However, Surat Ram clerk (P. W. 5) categorically stated that the appellant affixed his signatures after identifying the deponent as Bachan Singh and that the said deponent then put his thumb-impression on the back of the affidavit in his presence and that of the Oath Commissioner, Thus the prosecution has been able to prove from reliable and disinterested evidence that the affidavit, on attestation by the Oath Commissioner, was brought into existence when the appellant identified the deponent before the Oath Commissioner and his Clerk, and the deponent had affixed his thumb-impression as Bachan Singh. But none of the thumb-impressions on this affidavit purporting to be of Bachan Singh complainant are proved to be his, rather these thumb-impressions are found by the Handwriting and Finger-print Expert to be of somebody else. This affidavit must, therefore, be held to be a forged document in the execution of which the present appellant was an active participant. The

learned counsel for the appellant has stressed that there is no evidence on the record to show that the deponent had put his thumb-impression under the body of the affidavit and then at the bottom under the verification in the presence of the appellant, and, therefore, the appellant cannot be held liable for forging the said document. To this extent the contention of the learned counsel has substance, but this document assumed the character of an affidavit only when the same had been attested by the Oath Commissioner, and till then the same could not be utilised as an affidavit. Thus the attestation by the Oath Commissioner was a valuable step in the execution of this document as an affidavit. At that important stage the appellant took an active part and identified some person as Bachan Singh who, in fact, was not so. The contention of the learned counsel that according to the statement of the appellant this affidavit bearing the thumb-impressions of Bachan Singh had been handed over to the appellant for the purpose of getting the same attested from the Oath Commissioner and that the appellant had only to get the same attested from the Oath Commissioner and the fact that at that time the deponent was not there cannot be believed. It is clear from the thumb-impression marked 'C' on the back of the affidavit that a person, purporting to be Bachan Singh complainant, affixed that thumb-impression in the presence of the appellant, when the appellant had identified him as Bachan Singh before the Oath Commissioner and his clerk and the same was attested by the Oath Commissioner.

6. The next contention of the learned counsel is that this affidavit does not come within the ambit of forged document as defined in Section 464, IPC and is made punishable as such Under Section 467, IPC Under the latter section, any document which purports to be a valuable security, or which purports to give authority to any person to make or transfer any valuable security or to receive or deliver moveable property, and has been executed by impersonation is a forged document as envisaged Under Section 464, IPC and the author of such a forged document is guilty of the offence Under Section 467, IPC According to the learned counsel, the appellant was not the author of the affidavit, as admittedly the thumb-impression of the deponent was not affixed by him and that even if the appellant was a party to this forgery, he could not be held guilty Under Section 467, read with Section 114, IPC Section 114, IPC is reproduced below:-

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Its perusal shows that if at the time the offence is committed the abettor is present, he shall be held guilty as if he had himself committed the offence. From the prosecution evidence it is clear that the affidavit in question was attested when someone identified by the appellant as Bachan Singh deponent affixed his thumb-impression marked 'C' on the affidavit before the Oath Commissioner, and impersonated as the deponent. Thus the offence of forging the document as envisaged under 467. IPC was committed by the impersonator in the presence of the appellant, even though the latter may not be present at the time when the impersonator affixed his two thumb-impressions on the first page of the affidavit before the document was taken to the Oath Commr. Besides, even if the appellant is to be held liable as an abettor, he may be punished Under Section 467, read with Section 109, IPC and the same will not make any difference so far as the conviction of the appellant in the present case is concerned. *Chotey v. Emperor* AIR 1948 All 168 ; (49 Cri LJ 168) relied upon by the learned counsel for the appellants, renders no assistance to the case of the appellant. Therein it was held that when the abetment was committed at the time when the offence was being committed, the section applicable is Section 109 and not Section 114, IPC. On the other hand *In re P. Rama Naidu* AIR 1942 Mad 92 (1): (43 Cri LJ 227) relied upon on behalf of the prosecution, is on all fours with the present case. Therein the accused attested a forged document purporting to discharge decree debt and was interested in bringing the document into existence. One of the contentions raised was that the document was only a receipt and did not need attestors; the receipt was complete before the accused signed it and therefore he could not be said to have abetted the making of a false document. It was held that as the person who brought the document into existence intended that it should be attested and the accused should be one of the attestors, the document was not complete until the accused had signed and therefore the accused abetted the making of a false document. In the present case the document could not be used as an affidavit unless it had been attested by the Oath Commissioner, and as the

deponent was not known to the latter, the identification of the deponent before the Oath Commissioner was essential. Therefore, for the purpose of bringing into existence a complete forged document, the appellant played an essential part in identifying the impersonator as deponent and getting his thumb impression in the presence of the Oath Commissioner.

7. It was then contended that in this case the real impersonator was not traced by the prosecution and in his absence the appellant as abettor could not be convicted and punished. Reliance in this behalf has been placed on *Faquna Kanta v. State of Assam* : 1959 CriLJ917 . However, the facts in the said case were quite different. The main culprit charged with the offence Under Section 161, IPC had been acquitted on the ground that he had not committed the offence. It was under these circumstances that their Lordships of the Supreme Court held that no question of intentionally aiding by any act or omission the commission of that offence arises.

8. It was lastly contended that the charge framed against the appellant along with the other accused Jawala Singh was regarding forging the document purporting to be an affidavit on behalf of Bachan Singh complainant and not regarding the abetment in forging the said document, and as such conviction of the appellant under Section 467, read with Section 114, IPC is vitiated as the appellant was prejudiced by the framing of the wrong charge. This contention has no substance. Perusal of Section 238(2) of the old Cr.PC makes it clear that if a person is charged with a particular offence but from the facts proved a minor offence is established, he can be convicted of the minor offence though he may not have been charged for the same. Besides, according to Section 537 of the said Code, even if there is a defect, error, omission or irregularity in the framing of the charge, the same will not have any effect on the conviction or sentence imposed unless such a defect has occasioned a failure of justice. In the present case, the prosecution evidence, making out all the ingredients of the offence actually committed, was adequately adduced and the appellant availed of the opportunity to cross-examine the witnesses. The questions put to the appellant Under Section 342, Cr.PC and the answers given by him leave no manner of doubt that the appellant cannot be held to have been prejudiced in any manner by the omission

in the charge regarding his abetment in the forging of the document in question, i, e., the affidavit marked 'Y.'

9. Lastly, the learned counsel for the appellant prayed for reduction in sentence. But there are no extenuating circumstances to warrant any reduction. The appellant deliberately and actively manoeuvred the execution of a forged affidavit on behalf of the complainant in favour of his son and brother and the same was done obviously with the intention to get the truck of the complainant transferred in the names of his son Mal-kiat Singh and brother, Jawala Singh.

10. For the reasons recorded above, there is no merit in this appeal and the same is dismissed.

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