

Kharaiti Ram Vs. the State

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Court : Delhi

Decided On : Apr-28-1971

Reported in : AIR1972Delhi13; 1972CriLJ254

Judge : Pritam Singh Safeer, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 415; [Evidence Act, 1872](#) - Sections 5

Appeal No. : Criminal Revn. No. 157 of 1968, against order of K.S. Sidhu, Addl. S.J. Delhi, D/- 18-3-1968

Appellant : Kharaiti Ram

Respondent : The State

Advocate for Def. : R.L. Mehta, Adv.

Advocate for Pet/Ap. : D.P. Bhandari, Adv

Judgement :

ORDER

1. Kharaiti Ram has come up in revision which has been heard by giving the latitude to his counsel to urge it as an appeal.
2. The allegations against the petitioner were that he was working in August and September. 1964 as a bills clerk in the Post Graduate School. Indian Agricultural

Research Institute. New Delhi. The prosecution brought forward the evidence to establish that the present petitioner had the means to know as to what scholarships were payable to various students including one T.K. Chakrabarty.

3. It was on the 16th of September. 1964, that the said Shri T.K. Chakrabarty submitted an application to the Dean of the Post Graduate School. I.A.R.I. Delhi which has been exhibited as P.W. 13/A. He complained that he had not written any letter for remitting to him by telegraphic money orders any amounts payable to him on account of the scholarships. He stated that he had been staying at his native place in West Bengal. He requested that immediate steps be taken to recover the amounts and pay the same to him.

4. On an information being received by him, the Superintendent of Police. Special Police Establishment. New Delhi recorded information in a form bearing the inscription 'FIRST Information Report (Recorded u/s 154 Cr. P.C.)'. The said document has been produced in the course of the trial and is Exhibit P.W. 19/A. In document it was notice that two money orders had been sent to Ludhina. Telegraphic money order No. 583 for Rs. 600/- dated the 11th of September. 1964, had been entrusted by the Post-office to Ghanshyam Singh, described as an accused in Exhibit P.W. 19/A for disbursement. The allegation was that he had dishonestly disbursed the same to a person who had forged the signatures of T.K. Chakrabarty.

5. A similar allegation was made that money order No. 609 dated the 11th of September, 1964, for Rs. 137.35 had been entrusted to one Malkiat Singh, who also was described as an accused, for disbursing the same. It was alleged that Malkiat Singh had dishonestly shown that the money order had been paid to the correct payee. The signatures of the payee on the money form were forged and the voucher disclosed that the identifier was Ghanshyam Singh.

6. The two persons, who allegedly disbursed t and money orders and who were categorised in Exhibit P.W. 19/A as accused persons have been examined at the trial as P.Ws. 6 and 8. There is nothing on the record to show that any statement was recorded under Section 161(3) of the Code of Criminal Procedures (hereinafter called 'the Code') before the 21st of January. 1965, the date under

which Exhibit P.W. 19/A was scribed.

7. After investigation, the accused was put on trial in respect of the offences alleged to have been committed within the meaning of Sections 419, 420, 467 and 471 read with Section 467 and Section 468 of the Indian Penal Code. Having been convicted by the Assistant Sessions Judge, the petitioner filed an appeal which was disposed of by the Additional Sessions Judge in terms of his judgment dated the 18th of March. 1968. Which is being assailed before me. The court of appeal maintained the convictions under Sections 419, 420 and 467 of the Indian Penal Code. One year's rigorous imprisonment was imposed in respect of the first conviction and in respect of the second conviction the petitioner was sentenced to rigorous imprisonment for three years and a fine of Rs. 50/- or in default to undergo further rigorous imprisonment for one month After having imposed that sentence for the conviction under Section 420, similar sentence was imposed in respect of the conviction of the petitioner under Section 467 of the Indian Penal Code.

8. The first contention raised by Mr. D.P. Bhandari, the learned counsel for the petitioner. Who has eloquently argued this case is that the petitioner could not have been tried in Delhi. That contention was never raised before the courts below. I have scrutinised the memorandum of the revision petition preferred in this case. No such ground is urged. It is necessary to notice the provisions contained in Section 531 of the Code: -

'531. Proceedings in wrong place :- No findings sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry trial or other proceeding in the course of which it was arrived at or passed took place in a wrong session division, district sub-division or other local area unless it appears that such error has in fact occasioned a failure of justice.'

In the face of the statutory provision, reproduced above the first contention noticed by me loss all merit. The allegations contained in the four charges framed against the petitioner included allegation that he had forged the letter Exhibit P.W. 9/N in Delhi, for reason the petitioner knew that he was being tried for an offence which allegedly had been committed by him by forging the aforesaid document in Delhi.

He never raised any contention before the trial Court that he could not be tried in Delhi.

9. The second contention raised by Mr. Bhandari is that the testimony adduced in this case lacks veracity and legal proof. According to the learned counsel the convictions cannot be sustained on the basis of the statements made in court by P.Ws. 6 and 8. P. W. 6 is Ghanshyam Singh. It is significant that according to his testimony he did not know Kharaiti Ram petitioner before the date when he met him in Ludhiana. The petitioner represented that he was T.K. Chakarbarti. The witness had gone to the post office on the 14th of September, 1964. He deposed :-

'There one man T.K. Chakarvarti who is now present in court as accused came to me and enquired if his money order for Rs. 750/- had come or not. The accuse told me that the money order was expected from Indian Agricultural Research Institute. Delhi towards the scholarship for six months. I told the accused that I had received a Tmo for Rs. 600/- in favor of T.K. Chakravarti. On hearing it from me the accused told that he was T.K. Chakarvarti, and that his party was on tour and was to go to Ambala. Chandigarh etc, and that he was in need of money to meet the expenses.'

Kharaiti Ram was in the dock when the witness pointed him out from the witness box describing him as the accused and ascribing to him the clear statement that on the 14th of September, 1964, the said person who was being tried had told him that he was T.K. Charkrabarty. There could not be any worse impersonation for the purpose of cheating. Kharaiti Ram knew that he was not T.K. Chakrabarty. He was bill clerk employed in the institution concerned. Having acquired the knowledge that the amount covered by the scholarship was to be remitted on the address given in Exhibit P.W. 9/N he went to Ludhiana and stated to P.W. 6 that he was T.K. Chakrabarty.

10. Proceeding further in his deposition P.W. 6 stated :-

'I asked the accused as to who would stand his witness to the effect that he (i.e. accused) was T.K. Chakarvarti. The accused told me that he met the Office Superintendent Agriculture University. Ludhiana, who told him that he could get

payment of the T.M.O. after showing his identity card. I replied that I would give the amount after seeing the identity card when I shall get the T.M.O. along with the amount from the post-office, or that I shall reach the Agriculture Institute. Ludhiana, if he was in hurry.'

The witness then proceeded to describe the actual incident involving the payment of the amount to the petitioner :-

'The accused met me outside and demanded money. On my enquiry, he showed me his identification card which bore his photograph. On the foot the name T.K. Chakarvarti was written and there was a rubber stamp embossment reading as Asstt. Director but I could not decipher signatures over the rubber stamp. The photo tallied with the accused person in the court.'

It was right in the face of the petitioner who was standing trial that the witness deposed that the photo which had been produced before him as pasted in the identity card tallied with the accused present in court, but was described as that of T.K. Chakrabarty's. The petitioner, who was the accused present in the Court was Kharaiti Ram and not T.K. Chakrabarty. That deposition remains unshaken. The conviction under Section 419 of the Indian Penal Code remains unassailable. The witness further proceeded :-

'I was satisfied by comparing the Photo with the accused that the accused was T.K. Chakarvarti and I asked him to put his signatures at place Y on the back of Exhibits P.W. 4/C in my presence. The date was also put by him. On these two documents. I also tallied the signatures of the accused put by him on these two Exhibits in my presence with the signatures on the identification card shown by the accused. Signatures tallied and I was more convinced that the accused was T.K. Chakravarti.

The deposition clearly establishes that the deception was complete as soon as after producing the identity card having his photograph Kharaiti Ram petitioner signed as T.K. Chakrabarty on Exhibit P.R. 4/B and Exhibit P.W 4/C. The offence punishable under Section 467 of the Indian Penal Code also stood established by the actions performed by the petitioner in the presence of P.W. 6. I have seen the

documents proved on the record as Exhibit P.W. 4/B and Exhibit. P.W. 4/C as well as the document . Exhibit. P.W. 5/B. I have seen the signatures made as T.K. Chakrabarty on these documents. Those are encircled in red. In each of the three documents the signatures so encircled are indicated by the word 'Y' I have not been persuaded in any way to discard the deposition of P.W. 6. That being so on facts proved I find that Kharaiti Ram petitioner after having signed as T.K. Chakrabarty obtained the payments covered by the aforementioned documents and thus completed the offence punishable under Section 467 of the Indian Penal Code. The very circumstances proved by the said witness establish the commission of the offence punishable under Section 420 as well.

The testimony of P.W. 8 is to the effect that he was not prepared to make the payment to the petitioner but then Ghanshyam Singh, who has been examined as P.W. 6 told him that he had seen the identity card earlier and affirmed that the petitioner was T.K Chakrabarty. His deposition was :-

'The accused gave out his name as T.K. Chakarvarti. I refused to make payment until he was made identified. Ghanshyam Singh told me that two days back he had paid Rs. 600/- of a T.M.O. to the accused after seeing his identity card and thereforee I knew him and I should make payment for him. I got the signatures of the accused at place Y and Ghanshyam indentifying him put his signatures at Exhibit P.W. 5/B. I handed over the amount to him'.

Cross examination of P.W. 8 is indeed cryptic. In the second line of his cross examination. Short as it is, the witness deposed :-

'At the identification of Ghanshayam Singh I took the accused as T.K. Chakarvarti.'

I need not reproduce here the provisions of Sections 415, 419 and 420 of the Indian Penal Code. The proven circumstances eloquently establish that offences under Sections 419 and 420 were blatantly committed by the accused- petitioner who very well knew who he was.

11. It has been persistently urged by Mr. D. P. Bhandari that the testimony of P. Ws. 6 and 8 is that of accomplices. They did not share any common intention with

the accused petitioner before he contacted P.W. 6. P. Ws 6 and 8 were complete strangers to the accused - petitioner. There was no privity between them and the accused in the course of the performance of any of the actions. What were they to do if they were deceived when the person approaching P.W. 6 in the first instance produced an identification card bearing his own photograph describing him as T.K. Chakrabarty They fell into a trap of deception. Defrauded as they were, they made the payments after securing his signatures.

12. Mr. Bhandari has referred to Posts and Telegraph Manual. Volume Vi (Fifth Edition) corrected up to 1964 containing Rule 263. It is no doubt true that the requirements of the Rule are that the claimant must be identified by a trustworthy person or otherwise should produce dependable evidence regarding his identity. I am not persuaded that Malkiat Singh P.W. 8 in any case failed to discharge his duties efficiently. There was a straight refusal by him and he did not pay the amount covered and the money order which he was handing till P.W. 6 who a postman at Ludhiana, identified the accused petitioner. In his own turn P.W. 6 had already fallen into the trap a couple of days earlier and he had no reason to disbelieve the same person who had told him on the 14th of September 1964 that the amount to be received was not Rs.600/- but Rs.750/-. It may be noted that while remitting the money orders the money order charges were deducted out of the scholarship amount of Rs.750/-.

13. Mr. Bhandari has placed reliance on R.R. Chari v. State of Uttar Pradesh. : [1963]1SCR121 . The learned counsel has referred to paragraph 9 of the judgment. There the appellant was a person who had received from one Lala Sheo Karan Das several payments, noticed by the court, as illegal gratification. Turning to paragraph 27 of the judgment it becomes obvious that the Supreme Court was impressed by an established fact that the testimony adduced against the appellant was that of accomplices, why were the witnesses categorized as accomplices ?. They had instigated the acceptance of bribe. They had abetted the ante-dating of the applications. While analysing the facts the Supreme Court observed :__

'The ante-dating of the applications is a very important fact and of this fact there is no other evidence at all. thereforee in our opinion, the crucial fact on which the charge under Section 467 is based is deposed to only by accomplice witnesses and their statement are not corroborated by any other evidence on the record.'

In the case by no stretch of argument it can be said that P.Ws. 6 and 8 were accomplices. If that were to be held then in every case wherever a person is fraudulently and dishonestly made to believe a misrepresentation and under the spell of deception made to part with money he would be an accomplice and thus useless as a witness without independent corroboration. If the contention was to be accepted then every victim of fraud. Cheated by an accused person. Will lose competence as a natural witness whose veracity may other wise deserve to be ordinarily appreciated. If an accused person offers to sign any money order slip holding out an identity card and establishing by that act that he is the particular person shown in the photograph and after obtaining his signatures the postman makes the payment then in every case the postman will become an accomplice. Such a situation would be foreign to law. On a perusal of the proven circumstances of the case I came to a finding of fact that none of the two witness, on whom I am depending were even interested witness. They had been subjected to deliberate fraud and deception.

14. Mr. Bhandari urges and rightly so that the petitioner is losing his service. The counsel pleads that the sentences imposed be reduced because the accused will carry the stigma for ever and no company organisation or other business establishment will think of employing him again. Whatever the merit of the submission. I am persuaded that it will secure the ends of justice if the sentences imposed in respect of the convictions of the petitioner under Sections 420 and 467 of the Indian Penal Code are reduced to two years R.I. under each count. There will be no fine. All the three convictions are maintained.

15. With the modification as to sentences and directing that the same will run concurrently, the petition is dismissed.

16. Order accordingly.

