

Balram Singh Vs. State

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Court : Delhi

Decided On : Oct-17-1979

Reported in : 17(1980)DLT216; 1980RLR324

Judge : M.S. Jeshi, J.

Acts : [Indian Penal code, 1860](#) - Sections 420

Appeal No. : Criminal Appeal No. 155 of 1974

Appellant : Balram Singh

Respondent : State

Judgement :

M.S. Joshi, J.

(1) Aggrieved by the order of his conviction and sentence dated 29.4.1974, Balram Singh Chauhan preferred appeal No. 155 of 1974. In the same manner appeal No. 158 of 1974 was filed by Ravinder Kumar. Because the two appeals arise from one order the same are being disposed of through this judgment together.

(2) The case of the prosecution may be stated briefly in the following terms.

(3) One R. C. Misra, a military employee, was posted at Delhi in September, 1966. He was expecting his transfer out of the town and, therefore, decided to build a

house at this place before leaving it. For a house he needed a plot and for buying a plot he contacted Messrs Chauhan Property Dealers operating in Amar Colony. Balam Singh and Ravinder Kumar represented to him at the office of the said firm that they belonged to Mainpuri district from which Misra himself hailed and his confidence was in this manner won. They showed to Misra and his wife plot No. A-IV/36 in Amar Colony and told them that although the plot was worth Rs. 19,000.00 and had been reserved to be sold to a friend of theirs yet they could have it at the concessional price of Rs.18,000.00 They asked for earnest money amounting to Rs. 3,500.00 and Mrs. Sushma Misra, wife of R C. Misra, issued a cheque on the Punjab National Bank, Jangpura Branch, for the aforesaid amount in favor of Balram Singh. A receipt for the money was scribed by Rajinder Singh, brother of Ravinder Singh, and it was signed by Balram Singh. After a few days Balram Singh and Ravinder Singh, accompanied by Rajinder Singh and B, R. Saini, came to R. C. Misra and told him that there was a Gurdwara Building to be constructed opposite to the plot that had been offered to him previously and that it would be better if he took plot No. B-264 instead of the said plot and he agreed to have it. Balram Singh and Ravinder asked for Rs. 4,000.00 more towards earnest money and stated that the balance could be paid at the time of the registration of the transfer deed. Because the Misras had no doubt about the bonafides of the transaction, they paid Rs. 4,000.00 more by way of a cheque drawn on the Punjab National Bank. This time also the receipt was executed by Balram Singh. After some more days Balram and Ravinder contacted Misras again and informed them that because Kunti Devi the owner of the plot, was going to perform the marriage of her daughter she was in terrible need of Rs. 5,700.00 . To meet this demand, Mrs. Misra made out cheques for Rs. 3,500.00 Rs. 1,400.00 and Rs. 800.00 all favoring Balram Singh on different dates. In order to ensure them that the deal had a firm footing the appellants left two agreements at the residence of Misras-one purporting to have been executed by Kunti Devi and another by Amolak Singh. After having parted with Rs. 13,200.00 Misras wanted, and naturally so, to get in touch with Kunti Devi and Amolak Singh but the brokers failed to arrange a meeting with them. Suspecting that there was something fishy about the sale Misras asked the property dealers to refund their money whereon Ravinder Kumar left a letter dated 1.12.1966 at their house to assure them that the transfer would

be arranged very soon. In the meantime R. C. Misra succeeded in contacting Kunti Devi and she informed him that she had been a party to no agreement for sale. Shri Misra tried to locate Amolak Singh but failed. In the circumstances he made a complaint against Balram Singh, Ravinder Kumar and Rajinder Singh for suitable action being taken against them under section 420, 468 and 471 of the Indian Penal Code.

(4) Like R. C. Misra, one Bhupinder Singh was also in need of a plot and he too went to the same firm of brokers, Messrs Chauhan Property Dealers, for the purpose. Balram Singh and Ravinder Kumar showed him plot No. C-IV/6 in Amar Colony and told him that it was available for Rs. 14,000.00 On their demand for earnest money, Bhupinder Singh issued a cheque for Rs. 500.00 on 8.12.1966. Two days thereafter they brought him a document purporting to be a receipt-cum-agreement for sale signed by Amolak Singh and asked for payment of Rs. 500.00 more. This amount was also paid by Bhupinder Singh by a cheque dated 10.12.1966. Bhupinder Singh then told Balram Singh and Ravinder that he would like to see the original sale deed in favor of Amolak Singh and also to meet the vendor. The accused replied that Amolak Singh was out of station and his address was not known to them. This aroused a suspicion in the mind of Bhupinder Singh and when he made enquiries at the relevant office in Jamnagar House he came to know that plot No. C-IV/6 Amar Colony was still with the Government and had not been allotted to anybody. He confronted Balram Singh with this situation and thereof the latter repaid him Rs. 100.00 and gave him a cheque for Rs. 900.00 . The cheque was presented to the Bank but was dishonoured because there was no money in the account of the drawer. In this situation Bhupinder Singh lodged a report with Lajpat Nagar Police Station on 11.1 1967.

(5) Another victim of Messrs Chauhan Property Dealers was M. R. Choudhary. He was offered plot No. E-128 belonging to Dina Math Dhingra and a sum of Rs 200.00 was obtained from him towards earnest money. This happened on 4 12.1966. On 14.12.1966 Balram Singh came to Choudhary with the plea that Dina Nath was not agreeable to issuing an interim receipt for Rs. 200.00 only and he must be paid Rs. 300.00 more and Choudhary made this further payment. On 26.12.1966 Choudhary met Dhingra at the latter's shop in Moti Bagh and learnt

from him that Dina Nath had never agreed to sell his plot nor had he received any earnest money from Balram. When Choudhary took up cudgels with Balram for the fraud committed by him the accused gave him a post-dated cheque for Rs. 500.00 drawn on the Punjab National Bank, Lajpat Nagar Branch. It was presented to the Bank concerned but was not honoured. Choudhary went to Balram - Singh for his money again but was told that the latter's funds were in the process of transfer from Patel Nagar Branch of the Bank to Lajpat Nagar Branch. The cheque could not, anyway, be encashed. Disappointed in this manner Choudhary approached the police,

(6) After the investigation the authorities of Lajpat Nagar Station House put up a consolidated challan in respect of the aforesaid three reports against Balram Singh, Ravinder Kumar and Rajinder Singh. The Magistrate seized of the matter committed the accused to the Court of Session. Shri R.K. Sinha acquitted Rajinder Singh of the charges framed against him but convicted and sentenced Balram Singh and Ravinder Kumar in the aforesaid manner. Hence the two appeals referred to above.

(7) The charge under Section 468 read with Section 34 of the Indian Penal Code is concerned with the agreements. Exhibits Public Witness PW1/G and Public Witness PW1/K, purporting to have been executed by Kunti Devi and Amolak Singh respectively. Neither Kunti Devi nor Amolak Singh was examined at the trial because, it is said, they could not be found and we do not have the word of these people to the effect that they did not execute the said agreements. The services of a hand-writing expert were availed of for other matters but no effort was made to compare some admitted writings of Kunti Devi and Amolak Singh with the signatures in dispute in order to make out that the last-mentioned signatures were forged. R.C. Misra conceded that he had been able to contact Kunti Devi on one occasion though later on she could not be found. She was not thus an imaginary person. It has been contended in respect of Amolak Singh that no such man was available anywhere. The receipt-cum-agreement for sale purporting to be signed by Amolak Singh (Exhibit Public Witness PW7/B) is not a complete document; it is only the second-half of the sheet and it is not possible that the address of Amolak Singh was there in the missing part. Though the accused were supposed to know

the address of Amolak Singh from whom they claim to have obtained the said receipt-cum- agreement but the law would not permit that they should shoulder the responsibility of proving that the signatures on Ex. Public Witness PW7/B were of a genuine person. In any case, it has not been established beyond doubt that the signatures of Kunti Devi and Amolak Singh on the agreements (Exhibit Public Witness PW1/G and Public Witness PWI/K) are forged. The charge under Section 468 read with Section 34 of the Indian Penal Code will not, therefore stand.

(8) The case under Section 471 read with Section 34 of the Indian Penal Code is wholly dependent upon the charge under Section 468. Because the charge of forgery has failed the one of use of a forged document as genuine will also not survive.

(9) The conviction and sentence of Balram Singh and Ravinder Kumar under Section 468 read with Section 34 and under Section 471 read with S. 34 of the Indian Penal Code, must in these circumstances, be set aside.

(10) So far as cheating is concerned, there can be no doubt that it was committed by Balram Singh and Ravinder Kumar as well as Ravinder Kumar. Shri R.C. Misra has deposed that they offered him plot No. A IV/36 at a price of Rs. 18,000.00 and obtained from him a sum of Rs. 3500.00 by way of earnest money. R C. Misra is not shown to have any prejudice against the accused and there was no reason for his making a false statement on the point. When Balram was confronted with that allegation he said there was no such offer because the said plot had already been sold by him. The fact does not seem, however, to have been disclosed by the accused to Misras. They were told, on the contrary, that because there was a Gurdwara coming up in the vicinity it would be preferable for them to have another plot in substitution for plot No. A-IV/36. The accused then proposed to Misras to take plot No. E264 and on their agreeing to do it they were made to part with Rs. 4,000.00 more towards the price. This plot was said to belong to Kunti Devi. As in the case of the first Rs. 3,500.00 the receipt for Rs. 4,000.00 was also issued under the signature of Balram Singh and the alleged owner of the plot -was not brought into the picture. It is made out by the statement of R.C. Misra further that the accused told him and his wife that there was a wedding of Kunti Devi's

daughter to be arranged and she was in dire need of Rs. 5,700.00 for the purpose. They got from the Misras by way of this representation Rs. 5,700.00 more in the form of cheques for Rs. 3,500.00 , Rs. 1,400.00 & Rs. 800.00 . It is not denied that all the said cheques were encased and not a Paisa out of the whole amount went to Kunti Devi.

(11) Because Misras were getting apprehensive about the genuineness of the transaction there were two agreements brought, to allay their fears to their residence in their absence, one of them purporting to be signed by Kunti Devi and the other by Amolak Singh. The Misras were to purchase only one plot and it is beyond comprehension why two owners of independent plots, Kunti Devi and Amolak Singh, were persuaded by the brokers to execute agreements in favor of R.C. Misra. It was not a case of puce Arhtias so that Balram and Ravinder could deal with the buyer as principal to principal, they had ostensibly no authority to transfer the property by themselves and yet they appropriated the entire amount parted with by Misras towards the price of the plot. The very fact that Kunti Devi and Amolak Singh on whose account they received huge amounts from Misras could not be brought by them face to face with the buyers speaks volumes about the shady nature of the transaction. The total circumstances of the case lead to the one irresistible conclusion that the deal offered by Balram and Ravinder was wholly dishonest from the very outset and they were guilty of an offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

(12) So far as the case of Bhupinder Singh Js concerned it is not denied that a sum of Rs. 1,000.00 was received by the accused from him in the form of two cheques. He was told by them that the plot to be transferred in his case belonged to Amolak Singh. They realised it on behalf of Amolak Singh and it was not paid to him admittedly. When Bhupinder Singh insisted that he would be shown the seller's deed of title and provided an opportunity to meet him he was told by the appellants that Amolak Singh was out of Station and his address was not known to them. This brought the enlightenment to the poor complainant that he had been fleeced out of an amount of Rs.1,000.00 . When he raised a hue and cry he was given back a sum of RS.100.00 and a cheque for Rs.900.00 . The cheque was not honoured by the Bank due to there being no money in the account of the maker

thereof. Patently enough, a fraud had been practiced upon Bhupinder Singh and he was deprived of Rs. 1,000.00 deceitfully though he got back a small part of that amount i. e. Rs. 100/.

(13) In the third case, Balram and Ravinder obtained Rs. 500.00 in all from Chowdhary by offering to sell him plot No. E-128, Amar Colony, which belonged to Dina Nath Phingra (since dead). There is nothing on the record to show that the accused had any authority from the owner to strike a bargain on his behalf or to receive its price on his account. Chowdhary has sworn to the fact that he had met Phingra later on personally and had been told by the deceased that he had never contracted for the sale of that plot and had received no earnest money through the accused. This again is a clear-cut case of cheating. When the accused were told by Chowdhary what Dina Nath Phingra had revealed to him, Balram refunded him a sum of Rs. 200.00 only and the balance of Rs. 300.00 was never returned.

(14) The learned counsel for Balram has contended that R.C. Misra had entered into a partnership with him and it was on that account that the payments in question were made. It is, however, admitted that there was no agreement of partnership executed between the parties and the name of R C. Misra does not appear in any books of the firm as a partner. The appellant has not disclosed for what purpose was any capital needed to which a contribution could have been made by R.C. Misra and why the alleged contribution had to be made in dribblets. In respect of the payment received from Bhupinder Singh also it has been said that he was a partner and in that case again there is not a shred of proof as to Bhupinder Singh having associated himself with the accused in property broker's business. The plea of partnership as such has no legs to stand upon. According to Shri Sethi had the story put forward by Misras been true the payments in question should have been made to Kunti Devi and not to the accused. But as we learn from the statements of R.C. Misra and his wife the accused had represented to them that they belonged to the same district (Mainipuri) as the complainants and because of this sentimental factor they began to trust the accused. Kunti Devi was a total stranger to them and it was natural for them, therefore, to trust the property agents rather than the alleged vendor. Shri Dhanbir Singh, who appears for Ravinder has submitted that Balram was the leading light in the affair and his

client has been roped in unnecessarily. But R.C. Misra, Sushma Misra and Bhupinder Singh all have said that Balram and Ravinder were operating Jointly and the false representation whereby they were duped came from both of them. Agreements Exhibits Public Witness PW1/G and Public Witness Public Witness 1/K purporting to have been executed by Kunti Devi and Amolak Singh respectively are both attested by Ravinder Kumar. As a matter of fact, stamp papers for these agreements were also purchased by Ravinder. The letter, Exhibit PW1/J, written with the object of assuring Misras that the transfer deed would be executed soon is again in the hand-writing of Ravinder. Receipt for Rs. 3,500.00 in favor of Sushma, Exhibit Public Witness PWI/B, also bears the attestation of this accused as a witness. There cannot to a shadow of doubt that Ravinder was certainly acting in league with Balram in pursuance of their common intention.

(15) I find no reasons to disturb the decision of the court below on the subject of Balram and Ravinder both being guilty of cheating R.C. Misra and Bhupinder Singh and as to Balram having committed the same offence against Choudhary.

(16) The counsel for the appellants have submitted that at least a lenient view be taken in the matter of sentence. The transactions in question pertained to the end of 1966 or the beginning of 1967 and the matters are as such about 13 years old. Balram along has already undergone imprisonment for two years or so and Ravinder only a little less than that. It was Misras alone who were relieved of a substantial amount and they have already obtained a decree from the court of a Subordinate Judge and that has been affirmed by the High Court though an appeal in respect thereof is stated to be pending in the Supreme Court. In the light of the foregoing circumstances the substantive sentences to be suffered by Balram Singh Chauhan and Ravinder Kumar under various counts of Section 420 read with Section 34 or Section 420 of the Indian Penal Code are reduced to those already undergone by them. The appeals of Balram and Ravinder are thus accepted so as to set aside their conviction and sentence under Section 468 read with S. 34 and Section 471 read with Section 34 of the Indian Penal Code and to reduce the substantive sentence in the manner stated above under Section 420 read with Section 34 and Section 420 of the Indian Penal Code.

