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SooperKanoon Citation : sooperkanoon.com/684297

Court : Delhi

Decided On : Jan-11-1968

Reported in : 1970CriLJ536; 4(1968)DLT363

Judge : T.V.R. Tatachari, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342

Appeal No. : Criminal Revision Application Appeal No. 66 of 1967

Appellant : Devi Ram

Respondent : State

Advocate for Pet/Ap. : S. Malhtora and; K.C. Pandit, Advs

Judgement :

T.V.R. Tatachari, J.

(1) This Revision habeen filed against the judgment of Shri Rajinder Nath Aggarwal, Sessions Judge, Mahasu, dated 16th September, 1937, in Criminal Appeal No. 33/M-10 of 1967, dismissing the appeal and upholding the order of conviction and sentence passed by Shri Roop Singh Negi, Magistrate, 1st Class, Jubbal, dated 28th July, 1967, against Devi Ram, the petitioner herein.

(2) The case of the prosecution was as follows : - One Jhinu Ram had obtained a decree for Rs. 1891.50 paise againt one Bir Singh, a resident of the village Kadi. The decree holder, in execution of the decree, gto the property of the judgment-debtor attached. On 8th January 1964, the executing court issued a warrant of sale which was made returnable on 27th February 1964. The date of sale was fixed as 18th February 1964 The warrant of sale that was issued was for Rs. 1391 50 paise. The said warrant was sent to the Tehsildar, Chopal, for execution, and the said Tehsildar entrusted the warrant for execution to Devi Ram the petitioner herein, who was a bailiff.

(3) On 18th February 19P4, Devi Ram accompanied by a peon, Kundan Singh, and the decree holder, Jhinu Ram, went to the village of the judgment debtor, Bir Singh. Two persons, namely, Sunder Singh and Durga Singh, were summoned to the house of judgment-debtor. Devi Ram asked the judgment-debtor whether he was willing to pay the decretal amount and also told him that If he did nto pay the amount, his property would be sold. The judgment-debtor expressed his willingness to pay the decretal amount.

(4) The judgment-debtor had previously paid Rs. 1,000.00 to the decree-holder, and on 18th February, 1964. only Rs. 891.50 paise remained to be paid to the decree-holder. The judgment-debtor paid the said sum of Rs. 891.50 paise to the bailiff, Devi Ram, towards the balance of the decretal amount. Devi Ram executed a receipt (Ex. P/S) on which the two persons mentioned above, Sander Singh and Darga Singh, attested as witnesses. The decree-holder demanded the amount from Devi Ram, but was told by Devi Ram that the

amount would be sent to the court and he could take the money from the court. But, on the way, the bailiff. Devi Ram. told the decree-holder that he would pay the money to the decreeholder and that the latter should give a receipt for the same. The decree holder was agreeable to it, hut the bailiff, Devi Ram, offered to pay only Rs. 700.00. The decree-holder refused the same and wanted the payment of the full amount of Rs. 891.50 paise Thereupon, Devi Ram told-the decree holder that he would have to wait for a year to get the amount. In the result, no amount was paid to the decree holder by Devi Ram.

(5) On 27th February, 1964, the decree holder, Devi Ram, appeared before the learned Subordinate Judge, Shri P. L. Sharma, and was told by the learned Subordinate Judge that neither the report of the bailiff had come nor the money was received. The decree-holder, Jhinu Ram, told the Subordinate Judge that Rs. 891.50 paise, the balance of the decretal amount, had been paid by the judgment debtor to the bailiff. Thereupon, the learned Subordinate Judge sent a communication to the Tehsildar, Chopal, asking the latter to send the report and the money to the Court of the Subordinate Judge. Theog the decree-holder told the Tebsildar also that the judgment-debtor had paid the amount of Rs. 891.50 paise to the bailiff, Devi Ram. The Tehsildar summoned the bailiff, and the bailiff told the Tehsildar that out of the amount of Rs. 1390.50i paise mentioned in the warrant of sale, the decree-holder had received Rs. 500.00 in lieu of the goods attached, that the judgment-debtor stated that he would pay the balance of Rs. 891.50 paise in the evening, that the judgemet -debtor did nto, however, pay the said amount in the evening, and that, thereforee, the said amount was nto received at all from the judgment-debtor.

(6) The Tehsildar conducted an enquiry, and sent a report (Ex.P/H) to the Subordinate Judge, Theog, for further action. The Subordinate Judge, Theog, sent the report to the District and Sessions Judge, Mabasu. On a report by the learned Sessions Judge, Mabasu, a case under section 409, Indian Penal Code, was registered against the bailift, Devi Ram, the petitioner herein.

(7) The prosecution examined 13 witnesses in support of its case. Out of them, the material witnesses were P. W. 5, Bir Singh (judgment- debtor) P. W. 6, Jhinu Ram (decree-holder) P. W. 7, Sunder Singh (who attested as witness on the receipt, Ex. P/S), and P. W. 8, Durga Singh (who also attested as witness on the receipt. Ex. P/S).

(8) The accused, Devi Ram, was examined on two occasions, once at the beginning of the trial, and then again on the conclusion of the prosecution evidence. In the first examination, the accused admitted that he was entrusted with the warrant of sale, but denied having received the amount of Rs. 891.50 paise from the judgment-debtor and executed the receipt. He also stated that the receipt was nto in his band and that it should be sent to an expert for his opinion. In his second examination, after the conclusion of the prosecution evidence, be stated that the witnesses made false statements, that he did nto execute the receipt (Ex. P/S), and that he wished to send it to a, handwriting ex-pert.

(9) He also examined two witnesses, D. W. 1, Kundan Singh, and D. W. 2,Roshan Lal. D. W. 1 stated that he knew the handwriting of the accased, and that the signature (Ex. P. W. 7(A) on the receipt (Ex- P/S), was nto the signatures of the accused, Devi Ram. D. W. 2 stated that he had prepared a copy of the receipt (Ex. P/S), at the time of the enquiry by the Tehsildar, and that in that copy, the word 'Na' was left out by mistake.

(10) The learned Magistrate, by his judgment, dated 25th July, 1967, believed the evidence of the prosecution witnesses, and held that the accused Devi Ram, received the sum of Rs. 891.50 paise from the Judgment-debtor, and did nto pay the same either to the decree-holder or into the court, that he thus misappropriated the amount and committed the offence under section 109, Indian Penal Code. In the result, the learned Magistrate convicted the accused and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 500.00, and in default of payment of the fine to further undergo rigorous imprisonment for 4 months.

(11) Against that judgment, the accused preferred Criminal Appeal No. 33-M/10 of 1937, to the Court of the Sessions Judge. Mahasu. The learned Sessions Judge, by his judgment, dated 16th September, 1967, dismissed the appeal. It is against that the judgment that the accused has preferred the present Revision Application to this Court.

(12) Shri S. Malhtora, the learned counsel for the petitioner, raised three contentions before me, viz.-

(1)that the lower courts committed an irregularity in nto sending the receipt (Ex. P/S) for the opinion of a handwriting expert : (2) that the evidence of the prosecution witnesses regarding the payment of the amount by the judgment-debtor to the petitioner and his execution of the receipt (Ex. P/S), should nto have been accepted by the lower courts ; and (3) that the prose.:ution case was nto put to the accased in detail in his examination under section 342 of the Criminal Procedure Code, and that the petitioner was considerably prejudiced thereby.

(13) The receipt (Ex. P/S). which is alleged to have been executed by the petitioner, Devi Ram, is in Urdu, and the same was translated by the learned counsel for the petitioner as follows :-

'THEoccasion for writing that Rs. 891.50 paise, half of which are Rs. 441.73 paise, were nto received in the case of Jhinu Ram, decree-holder v. Bir Singh, judgment-debtor from Shri Bir Singh, judgment debtor. Hence this receipt dated 18th February, 1964. (Sd.) Sunder Singh, (Sd.) Devi Ram Bailiff Parwey Kedi 18th February, 1964. 18th February, 1964. (Sd.) Durga Singh.'

(14) As already stated, the petitioner, Devi Ram, was examined on 11th June, 1965, by the Magistrate, before the trial commenced. In that examination, he was put a question and he answered the same as follows :-

'QUESTION.Kaya Kuch Aur Bhi Kahana Chabate Ho (Do you want to say anything else?). Answer. Meri Rasid Yahe Nahin Hai. Expert Ko Bhaji Jave. Yahe Mere Hath Ki Likhi Nahin. (This is nto my receipt. This should be sent to the handwriting export. This is nto written in my hand).'

(15) After the conclusion of the prosecution evidence, the petitioner Devi Ram, was examined under section 342, Criminal Procedure Code, . on 8th November, 1965. In this examination he was put only ques. tions and he answered the same. The questions and answers were in Hindi and they have been translated by the learned counsel for the petitioner as follows :-

'1.Question: Have you heard and understood the statement of prosecution witnesses who appeared against you? Answer: Yes. 2. Question: Do you wish to say something about the witnesses. Answer: Yes. Alt the witnesses have made incorrect statements. 3. Question: Will you lead defense? Answer: Yes. 4. Question; Do you wish to say anything else? Answer: Yes. The receipt which has been produced as against me is incorrect. I wish to send it to the handwriting expert for examination.'

(16) The contention of the learned counsel for the petitioners is that the accused requested that the signature on the alleged receipt (Ex.P/S) should besent to a handwriting expert for his opinion, and that the lower courts erred in nto sending the same to the handwriting expert. A similar argument was addressed before the learned Magistrate, but he brushed it aside by observing that the accused stated in his statement under section 342 that-

'HEwants to send the receipt (Ex. P/S) to the handwriting expert but he never applied to do the same.' In antoher part of the Judgment, the learned Magistrate again observed as follows:- 'He also denied his signature on this receipt for which in his statement given by him under section 342, Cr. P. C. he wanted to send it to handwriting expert which he failed to do so,', and he produced Kundan Singh, D. W. 1, who states that the signatures of Shri Devi Ram, accused, do nto tally with the signatures of Ex. Public Witness 7/A on ExP/S' The learned sessions Judge dealt with a similar argument before him by observing as follows :- 'The witnesses for the prosecution have in clear words stated that the signatures at the place Ex, P-7/A are that of the accused. I have no reason to disbelieve the statements of prosecution witnesses in this respect. I find it will serve no useful purpose to send the receipt to handwriting expert for having his opinion.'

(17) The observation of the learned Magistrate that the accused wanted to send the signature on the receipt to the handwriting expert but failed to do so and never applied to do the same, is clearly an erroneous approach to the question. The accused, even in his examination prior to the examination of the prosecution

witnesses, stated in clear terms that the receipt was nto executed by him and should be sent to a handwriting expert. It is true that in his examination under section 342, Criminal Procedure Code, after the conclusion of the evidence of .the prosecution, he used the words that he wanted to send the signature on the receipt to a handwriting expert. Reading the two answers together, it is obvious that his intention was that the court should send the disputed signature on the receipt to a handwriting expert. Further, when the signature on the receipt was denied by the accused, it was the boundent duty of the prosecution to get the signature examined by a handwriting expert in order to establish their case against the accused. The learned sessions Judge also erred in thinking that no useful purpose would be served by sending the alleged signature on the receipt to a handwriting expert. He failed to see that if the signature was found nto to be the singature of the petitioner, Devi Ram, it reffects to a considerable extent on the credibility of the witnesses, P. Ws. 5 and 8, who deposed that the petitioner, Devi Ram, executed the receipt after receiving the money from the Judgment debtor. It was, thereforee, essential that the signature on the receipt should have been sent to a handwriting expert.

(18) Btoh the lower courts relied upon the evidence of P. Ws. 5 to b regarding the signature of the petitioner, Devi Ram on the receipt (Ex. P/S). P. W. 5. Bir Singh (judgment debtor) stated is his evidence-

'Icannto read the receipt. It was written in Urdu It is Ex. P/S'. P. W. 6, Jhinu Ram, decree-holder, no doubt, stated in his chief-examination that the accused issued the receipt, but he also stated as follows:- 'I identify the paper of Ex. P/S, but I cannto identify the signature on it.' P. W. 7, Sunder Singh, who is said to have signed as a witness on the receipt, stated as follows : - 'I have seen Ex. P/S It was the same receipt which was written by Devi Ram. It bears my signature as also the signature of Durga Singh. Ex. P. 7/A is the signature of Devi Ram which was made in my presence.' P. W. 8, Durga Singh, who is said to have signed the receipt as a witness, stated as follows , 'In my presence Devi Ram signed receipt Ex. P/S.' In the earlier part of the chief-examination, he stated - 'I have seen Ex P/S,on which my signature appears at Ex. Public Witness 8/A which is correct' Thus, the evidence of P. Ws. 5 and 6 does nto establish that the alleged signature on the receipt (Ex. P/S) was, in fact, that of the petitioner, Devi Ram. The evidence of P. Ws. 7 and b, however, is, no doubt, to the effect that the said signature was that of the petitioner, Devi Ram. But, as already pointed out, if on an examination Ly a handwriting expert, the signature on the receipt is found to be nto that of the petitioner the statements of P. Ws. 7 and 8 would nto have any weight, and indeed their credibility itself becomes doubtful. The petitioner was clearly prejudiced by the failure of the lower courts or the prosecution to sent the signature on the receipt for an examiniation by a handwriting expert, and the learned Sessions Judge was nto light in standing that no useful purpose would be served by serding the signature for the opinion of a hand writing expert. In the circumstances, it was necessary in the interests of justice to get the allged signature of the petitioner on Ex. P/S, examined by a handwriting expert. As the alleged signature on the receipt was nto gto examined by a handwriting expert, it is nto safe to rely upon it as evidence against the petitioner accused). In this view, it is nto necessary to consider the effect of the alleged alteration in the language of the reciept by the interpolation of the word 'Na'.

(19) As regards the second contention of Shri Malhtora, since the credibility of the prosecution witnesses, particularly P. Ws. 7 and 8, depends on the genuineness or toherwise of the alleged signature of the petitioner on the receipt (Ex. P/S). and as the laid signature was nto gto examined by a handwriting expert, it is nto sale to rely on the bare oral statements of the witnesses, P. Ws. 5 to 8, when they are nto supported by any contemporaneous documentary evidence.

(20) The third contention of the learned counsel for the petitioner that the evidence of the prosecution witnesses was nto put in detail to the accused in his examination under section 342, and that he was prejudiced thereby, has, in my opinion, considerable force. The four questions that were put to the accused and the answers given by him have already been extracted above. The evidence adduced and relied upon by the prosecution was nto at all brought to the ntoice of the accused in the said questions. The learned Sessions Judge observed that the accused knew the case against him, and that, thereforee, he was nto pre-judiced by the absence of a detailed reference to the prosecution evidenee in the examination under section 342,

Criminal Procedure Code. The learned Sessions Judge clearly fell into an error la making the said observation. The accused might know what the case against him was. But the object of section 342, Criminal Procedure Code.is to give an opportunity to the accused to answer each and every piece of evidence adduced and relied upon by the prosecution. In Hathe Singh v. State of Madhya Bharat, the Supreme Court observed as follows ;- We have a further comment to make. Btoh the Sessions Judge and the High Court have attached importance to the fact that btoh the accused absconded, but at no stage of the case have they been asked to explain this. We have stressed before the importance of patting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can. We regret to find that this rule is so often ignored.' Again, in Machander v. Hyderabad State. The Supreme Court observed as follows :-

'THISis antoher of those cases which courts are compelled to acquit because Magistrates and Sessions Judges fail to appreciate the importance of section 342, Criminal Procedure Code, and fail to carry out the duty that is cast upon them of questioning the accused properly and fairly, bringing home to his mind in clear and simple language the exact case he has to meet and each material point that is sought to be made against him, and of affording him a chance to explain them if he can and so desires. Had the Sessions Judge done that in this case, it is possible that we would nto have been obliged to acquit.'

The Supreme Court further observed-

'WEwere asked to reopen the question and, if necessary, to remand the case. But we decline to do that. Judges and Magistrates mast realise the importance of the examination under section 342, Criminal Procedure Coda, and this Court has repeatedly warned them of the consequences that might ensue in certain cases. The appellant was arrested in December, 1950, and has been on his trial one way and antoher ever since, that is to say, for over 4 years. We are nto prepared to keep persons who are on trial for their lives under indefinite suspence because trial Judges omit to do their duty. Justice is nto one sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do nto escape, it is even more necessary to see that persons accused of crime are nto indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detectiones of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go. Except in clear cases of guilt, where the error is parely technical, the forces that are arrayed against the accused should no more be permitted in special appeal to repair the effects of their bungling than an accused should be permitted to rapair gaps in his defense which he could and ought to have made good in the lower coarts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favor of the State or nto; and on broad rule must apply in all cases.'

(21) In the present ease, the prosecution or, at any rate, the trial Court should have sent the alleged signature of the accused on the receipt (Ex. P/S) for examination by and the opinion of a handwriting expert. As already pointed out, the credibility of the witnesses, P. Ws.5 to 8, was dependent upon the genuineness of the alleged signature of the petitioner on Ex. P/S. When the prosecution failed to establish the genuineness of the signature on Ex. P-/S, it is nto safe, in my opinion, to rely upon the testimony of the prosecution witnesses Nos. 5 to b to the effect that the judgment-debtor paid the amount in question to the petitioner, when it was nto supported by any contemporaneous documentary evidence. Further, the emission on the part of the trial court to put to the accused every material fact in the evidence of the prosecution witnesses, sought to be relied upon by the prosecution against the accused, and thus affording him a chance to explain the same, if he can and so desires, cannto but be said to have prejudiced the defense of the accused, because, if all the material facts deposed to by the prosecution witnesses had been put to him clearly in his examination under section 342, Criminal Procedure Code, he might have adduced such further evidence as might have been available to him. The first question put to him in the examination under section 342 was an omnibus question, wherein he was asked whether he heard and understood the statements of the prosecution witnesses who had appeared against him. This does nto satisfy at all the requirement under section 342, Criminal Procedure Code, as explained by the Supreme Court in the above mentioned decisions.

(22) Thus, when the receipt (Ex. P/S) as well as the evidence of P. Ws. 5 to 8 has to be regarded as unreliable and the same is excluded, there is no toher evidence adduced by the prosecution which brings home the guilt to the accused. The judgments of the learned Magistrate and the learned Sessions Judge are vitiated by their omission to consider the above important aspects. To reopen the case and remand the same to the trial court for fresh trial after the lapse of nearly 4 years from the date to the alleged offence, and thereby enable the prosecution to fill up the lacuna in their evidence, would be unfair to and even and harassment of the accused.

(23) For the above reasons, I allow this revision application, set aside the orders of conviction and sentence passed by the lower Courts, and acquit the petitioner (accused).