

Rakesh Kumar Vs. State

Rakesh Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/704857

Court : Delhi

Decided On : Dec-12-2003

Reported in : 109(2004)DLT826; 2004(72)DRJ311

Judge : O.P. Dwivedi, J.

Acts : Indian Penal Code (IPC) - 120B, 363, 364A, 384, 366, 420, 468, 471 and 506; Code of Criminal Procedure (CrPC) - Sections 164 and 313

Appeal No. : CRLA 68/2002

Appellant : Rakesh Kumar

Respondent : State

Advocate for Def. : S.K. Kapoor, Adv.

Advocate for Pet/Ap. : Inspector O.P. Arora (Vigilance) in CRLA 68/200; Arvind Singh, Adv. in CRLA 68/2002,; K.B. Andley, Sr. A

Disposition : Appeal allowed

Judgement :

O.P. Dwivedi, J.

CRLA 68-91-103/2002

1. These appeals are directed against the judgment of conviction dated 14.1.2002 whereby appellant Rakesh Kumar was found guilty of offence u/s 420/ 468/ 471/ 363/ 366/506/384/120B IPC and the remaining two accused Chander Shekhar and Sri Chand were held guilty u/s 420/468/471/120B IPC and the order on sentence dated 16.2.2002 whereby appellant Rakesh was sentenced to undergo RI for seven years u/s 366 IPC and fine of Rs. 10,000/- in default RI for two years. He was further sentenced to undergo RI for a period of three years each for offences u/s 420/468/471/363/384 IPC and fine of Rs. 3,000/- each. Convict Rakesh was also sentenced to undergo RI for six months each for offences under sections 120B and 506 IPC. Remaining two appellants Sri Chand and Chander Sekhar were sentenced to undergo RI for three years for each of offences u/s 420/468/471 IPC and to pay a fine in the sum of Rs.5,000/- each for these offences in default RI for one year each. Convicts are also sentenced to undergo RI for six months u/s 120B IPC.

2. Briefly narrated facts leading to these appeals are that on 15.7.92 Smt. Omvati, the mother of prosecutrix Poonam filed a typed application dated 9.7.92 before the SDM, Shahdara, praying for cancellation of the order dated 22.4.92 for issuing a birth certificate in respect of her daughter Poonam Choudhary. In the application Omvati alleged that her daughter's date of birth is 1.3.75 but appellant Rakesh induced Poonam Choudhary for marriage and for this purpose to show her to be major, some lady impersonated as Omvati and obtained the birth certificate dated 22.4.92 on the basis of the application dated 22.4.92. In the application it was further alleged that Rakesh aforesaid has committed a serious offence. Besides Patwari Chandra Shekhar who is appellant herein in Appeal No. 103/2002 neither came to the spot to verify the date of birth nor recorded her statement. On this application of Omvati, SDM passed an order dated 10.08.92 whereby earlier order dated 22.4.92 and the birth certificate dated 22..92 was cancelled and the intimation was sent to the SHO for necessary action in the matter. Thereupon, the police registered a case u/s 419/ 468/ 471/ 506 IPC and filed challan in the Court of Metropolitan Magistrate, Shahdara against Rakesh Kumar, Sr Chand (Typist) and one Dr. P.D. Gupta who had given a certificate regarding age of Poonam was placed in column No. 2. While considering the question of charge, learned Metropolitan Magistrate felt that case has not been properly investigated.

therefore, vide order dated 20.4.95, learned Metropolitan Magistrate directed DCP (Crime) to get the case thoroughly investigated through some officer not below the rank of Inspector. During further investigation the police recorded the statement of prosecutrix Poonam and other witnesses. In her statement u/s 164 Cr.P.C, Kumari Poonam stated that on 18.6.92 at about two 2 p.m when she was going towards her uncle's house, appellant Rakesh met her near nallah and on the point of pistol under the threat that if she did not obey her brothers will be killed, took her to temple where he solemnised marriage with her and also got himself photographed with her. During investigation police seized various documents namely original application/affidavit dated 22.4.92 purporting to have been submitted by Omvati for issuance of birth certificate, the specimen signatures and thumb impression of various suspects. Experts reports received from CFSL and Finger Print Bureau indicated that thumb impression on the application/affidavit dated 22.4.92 tally with those of appellant Sri Chand who is a private typist and said affidavit was attested by one Rajender Singh, Advocate, Oath Commissioner. It was further revealed during the investigation that appellant Chandra Shekhar who was working as Patwari in the office of SDM was asked to verify the date of birth of Poonam. He submitted a report dated 22.4.92 to the effect that date of birth of Poonam is 1.3.74 and this report was made on the basis of statement of two fictitious persons namely Sri Chand, S/o Radha Kishan and Charan Singh S/o Girdhari. After completing investigation, the police again submitted a challan u/s 420/468/371/366/364A/506 IPC against appellants Rakesh Kumar, Sri Chand, Chandra Shekhar and one Rajender Singh, Advocate who had attested the affidavit dated 22.4.92. After complying with the necessary formalities, the case was committed to the Court of Sessions. On 22.3.98 learned ASJ framed charges u/s 120B IPC, 420 r/w 120B IPC, 468 r/w 120B IPC 471 r/w 120B and u/s 363/366/506/384 IPC against appellant Rakesh Kumar. Appellants Chandra Shekhar and Sri Chand were separately charged u/s 120B IPC, 420 r/w 120B IPC 468 r/w 120B IPC, 471 r/w 120B IPC. Rajender Singh, Advocate/Oath Commissioner was also charged u/s 120B IPC, 420 r/w 120B IPC, 468 r/w 120B IPC and 471 r/w 120B IPC. In proof of its case the prosecution examined Vijay Kumar PW-1; Omvati PW-2; R.K. Mishra, SDM PW-3; S.P. Singh, LDC PW-4; Poonam Choudhary PW-5; R.N. Shah PW-6; Charan Singh PW-7; ASI Karan Singh, PW-8; Ajay Kumar (Sub-

Registrar) PW-9; Inspector Shanti Devi PW-10; Inspector Ved Prabhakar PW-11; Ravinder Kumar PW-12; HC Balbir Singh PW-13; Manoj Sharma PW-14; Sri Chand Jain PW-15; SI Jag Pal Singh PW-16; SI Mohan Rm PW-17; Inspector O.P. Arora PW-18 and Ms. Deepa Verma PW-19.

3. In their statements u/s 313 Cr.P.C appellants/accused persons abjured their guilt. After considering the material on record, learned ASJ came to the conclusion that appellant Rakesh Kumar had kidnapped Poonam and performed marriage with her under threat by using force and also tried to extort money from her brothers. Accordingly, learned ASJ held that all three accused persons had entered into a conspiracy and in execution thereof, appellant Rakesh committed offences u/s 420/ 468/ 471/366/ 506/ 384/120B IPC by forging documents with a view to obtain birth certificate of Poonam indicating her date of birth as 1.3.74 although her actual date of birth is 1.3.75. Appellant Rakesh Kumar was accordingly convicted u/s 420/468/471/366/384/506/120B IPC. Remaining two convicts namely Sri Chand and Chander Shekhar were convicted u/s 420/468/471/120B IPC. Rajender Singh, Advocate, was acquitted because the original affidavit dated 22.4.92 which was attested by him could not be traced. Appellants were sentenced to different terms of imprisonment as detailed earlier. Feeling aggrieved the appellants have preferred these appeals.

4. I have heard learned counsel for the appellants and learned counsel for the State and perused the record.

5. The testimony of Poonam assume prime importance in the case because as per prosecution case and also according to the judgment of learned ASJ appellant Rakesh kidnapped her on 18.6.92 under the threat of killing her brothers and took her to a temple at Mandir Marg and solemnized marriage with her, got himself photographed with her, tried to extort money from her brothers and with a view to show that she is major, he obtained a false birth certificate on 22.4.92 by moving an application/ affidavit purporting to have been signed by Omvati and in conspiracy with other appellants managed to get the said birth certificate dated 22.4.1992 which was later on cancelled by the SDM vide order dated 10.8.92.

6. At the very outset it may be pointed out that Poonam, PW-5, never lodged a report with the police about the alleged incident of kidnapping dated 18.6.92 and forcible marriage or the attempted extortion by appellant Rakesh. Even her mother Omvati, PW-2, or her brother Vijay Kumar, PW-1, never lodged any report with the police that Poonam had been kidnapped. It is only after the order dated 20.4.95 passed by learned Metropolitan Magistrate for further investigation that the police recorded her statement when these facts came to notice. The very fact that Poonam or his brother or mother never lodged report with the police about Poonam being kidnapped or married forcibly deals a serious blow to the prosecution case. No self respecting girl, her parent or brothers would keep mum if such an incident had happened with them. Their silence in the matter would suggest that either no such incident at all occurred or she was a consenting party thereto. This inference is further reinforced from her testimony in Court. Poonam, PW-5, stated that on 18.6.92 she was studying in 9th standard in Arvachina Public School. At about 2 p.m she was going to her uncle's house in Balbir Nagar, Shahdara. On the way when she reached near nallah appellant Rakesh came on Motor cycle and asked her to sit on the rear seat. According to Poonam, PW-5, Rakesh had shown her a pistol and threatened to kill her brothers if she did not obey. Then he took her to a Mandir where a priest along with other people who were already present. Rakesh provided her bridal costume which she wore and then marriage was solemnized according to Hindu rites and photographs were taken. After that he took her to the house of some of his relation and made a call to her brothers demanding Rs. 2 lakhs. Her two elder brothers came over there and then she came back with her brothers. According to her the accused further continued to demand money on telephone and threatened to defame her by showing photographs. She further states that appellant Rakesh took her signatures on various documents at the time of marriage in the temple. In cross examination she admits that she knew accused Rakesh since birth as he was her neighbour but she denied having any affair with him. She also denied various love letters allegedly exchanged between her and Rakesh which were shown to her during cross examination. In cross examination she stated that she was alone at the nallah at the time when Rakesh came on Motor cycle and forced her to accompany him. A perusal of the site plan, Ex. PW-16A, shows that on both sides

of spot from where she was allegedly kidnapped there are densely populated residential areas. therefore, it is not possible to believe that in broad day light there was none near about the place of occurrence to help her. From her statement it is clear that she did not raise any hue and cry to attract the attention of people nearby either at the spot from where she was allegedly kidnapped or throughout the way right up to Mandir Marg. In cross examination she admits that on way to temple appellant Rakesh's motor cycle stopped on various red lights but she did not get down nor raised any alarm. Considering the distance between Baldev Nagar and Mandir Marg the accused must have taken about 30 to 45 minutes in covering the distance but she remained silent throughout. At the temple also as per statement of Pujari (Priest) Sri Chand, PW-15, who issued marriage certificate, Ex. PP-1, as office Secretary of Akhil Hindu Mahasabha Temple, Mandir Marg, New Delhi the marriage was solemnized at the request of the Poonam, PW-5 herself. Sri Chand further stated that as per rules and custom one hour time was given to Poonam separately to reconsider the matter and to ensure that she was not under pressure or coercion and the merits or demerits of entering into such relationship were also explained to her. She was specifically asked whether she had been kidnapped or was under threat but she categorically told that she has agreed for marriage of her own free will and adamantly stated that " if you would not perform the marriage I would do it at any cost from any where". The marriage was witnessed by two witnesses from boys' side and two witnesses from girls' side. The statement of Sri Chand, PW-15, show that the girl was ready and willing rather adamant and the marriage was solemnized at her insistence on that very day. She had ample opportunity while on the way from Baldev Nagar to temple and then in the temple itself to tell people that she has been kidnapped under threat and pressure but she never availed any such opportunity. Thus from the statement of Sri Chand, PW-15 and from the conduct of Poonam, PW-5, it can be safely inferred that Poonam was a consenting party. In the case of Shyam and another Vs . State of Maharashtra- : 1995 CriLJ3974 , in similar circumstances, the Supreme Court observed as under:-

In her statement in Court, the prosecutrix has put blame on the appellants. She has deposed that she was threatened right from the beginning when being kidnapped and she was kept under threat till the police ultimately recovered her.

Normally, her statement in that regard would be difficult to dislodge, but having regard to her conduct, as also the manner of the so-called "taking", it does not seem that the prosecutrix was truthful in that regard. In the first place, it is too much of a coincidence that the prosecutrix on her visit to a common tap, catering to many, would be found alone, or that her whereabouts would be under check by both appellants/accused and that they would emerge at the scene abruptly to commit the offence of kidnapping by "the king" her out of the lawful guardianship of her mother. Secondly, it is difficult to believe that to the strata of society to which the parties belong, they would have gone unnoticed while proceeding to the house of that other. The prosecutrix cannot be said to have been tied to the bicycle as if a load while sitting on the carrier thereof. She could have easily jumped off. She was a fully grown up girl may be one who had yet not touched 18 years of age, but still she was in the age of discretion, sensible and aware of the intention of the accused-Shyam, that he was taking her away for a purpose. It was not unknown to her with whom she was going in view of his earlier proposal. It was expected of her then to jump down from the bicycle, or put up a struggle and, in any case, raise an alarm to protect herself. No such steps were taken by her. It seems she was a willing party to go with Shyam the appellant on her own and in that sense there was no "taking" out of the guardianship of her mother. The culpability of neither Shyam, A-1 nor that of Suresh, A-2, in these circumstances, appears to us established. The charge against the appellants/accused under Section 366 IPC would thus fail. Accordingly, the appellants deserve acquittal. The appeal in, therefore, allowed acquitting the appellants.

7. The facts in the present case are similar to the case cited above. Continued silence of Poonam during her alleged taking away by appellant Rakesh to temple at Mandir Marg and during her stay at the temple for about two hours is clearly indicative of her consent and willful participation. Not only that the matter was not brought to the notice of the police by herself, her brothers and her mother. Under the circumstances, the obvious conclusion would be that either no such incident occurred or that she as a willing party to it.

8. This being the position, the question of her age assumes great importance because if she was below 18 years of age her taking away by appellant Rakesh

would amount to kidnapping within the meaning of section 361 IPC even if she was a consenting party. Her mother Omvati has deposed that Poonam was born on 1.3.75. In cross examination she stated that she has other three children but she could not give their dates of birth. It appears that she did not get the birth of her children registered in municipal record. therefore, her statement regarding date of birth of Poonam cannot be taken on its face value particularly when she does not remember the dates of birth of other children. The only other piece of evidence in proof of date of birth of Poonam relied upon by the prosecution is the transfer certificate Ex. PW-14-/A issued by the Principal of Shishu Ghyan Vidhalaya wherein her date of birth is recorded as 1.3.75. This certificate does not indicate who got her admitted initially and on what basis he date of birth was recorded as 1.3.75. No birth certificate has been produced on record. Even Omvati, PW-2, does not say anything in this regard. In absence of birth certificate and other reliable material regarding the date of birth, it cannot be aid with certainty that the date of birth of Poonam 1.3.75 as given in the school certificate is her correct date of birth. It is a matter of common knowledge that at the time of admission in the schools the parents generally tend to get the age of their ward recorded on the lower side so that they do not become over aged while searching job and they remain in service for longer period. Counting from 1.3.75 Poonam would have been 17 years + three months on the date of incident i.e. 18.6.92 which means that she was short of 8 or 9 months in attaining the age of majority i.e 18 years. When the margin of error is so narrow and reliable evidence in proof of date of birth is not forth coming, the accused will be entitled to benefit of doubt on this score and thereforee the accused could not have been held guilty of offence u/s 363/366/506 IPC because as already observed, her conduct shows that she went with the appellant, got married and photographed with him of her own free will.

9. The evidence regarding the extortion of money from the brothers of Poonam is also unworthy of credit. It has come in the statements of Vijay Kumar, PW-1, Omvati, PW-2, mother of Poonam and Poonam herself that when her brothers came to take her from the house of relation of the appellant Rakesh where she was kept for the day she came back with her brothers and at that time no quarrel took place. Had the appellant abducted Poonam for ransom he would not have

allowed her whereabouts to be known to her brothers and then allowed her to move out so easily with her brothers. Rather it is the appellant himself who approached the Court of Magistrate seeking search warrant under Cr.P.C alleging that his wife has been taken away by her brothers. On search warrant being issued Poonam was produced before the Magistrate where her statement was recorded on 21.7.92. It is in that statement that Poonam for the first time disclosed the fact that the accused had demanded Rs.2 lakh on phone after getting her photographed with him. Thus according to the Poonam the demand was made on the date of marriage i.e 18.6.92 but her brother Vijay Kumar, PW-1 states in cross examination that the demand of Rs.2 lakh was made after his appearance before SDM court. However, he could not tell exact date of the alleged demand. As already stated neither Poonam nor her brothers and mother ever made any complaint of their own to the Police regarding the alleged extortion bid made by the appellant Rakesh. According to Vijay Kumar, P-1, the demand for money was contained in the letter mark A-2 which he handed over to police. Prosecution has however made no effort to prove the authorship of this letter marked as A-2 by getting it compared with the sample hand writing of the appellate Rakesh. Even this letter does not contain demand for money. The evidence regarding alleged extortion bid is far from satisfactory and appears to be an after thought to rope in appellant when he obtained search warrant from the Court. The charge u/s 84 IPC thus remains unproved.

10. Commenting on the evidence regarding charge of conspiracy, cheating, forgery etc in respect of the birth certificate dated 22.4.92 obtained from the SDM, learned counsel for the appellant Rakesh contended that not a single witness has deposed that accused Rakesh had filed this application or that he produced any lady to impersonate as Omvati nor his hand writing, signatures or thumb impression appear on the application dated 22.4.92 purporting to have been filed by Omvati or on any other proceeding reputed to the verification of the date of birth. therefore, conviction of Rakesh u/s 120B IPC, 420, 468, 471, 120B IPC is totally uncalled for.

11. As regard appellant Chandra Shekhar, submission of the learned counsel for the appellant was that he was working as Patwari in the office of SDM and on

being asked by a senior colleague R.N. Shah, he submitted the report on the basis of the statements of two witnesses. There is no evidence whatsoever to suggest that he was party to any conspiracy or he did it for some monetary benefit or any other motive. therefore, even though, he may have been negligent in discharge of his duty as Patwari, he cannot be held guilty of being party to any conspiracy to procure false birth certificate by cheating, forgery etc. Moreover, when co-accused Rajinder Singh, Advocate, has been acquitted by learned Additional Sessions Judge for want of original affidavit which he allegedly attested, appellant Chandra Shekhar and Sri Chand could not have been convicted when the original verification report which was based on the statements of two witnesses namely Sri Chand and Charan Singh and the affidavit dated 22.4.92 were missing. Learned Additional Sessions Judge could not have adopted dual standard while assessing the probative value of the material against appellants Chandra Shekhar and Sri Chand on the one hand and Rajinder Singh, Advocate on the other hand. Regarding third appellant Sri Chand, a private typist, the plea taken by the learned counsel for the appellant is that although the expert from Finger Print Bureau has found the thumb impression/finger impression appearing on the application and affidavit date 22.4.92 to be identical, when compared with the specimen thumb impression of Sri Chand, only one impression i.e mark Q-3 appearing on the affidavit has been found to tally with the right middle finger impression of Sri Chand. No definite opinion has been given about the remaining two impressions namely Q-1 appearing on the application and Q-2 appearing on the affidavit. Moreover, the affidavit dated 22.4.92 has been lost and photo copy, Ex. PW-4/PA1 has not been proved to be the copy of the original affidavit dated 22.4.92 and therefore (Questioned Mark Q-3) at PW-4/PA1 cannot be used to connect Sri Chand with alleged offence. When examined in the light of material on record, I find these submissions of learned counsel for the appellants do carry weight.

12. As regards role of accused/appellant Rakesh in the conspiracy to obtain forged birth certificate of Poonam by cheating SDM and forging documents is concerned, I find that not a single prosecution witness has deposed that accused Rakesh had taken Poonam to SDM's court on 22.4.92. Even Poonam has not stated so. Other witnessed examined from SDM's office namely R.K. Mishra, SDM, PW-3, S.P. Singh, LDC, PW-4; or R.N. Shah, Bailiff, PW-6 have not said a word in this regard.

Not a single prosecution witnesses stated that appellant Rakesh had brought some lady who impersonated as Omvati on 22.4.92 or that he had got prepared the application and affidavit dated 22.4.92. Even the specimen hand writing/signatures, thumb impression of the Rakesh was not obtained by the prosecution for comparison. Thus there is nothing on record to show that any application, affidavit or any other document prepared for obtaining the birth certificate dated 22.4.92 was written/signed or filed by appellant Rakesh. During investigation the i.e could not ascertain as to who was lady who appeared before the SDM on 22.4.92 and impersonated for Omvati. Learned Additional Sessions Judge seems to have been completely swayed by an unwarranted inference that Poonam was kidnapped by Rakesh by force and under threat and thereforee it is he who must have procured the birth certificate dated 22.4.92. As already observed evidence on record indicates the girl was a willing participant in solemnization of marriage in the temple. thereforee, the submission made by the learned counsel for the appellant that the possibility of the girl having procured the birth certificate dated 22.4.92 through some of his relation to show that she is major so that she could marry the appellant, cannot be said o be without substance. Sub Registrar Ajay Kumar, PW-9, deposed in cross examination that as per entries made in column No. 26 in the birth register, the SDM's order dated 22.4.92 was brought by one Surinder, brother of Poonam. Surinder aforesaid also signed the said entries in column No. 29 Ex.PW9/B Prosecution has not examined Surinder to rebut this nor his specimen signatures obtained for comparison with those appearing in the birth register to ascertain whether the said entries are signed by Poonam's brother Surinder or by somebody else. If the birth certificate was obtained by Surinder, brother of Poonam as the entry in the birth register would suggest, it would indicate that it was Poonam who wanted to get a certificate showing her to be more than 18 of age so that she could marry the man of her choice. The finding of the learned trial Judge that appellant Rakesh was party to the conspiracy to commit offence of cheating, forgery for obtaining birth certificate of the Poonam is totally unfounded on evidence. thereforee, the charge of conspiracy cheating or forgery is clearly not made out against Rakesh. As regards charged u/s 471 for using the false certificate dated 22.4.1992 as genuine for the purpose of marriage of Poonam at the temple of 18.6.92, the statement of

Sri Chand, PW- 15, office Secretary of Akhil Bhartiya Mahasabha clearly disproves it. Sri Chand, PW-15 categorically stated that the marriage was solemnized on the request of Poonam who was given an hours time to rethink over the matter. Rather according to Sri Chand, PW-15, it is Poonam who insisted that marriage be solemnized otherwise she would get married some how somewhere else. He nowhere stated that birth certificate dated 22.4.92 was produced by Rakesh before him.

13. Thus charge of using forged documents as genuine remains unproved. At least the appellant would deserve benefit of doubt in this regard.

14. Conviction of appellant Sri Chand is based mainly on the report of the Finger Print Bureau, PW-1/A, according to which the thumb impression appearing on the application dated 22.4.92, Ex. PW2/B and on the affidavit of the even date copy PW-4/PA1 are identical and that the questioned thumb mark Q-3 appearing on the affidavit (copy PW-4/PA1) is identical with right middle finger impression of Sri Chand. During examination of Sri Chand, u/s 313 Cr.P.C, it was never put to him that application, PW-2/B was thumb marked by him. Obviously, therefore, the evidence to the effect that application, PW-2/B, bears the thumb impression Q-1 of appellant Sri Chand could not have been taken into consideration at all for convicting the accused. The perusal of the impugned judgment shows that while dealing with the case of appellant Sri Chand learned Additional Sessions Judge in para 32 to 34 has returned the findings of guilt against the appellant mainly because according to him " In view of the above report, it stands proved that this application was moved before the SDM by Sri Chand in collusion with Rakesh Kumar. It stands proved beyond reasonable doubt that Sri Chand and no body else had moved the application Ex. PW 2/B. This is complete chain of direct as well as circumstantial evidence. All these facts boil down to the conclusion that accused Sri Chand is guilty of the offence punishable under sections 120B IPC, 420 r.w. 120B IPC, 468 r.w. 120B IPC AND 471 R.W. 120B IPC." As already stated nobody has stated that application Ex. PW-2/B was moved in the SDM's Court for obtaining birth certificate of Poonam by Sri Chand nor this part of the evidence was put to the appellant Sri Chand yet the learned Additional Sessions Judge based conviction of the appellant solely on this piece of evidence. The

original affidavit dated 22.4.92 and the hand writing expert's report got misplaced yet the case was proceeded with without fixing the responsibility. According to the report of Finger Print Bureau, Ex PW 12/A, the finger print marked as Q-3 appearing on the affidavit dated 22.4.92(copy PW-4/PA1) tallies with the right hand middle finger impression of Sri Chand. The report is rather confused one. On the one hand it says that three finger prints Q-1 appearing on the application dated 22.4.92 and Q-2,3 on the affidavit dated 22.4.92 are identical inter se. On the other hand it says that only mark Q-3 i.e the finger print/thumb impression appearing on the affidavit dated 22.4.92 tallies with the middle right finger impression of Sri Chand. The expert has not given any definite opinion that Q-1 the thumb impression appearing on the application dated 22.4.92 is identical with the specimen thumb/finger print S2A of Sri Chand. To that extent the report of the Finger Print Bureau is not free from doubt. Moreover not a single prosecution witness has stated that PW-4/PA1 is the photo copy of the original affidavit dated 22.4.92 which was filed along with the application dated 22.4.92 before SDM for obtaining birth certificate of Poonam. Even SDM or i.e does not say so. On the contrary S.P.Singh,PW-4 who was working as LDC in the office of SDM in April 1992 has clearly denied the suggestion that Ex. PW-4/PA 1 is the photocopy of affidavit dated 22.4.92 which had been filed along with the application for birth certificate. When co-accused Rajender Singh, Advocate, was acquitted for want of original affidavit dated 22.4.92 the conviction of appellant Sri Chand could not have been based on the thumb impression/finger print appearing on the photo copy of the affidavit Ex.PW-4/PA1. A perusal of the impugned judgment shows that while convicting appellant Sri Chand, learned Additional Sessions Judge has based conviction mainly on the basis of the thumb impression appearing on the application, PW-2/B dated 22.4.92 and not on the basis of thumb impression appearing on the affidavit photocopy whereof is PW-4/PA1. As already stated the report of the expert from Finger Print Bureau is not categorical about thumb impression/finger impression Q-1 appearing on the application, PW-2/B as being that of appellant and thereforee appellant would deserve benefit of doubt on this score. Besides, this part of evidence namely that the application PW-2B was filed before the SDM on 22.4.92 under thumb impression of the appellant was never put to him in his examination u/s 313 Cr.P.C . thereforee, it could not have been

taken into consideration.

15. The case against the third appellant Chandra Shekhar is no better. He admits in his statement u/s 313 Cr.P.C that on 22.4.92 the application, PW-2B, was marked to him for verification of the date of birth of Poonam. He also admits that on the basis of the statement of two witnesses namely Sri Chand, S/o Radha Krishana and Charan Singh, S/o Girdhari Lal which were recorded in the office, he made the report to the effect that the date of birth of Poonam was 1.3.74. Appellant is sought to be roped in the alleged conspiracy to obtain bogus birth certificate of Poonam only on the basis of the report submitted by him without any proper verification. Taking at its best, the evidence against him at the most indicates that the appellant has been negligent in discharge of his duty in as much as he submitted the verification report without actually verifying the facts on the spot. This by itself cannot lead to the conclusion that the appellant had any means read to commit the offence of cheating or forgery.

16. It may be mentioned here that although the name of appellant Sri Chand figures in the disclosure statement of appellant Rakesh, the name of appellant Chandra Shekhar does not find mention as a conspirator. SDM R.K. Mishra, PW-3, admitted in cross examination that there are no guidelines for verification of birth certificate. He also did not lodge any report against Patwari Chandra Shekhar, the appellant. In the present case application dated 22.4.92 for birth certificate of Poonam was accompanied by photo copy of ration card and an affidavit as has been stated by S.P. Singh, PW-4 dealing clerk in the office of SDM. According to PW-4 the application PW-2B was marked to bailiff R.N. Jha for verification. This R.N. Jha, PW-6, however, states that inquiry report was prepared by appellant Chandra Shekhar and it was attested by two witnesses. It is quit possible that the appellant Chandra Shekhar submitted his report innocently on the basis of the statement of two witnesses produced by the applicant without Realizing the need for spot verification. As stated by other witnesses, the application was accompanied by photo copy of ration card and an affidavit. thereforee, it is quite possible that the appellant did not think it necessary to make any further verifacation. According to the Sub- Registrar, Ajay Kumar, PW-9, orders of the SDM regarding birth certificate was brought from the SDM office by Surinder,

brother of Poonam. therefore, in the circumstances, the contention of the learned counsel for the appellant that it is quite possible that Poonam herself had gone to the office of SDM along with her brother and two witnesses and believing her version for change of date, the appellant simply gave the verification report presuming everything to be in order can not be said to be devoid of merit. Under the circumstances, it cannot be said with certainty that appellant Chandra Shekhar had any guilty intention in submitting the verification report. Prosecution has also examined Charan Singh, PW-7 who has denied having made any statement regarding the date of birth of the Poonam but this bare denial of Charan Singh will per se be not sufficient to conclude that Charan Singh, S/o Girdhari Lal and Sri Chand, S/o Radha Krishna on whose statements appellant gave verification report, were fictitious persons. There is no definite evidence on the basis of which it could be said that Charan Singh, S/o Girdhari Lal, and Sri Chand, S/o Radha Krishna were fictitious persons. None of the PW s have said so. Further the original statements of Sri Chand and Charan Singh recorded by the appellant and his original verification report got misplaced during the trial. What has been put to the appellant u/s 313 Cr.P.C is Ex.PW-18/A which is the specimen writing of the appellant got written by the investigation officer for the purpose of comparison with the disputed one. The original verification report or its photo copy marked Q-2/1 has not been put to him in his examination u/s 313 Cr.P.C.

17. When the originals are missing and the alleged photo copies have not been proved to be so nor put to the accused persons in their examination u/s 313 Cr.P.C, basing any conviction on expert report which is only an opinion evidence, will be legally infirm.

18. Moreover, the alleged specimen signatures/handwriting/thumb /finger print impression of appellant Chandra Shekhar and Sri Chand were obtained during investigation by the i.e without prior permission from the court. Facts in the case of Sukhvinder Singh and others Vs . State of Punjab- : [1994]3SCR1061 , were that specimen handwriting of the appellant were taken under the direction of the Executive Magistrate during the investigation when no inquiry or trial was pending in his court. Accused person did to raise any objection thereto yet Hon'ble Supreme Court observed that such specimen writing of the accused persons could

not be made use of during the trial and the report of the handwriting expert is thus rendered of no consequence at all and could not be used against the accused to connect him with crime. In the present case the specimen signatures/writing/thumb impressions were obtained during the investigation without any permission from the Court. therefore, the case in hand stands on a weaker footing than that of Sukhvinder Singh (Supra). therefore, in view of the law laid down by the Supreme Court in the case of Sukhvinder Singh (supra) it follows that the specimen writing/thumb impression/finger print impression of the appellant Sri Chand Chandra Shekhar could not be made use of during the trial. The report of the hand writing expert/Finger Print Bureau is thus rendered of no consequence at all and cannot be used to connect the appellants with crime.

19. Learned counsel for the State contended with reference to 4 (2003) SLT 946- The Government of NCT of Delhi v. Jaspal Singh, that direct evidence of conspiracy cannot be gathered because conspiracy by its very nature is hatched in secrecy. But if overt act is done by one accused with the motive of doing some illegal act for some consideration, the conspiracy can be inferred. There is no dispute with this proposition of law. As already noticed in the present case, there is no evidence whatsoever to show that appellant Rakesh had moved application/affidavit dated 22.4.92 or he produced any lady impersonating as Omvati or he had fabricated any document. On the contrary the statement of the Sub-Registrar, PW-9, indicates that SDM's order dated 22.4.2 was brought to the Sub-Registrar by Poonam's brother Surinder who also signed the relevant entry in the register. Original affidavit dated 22.4.92 and the verification report allegedly prepared by Chandra Shekhar on the basis of statement of two attesting witnesses namely Sri Chand and Chandra Shekhar were lost during the trial and the documents were not reconstructed. Alleged photo copies have not been proved to have been duly prepared from the originals nor the photo copies of the questioned writing/thumb impression/finger print have been put to the appellants in their statements u/s 313 Cr.P.C. Besides the same could not have been made use at the trial in view of law laid down by Supreme Court in the Sukhvinder Singh (Supra).

20. In view of my discussion above, it follows that prosecution has failed to bring home the charges against the appellants beyond reasonable doubt. In the result, these appeals are allowed and the appellants are acquitted of all charges framed against them.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com