

Shiv Kumar Gupta Vs. State

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Court : Delhi

Decided On : Jun-01-2006

Reported in : 131(2006)DLT499; 2006(90)DRJ35

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 474

Appeal No. : Crl Rev. P. 173/2006

Appellant : Shiv Kumar Gupta

Respondent : State

Advocate for Def. : V.K. Malik, Adv.

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv.,; M.L. Yadav and; K.K. Singh, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition is directed against the order passed by the learned Additional Sessions Judge on 25.2.2006 whereby the petitioner's appeal against the order dated 30.3.2005 passed by the learned Metropolitan Magistrate convicting the petitioner under Section 474 IPC and sentencing him to three years rigorous imprisonment with a fine of Rs.5000/-, was dismissed. The facts leading

to the filing of the appeal before the learned Sessions Judge as set out in the impugned judgment are as under :-

3. The brief facts giving rise to the present appeal are that on 11.10.1993 SI Dharampal along with Yashpal, Ct. Janender Singh and Ct. Virender Singh were on patrolling duty and at about 5.10 p.m. when they reached at DMC picket, Rani Jhansi Road, SI Dharam Pal received a secret information that one Ashok and his accomplice who are indulged in preparing fake driving licenses and fake documents i.e., RC and NOC will come at DTC Bus Stand, Tikona Park, Bara Hindu Rao to hand over fake driving license and they are having fake rubber stamps and documents of Rajasthan and Delhi Transport Authority. On this information, a raiding party was prepared and nakabandi was done at DTC bus stand. At about 6.10 p.m. two persons came at the bus stop and on the pointing out of the secret informer, accused persons were apprehended whose names were revealed as Ashok Kumar and Sushil Kumar. During the search of accused persons, various DLS, rubber stamps, stamp pad, blank RC book, driving license form etc were recovered from the accused Ashok and Sushil Kumar. At the instance of accused Ashok, accused Shiv Kumar Gupta and Chajju Ram were arrested and from their possession fake DLS rubber stamps of different authority were recovered. After completion of investigation, charge sheet for the offences u/s 420/468/474/511/411/34 IPC was filed against the accused persons. After hearing the arguments of Ld counsel for the appellants as well as LD. APP for the State, charge U/S 473/465/420 IPC was framed against the accused/appellants Chajju Ram to which accused pleaded not guilty and claimed trial. A prima facie charge U/s 474 IPC was framed against the appellant/accused Shiv Kumar to which he pleaded not guilty and claimed trial. A prima facie charge U/S 420/465/473 IPC was framed against accused Ashok Kumar to which he pleaded not guilty and claimed trial. In order to prove its case, prosecution examined 14 witnesses. Thereafter, statement of accused persons u/s 281 Cr.P.C. were recorded wherein they denied the allegations leveled against them and stated that they have been falsely implicated in the present case. Accused persons did not lead any evidence in their defense. After hearing arguments of both the parties, Ld Trial Court convicted the appellant Chajju Ram U/s 466/473/474 IPC and sentenced them to undergo RI for a period of three years and fine of Rs.5000/- for

offence u/s 468 IPC and further sentenced them to undergo RI for a period of three years U/s 473/474 IPC. Appellant Shiv Kumar was convicted U/S 474 IPC and was sentenced to undergo RI for a period of three years and fine of Rs.5000/-. Accused Ashok Kumar was convicted U/s 466/473/474 IPC and was sentenced to undergo RI for a period of three years and fine of Rs.5000/- for offence U/S 466 IPC. He was further sentenced to undergo RI for a period of three years and fine of Rs.5000/- for the offence U/S 473/474 IPC. Feeling aggrieved by the said judgment and order on the point of sentence, the present appeals have been filed by the appellant.

2. The learned Counsel for the petitioner had submitted before the learned Additional Sessions Judge that the conviction of the petitioner was not sustainable inasmuch as the prosecution had not been able to prove its case beyond reasonable doubt. Essentially, three points were urged before the Additional Sessions Judge and the same points are being agitated herein. It was urged on behalf of the petitioner that the courts had overlooked the fact that PW1, PW2 and PW4 were declared hostile and did not support the prosecution case on material points. Secondly, it was urged that the trial court as well as the appellate court had completely overlooked two vital documents being letters X-1 and X-2 which were written by the Station House Officer of Police Station Bara Hindu Rao and the Investigating Officer to the department where the petitioner was employed indicating that the petitioner was not involved in any act of forgery and that the conviction of the petitioner would be illegal under Section 474 IPC. Thirdly, it was submitted that the trial court overlooked the fact that no public witnesses were joined in the investigation.

3. As regards PW1, PW2 and PW4 turning hostile, the appellate court was of the view that it is a well-settled principle of law that merely because a witness has been declared hostile, his entire evidence is not to be discarded on that ground alone. As regards the overlooking of the vital documents being letters X-1 and X-2, the appellate court observed that these letters had no evidentiary value and had been appropriately dealt with by the trial court in paragraph 16 of the judgment. This view of the appellate court as well as the trial court is based on the circumstance that these letters written by the IO and SHO subsequent to the filing

of the charge sheet against the petitioner. The appellate court also observed that the positive case against the petitioner has been established as he was found in possession of one driving license Exhibit-P-103 bearing number 2194/93 in the name of one Mr Kanhiya Lal. The finding recorded in the impugned judgment is that it has been proved on record by PW13, who had come from Regional Transport Office, Jaipur, that license No. 2194, which was recovered from the possession of the accused petitioner, was issued in the name of Prem Narayan and was not in the name of Kanhiya Lal. In this regard Mr Andley, the learned senior counsel appearing on behalf of the petitioner, drew my attention to paragraph 17 of the judgment of the trial court wherein it is observed as under:

17. As regards the driving license No. 2194 in the name of Prem Narain in his cross examination PW13 was asked that there was overwriting but there was no application submitted for the purpose of changing the name. However, this does not in any manner bring down the fact that the driving license was in fact issued in the name of Prem Narain and the accused was found in possession of this driving license which was found to be a fake one. The accused has not explained as how this driving license has come into his possession, therefore, the prosecution has succeeded in proving that accused Shiv Kumar was found in possession of a fake driving license.

4. Mr Andley, submitted that apart from the finding in respect of Exhibit P-103 recorded by the trial court and the appellate court, there is no other finding with regard to other documents recovered from the petitioner, namely, Exhibits P-104 to P-110. He submitted that the petitioner had been convicted under Section 474 IPC for possession of the said driving license Exhibit- P103. As regards the other documents recovered from the possession of the petitioner, there is no finding that the same were forged. He submitted that before a person could be convicted under Section 474 IPC, it must, first of all, be established that the document which is recovered from the accused is forged. Secondly, it must be established that the accused knew that the documents were forged. Thirdly, it must also be established that the accused, knowing that the documents were forged, intended the same, fraudulently or dishonestly, to be used as genuine. He submitted that in the first place the said Exhibit P-103 has not been established to be forged. He referred to

the cross examination of PW14. In cross examination, the said witness has stated that Mark X-1 depicts that the driving license which was recovered from the petitioner and which was found to be genuine. He submitted that this material aspect of the matter was completely ignored and was not given due weightage by the courts below. He also submitted that the prosecution has not been able to establish that Exhibit P-103 was a forged driving license.

5. Mr Malik, who appears on behalf of the State, submitted that the said Exhibit P-103 has been proved to be a forged and fabricated document. He referred to the deposition of PW13 who was an officer who had come from the Regional Transport Office, Jaipur and brought a photo copy of two pages of the Driving license Register. The relevant pages are Exhibited as Exhibit PW13/A. This indicates that a driving license was issued in the name of one Mr Prem Narain whose photograph also appeared on the second page. Comparing this photograph with the photograph appearing in Exhibit P-103, it is apparent that two persons are different.

6. An examination of Exhibit P-103 and Exhibit PW13/A would indicate that the driving license i.e., Exhibit P-103 bears a number 2194/93 and has been issued in the name of one Mr Kanhiya Lal. His photograph is also affixed on the driving license. He is clearly not the person who has been shown in Exhibit PW13/A. In paragraph 17 of the trial court judgment extracted above, it is indicated that there was some overwriting in Exhibit PW13/A, but there was no application submitted for the purpose of changing the name. In my view, this observation is misguided because the overwriting is not in the name but in the number of the driving license. Originally, the number of the driving license as per the Driving license Register Exhibit PW13/A was 2193. The numeral 3 has been over-written by the numeral 4. It could very well be that driving license No. 2193 pertains to Prem Narain who is an entirely different person. The overwriting is in the register and not in the driving license found in possession of the present petitioner. The rest of the register was not produced before the trial court. Only the two pages have been produced in court and have been exhibited as Exhibit PW13/A. thereforee, it cannot be said with certainty that Exhibit P-103 is a forged driving license. It is quite possible that a driving license was issued to Kanhiya Lal and a driving license was also issued

to Prem Narain. thereforee, the possibility of the driving license Exhibit P-103 being a genuine license cannot be ruled out. In these circumstances, it has not been held beyond reasonable doubt that Exhibit P-103 was a forged driving license. Coupled with this fact, is the statement in cross examination by PW14 that the driving licenses found in possession of the petitioner were genuine. Taking into consideration these aspects of the matter, I find that there is enough doubt so as to indicate that the petitioner may not have been in possession of a forged document, particularly Exhibit P-103. In such eventuality, the very first ingredient of Section 474 IPC of the requirement of the document being forged has not been made out. Unfortunately, the courts below did not consider this aspect of the matter which is very material and, thereforee, I feel that the petitioner is entitled to the benefit of doubt.

7. Accordingly, he is acquitted of the charge and the conviction and sentence meted out to him by the courts below is set aside. A copy of this order be sent to the Superintendent of Jail.

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