

State of Rajasthan Vs. Jeet Mal

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Court : Rajasthan

Decided On : Nov-11-1986

Reported in : 1987(2)WLN920

Judge : Shyam Sunder Byas and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 292 of 1976

Appellant : State of Rajasthan

Respondent : Jeet Mal

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. The State has come-up in appeal against the judgment of the learned Additional Sessions Judge (2), Jodhpur dated September 24, 1974, by which accused Jeetmal was acquitted of the offences under Section 467 and 471, IPC.

2. Briefly stated, the prosecution case is that accused Jeetmal was employed as a peon in the Workshop of the Public Works Department, Jodhpur. Anonymous complaint levelling various charges of embezzlement and forging certificate was received against him in the Office of the Crime Investigation Department (CBI), Rajasthan, Jaipur. A decision was taken to make a preliminary enquiry and Sub-

Inspector Karanraj (PW 5) was entrusted with this job. He made an inquiry and submitted report Ex. P 7 to the Additional Superintendent of Police. It was thereafter received at Police Station, Sardarpura, Jodhpur on October 12, 1971. The police registered a case under Sections 480, 468 & 471, IPC against the accused. It transpired during investigation that the accused submitted application forms Ex. P 2 & Ex. P 3 to the Principal, Industrial Training institution, Jodhpur. Along with these applications, he annexed Ex. P 1 the attested copy of his academic qualification Ex. P 1 shows that he had studied upto class VIII in Government Middle School, Mathaniya district Jodhpur. In application forms Ex. P 2 & Ex. P 3 (column No. 6) he showed his qualification as having passed VIII standard from the Government Middle School, Mathaniya. The attested copy Ex. P 1 is a forged document, so also the entries in column No. 6 of Ex. P 2 & Ex. P 3 are false. He had never studied in the Government Middle School, Mathaniya, nor passed VIII standard from there. The accused, thus, forged the attested copy of the certificate Ex. P 1 and used it as genuine' knowing it to be a false and forged document. The police after investigation, submitted a challan against the accused in the Court of Additional Munsif Magistrate (1) Jodhpur, who, in this turn, committed the case for trial to the Court of Sessions Judge, Jodhpur. The case came for trial before the learned Additional Sessions Judge (2), Jodhpur, who framed charges under Sections 467 & 471, IPC against the accused, to which he pleaded not guilty and claimed to be tried. The defence taken by the accused was that he did not submit the attested copy Ex. P 1 of the certificate along with application forms Ex. P 2 & Ex. P 3 to the Principal, 1TI, Jodhpur. He further denied that in column No. 6 of Ex. P 2 & Ex. P 3, the entries were made by him or were made at his instance. He further pleaded that on November 15, 1968 when Ex. P 2 & Ex. P 3 are said to have been submitted in the ITI Office, he was not at Jodhpur but was at some other place. In support of its case, the prosecution examined seven witnesses and filed some documents. In defence, the accused examined four witnesses. On the conclusion of trial, the learned Sessions Judge was of the opinion that the prosecution has miserably failed to establish the charges against the accused. He held that the deputed entries C to D in column No. 6 of application forms Ex. P 2 & Ex. P 3 were not in the handwriting of the accused, nor were they written at his instance or were in his knowledge. He further

held that the attested copy Ex. P 1 of the certificate was not submitted by the accused along with the application forms Ex. P 2 & Ex. P 3. Taking this view, he held the charges not proved and acquitted the accused. The grievance of the State is that the accused was wrongly acquitted of the offences he was charged with.

3. We have heard the learned Public Prosecutor Mr. L.S. Udawat and Mr. R.P. Vyas, learned Counsel for the accused-respondent. We have also gone through the case file carefully.

4. In challenging the acquittal, it was contended by the learned Public Prosecutor that admittedly Ex. P 1 is a forged document and there is no controversy about it. The accused submitted the application forms Ex. P 2 and Ex. P 3 in the ITI Office, Jodhpur to seek admission in the trade of Motor Mechanic. He could not seek the admission for the aforesaid course unless he had passed VIII standard. The necessity, therefore, arose for the accused to forge a document showing himself to have the requisite academic qualification. He, therefore, got Ex. P 1 attested on the basis of a false document. It was further argued that in the natural sequence of the events, it can be the accused alone who could have filed Ex. P 1 along with application forms Ex. P 2 & Ex. P 3. The learned Public Prosecutor invited our attention to the testimony of PW 3 Gangadhar, who was working as Assistant Engineer in the PWD, Jodhpur. It was he who had attested Ex. P 1 to be the true copy of the original. It was argued by the learned Public Prosecutor that PW 3 Gangadhar has no bias against the accused and there were no reasons to disbelieve his testimony. He had clearly stated that the accused had come with the original certificate and on the basis of the original certificate he had attested Ex. P 1 as the true copy of the original. It was, on the other hand, contended by Mr. Vyas that no reliance can be placed on the testimony of this witness PW 3 Gangadhar because in his earlier statement Ex. D 1, which was recorded during co.nmittal proceeding by the Magistrate, he clearly stated that only his clerk came in his office with a certificate and its copy Ex. P.1. He compared Ex. P 1 with the original and put his attestation endorsement. He did not state in Ex. D.1 that the accused had come with his clerk when he attested Ex. P 1 to be the true copy of the original, in view of this contradictory statement, the learned Sessions Judge was

justified in disregarding the testimony of PW 3 Gangadhar. It was submitted that in case the testimony of PW 3 Gangadhar is found unreliable, there is no other evidence to connect him with Ex. P 1. It was further argued by him that there is again no evidence from the prosecution side to show that Ex. P 1 was submitted by the accused along with his application forms Ex. P 2 and Ex. P 3 in the Office of the ITI, Jodhpur. We have taken the respective submissions into consideration.

5. The pertinent fact-in-issue for our deliberation is whether the accused used the forged document Ex. P 1? If he used it, it can certainly be inferred that he knew it to be a forged document.

6. In this connection, the sole testimony speaking against the accused is that of PW 3 Gangadhar. It is he who attested Ex. P 1 to be a true copy of the original. PW 3 Gangadhar no doubt, stated during trial that the clerk of his office and accused Jeetmal came to him in his room with Ex. P 1 and its original. He compared Ex. P 1 with the original and put his attestation on Ex. P 1. If his testimony is accepted as true, it furnishes a very valuable piece of evidence against the accused. Unfortunately, the testimony of PW 3 Gangadhar stands shattered and punctured on this vital point. He was examined as a prosecution witness in the committal proceeding conducted by the Magistrate. His statement is Ex. D 1. It was recorded on oath, in Ex. D 1 he stated:

esjs Dydz us esjs lkeus ,d 'k[l dk lfVZfQdsV is'k fd;k Fkk -----eSus vly
ns[kk Fkk A ;g threy dk Fkk A eSus vly ls compare fd;k Fkk A

Thus, in Ex. D 1, he did not state that the accused had accompanied his clerk who had come with Ex. P 1 and its original. This is an important contradiction and omission which cannot be lightly ignored from consideration. This commission and contradiction goes in the very root of the testimony of this witness Gangadhar (PW 3). When he was asked to explain the aforesaid contradiction and omission occurring in his statement Ex. D 1, he could not furnish any satisfactory explanation except that by one person in Ex D 1 he meant the accused Jeetmal. Unfortunately, against in Ex. D 1 he had not stated that there was any other person along with his clerk when the latter came in his office to have the attestation of Ex. P 1. The learned Judge was, therefore, justified in concluding

that accused Jeetmal did not accompany the clerk & never went to PW 3 Gangadhar when Gangadhar attested Ex. P 1 to be a true copy of the original. This finding of the learned Sessions Judge is not tainted and calls for no correction.

7. The best witness to give corroboration and to prove the charges against the accused was that clerk who went to PW 3 Gangadhar. It was he who had submitted Ex. P 1 and its original to PW 3 Gangadhar. That clerk has not been examined so much so that even his identity has not been disclosed. The withholding of such a material witness speaks volumes against the prosecution.

8. The next fact-in-issue is whether the accused submitted Ex. P 1 along with his application forms Ex. P 2 and Ex. P 3 in the Office of the I.T.I., Jodhpur. The only witness speaking on this aspect is PW 1 Mr. N.K. Kaushik, the Principal of the I.T.I., Jodhpur. He merely stated that Ex. P 2 and Ex. P 3 were received in the office along with the attested copy Ex. P 1. He did not state that it was the accused who had personally submitted Ex. P 1, Ex. P 2 and Ex. P 3 in his office or before him. No person of the office of the I.T.I., has been examined to prove that it was the accused who had submitted Ex. P 1, Ex. P 2 and Ex. P 3. It is in the knowledge of everybody that application forms are presented by some other persons on behalf of the candidates. The application forms are also received by post. Since there is no evidence to show that Ex. P 1, Ex. P 2 and Ex. P 3 were personally submitted by the accused in the office of the I.T.I., we are not in a position to precisely hold that it was the accused and none else who had submitted the above three documents Ex. P 1, Ex. P 2 and Ex. P 3 in the office of the I.T.I. Jodhpur. The question whether the accused used Ex. P 1 is a question of fact and requires positive and dependable evidence for its proof. Simply because Ex. P 1 was found in the office of the I.T.I., it cannot be gathered that it was the accused who has submitted it there. Drawing such an inference would be simply a conjecture and surmise. Mere conjectures and surmises do not prove the charges.

9. PW 4 Nand Kishore has given a death blow to the prosecution case, Ex. P 2 and Ex. P 3 are in his handwriting and he admits that the blank Columns in them

were written by him at the instance and request of the. accused. He, however, stated that the disputed portion C to D in both these forms, in which it has been described that accused had passed VIII standard from the Govt. Middle School, Mathaniya, was not in his handwriting. He further stated that who had written these disputed entries in Ex. P 2 and Ex. P 3, is not in his knowledge. He was not declared hostile and no reasons appear not to accept what he testified on oath. It can be, therefore, safely said that the disputed entries C to D in Ex. P 2 and Ex. P 3 were not written at the instance of the accused. If it does not stand proved that disputed entries C to D were written at the instance of the accused, the whole prosecution case that the accused used Ex. P 1, crumbles down.

10. An acquittal is to be interfered with only when there are compelling reasons to do so. The view taken by the learned Sessions Judge does not appear to be wrong nor the reasoning advanced by him in recording the acquittal is perverse. No case for interference is, therefore, made out.

11. For the reasons discussed above, we find no force in this appeal and dismiss the same.