

Jagdish Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-08-2002

Reported in : 2002CriLJ2171

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B 193 199, 204, 467, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 156(3) and 313

Appeal No. : Crl. R.P. No. 92 of 1997

Appellant : Jagdish

Respondent : The State of Rajasthan

Advocate for Def. : M.A. Bhurat, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Mehta and; M.L. Garg, Advs.

Judgement :

Sunil Kumar Garg, J.

1. This revision petition has been filed by the accused petitioner against the judgment dated 4-2-1997 passed by the learned Addl. Sessions Judge No. 1, Jodhpur in Criminal Appeal No. 2/95, by which he dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 22-4-1995 passed

by the learned Judicial Magistrate No. 4, Jodhpur in Criminal Case No. 7723/94 by which he convicted and sentenced the accused petitioner in the following manner :-

-----Name of accused	Convicted
under	section
Sentencepetitioner	awarded
Jagdish	120-B, IPC
Three years RI and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo SI for three months.	471, IPC Three years RI and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo SI for three months.
204, IPC One year RI and to pay a fine of Rs. 200/-, in default of payment of fine, to further undergo SI for one month.	-----

All the above substantive sentences were ordered to run concurrently.

2. It may be stated here that in this case apart from the accused petitioner Jagdish, accused Ramdas, Badrinarain, Badridas and Girdharilal also faced trial for various offences and during trial before the learned Magistrate, three accused persons, namely, Ramdas, Badrinarain and Girdharilal died and therefore, proceedings against them were dropped and by the same judgment, the learned Judicial Magistrate acquitted another accused Badridas of the charges for the offence under Sections 120B, 467, 471/34, IPC and also acquitted the present accused petitioner of the charge for the offence under Section 199, IPC.

3. The facts giving rise to this revision petition, in short, are as follows :-

PW. 3 Smt. Jani W/o Ganesh Das lodged a written report Ex. P/28 before the Police Station Division-A, Jodhpur stating inter alia that she was the second wife of Genesh Das, who died in Samvat 2007 (year 1950) and when Ganesh Das died, he left two daughters only. It was further stated in the report that accused Badrinarain (died) was her Devar, who used to look after the property of her husband deceased Ganesh Das and after the death of her husband Ganesh Das, accused petitioner Jagdish was brought by accused Badrinarain for the purpose of doing Seva Pooja in the temple and the accused petitioner Jagdish was got married by accused Badrinarain (died) with the daughter of his brother-in-law. It

was further stated in the report that during the lifetime of her husband Ganesh Das, she did not adopt anybody nor anybody was taken in adoption after the death of her husband Genesh Das. It was further stated in the report that she came to know from another accused Badridas that her Devar Badrinarain (died) prepared a forged Will (Ex. P/75 Photocopy of the original Will) and he had also forged signatures of Ganesh Das on that Will and it was also stated that the said Will pertained to the period when Ganesh Das was alive and through that Will, accused petitioner was made owner of the properties both movable and immovable belonging to Ganesh Das. It was further reported that the said forged Will (Ex. P/75) was presented in the office of Tehsildar for the purpose of registration by the accused petitioner after making conspiracy with accused Badrinarain (died) and further that forged Will (Ex. P/75) was got attested by three witnesses, namely, Badridas, Girdharilal (died) and Ramdas (died). It was further stated in the report that accused Badridas and Girdharilal (died) told PW. 3 Jani that their signatures were got by accused Badrinarain (died) on the pretext that it was a rent deed, but when they came to know that their signatures were obtained by accused Badrinarain (died) on the forged Will, they informed the office of Sub-Registrar through applications and these applications were marked as Ex. P/72 presented by accused Badridas and Ex. P/73 presented by accused Girdharilal (died). Thus, a forged Will (Ex. P/75) was got prepared by accused Badrinarain (died) pertaining to the period when Ganesh Das was alive and signatures of Ganesh Das were also forged by accused Badrinarain (died) on the said Will (Ex. P/75). It was further stated in the report that since the said Will (Ex. P/75) was forged one, therefore, accused petitioner and accused Badrinarain (died) tried to take that Will back from the office of the Sub Registrar, Jodhpur. Thus, according to the complainant PW. 3 Jani, the accused persons had committed the offence punishable under Sections 193/199, 467, 468, 471, IPC.

The said complaint Ex. P/28 was presented by PW/3 Jani on 29-10-1975 before the Court, though it was addressed to SHO, Police Station Division-A, Jodhpur and on 31 -10-1975, the learned Judicial Magistrate First Class No. 2, Jodhpur sent the original complaint under Section 156(3), Cr. P.C. to the SHO, Police Station Division-A, Jodhpur for investigation and that complaint was received by SHO, Police Station Division-A, Jodhpur on 7-11-1975, where the case was

registered and investigation was started.

After usual investigation, police submitted challan against five accused persons, namely, Jagdish (present accused petitioner), Badrinarain (died), Ramdas (died), Badridas and Girdharilal (died) in the Court of Magistrate, Jodhpur.

On 13-9-1993, the learned Judicial Magistrate First Class No. 5, Jodhpur framed the charges against the accused persons in the following manner :-

-----Name	of
Chargesaccusedpersons-----	Jagdish 120-B 199, 204, 471, IPCRamdas 120-B, 467, 471/34 199,(died) IPCBadrinarain 120-B 199, 204, 467,(died) 471/34, 468, IPCGirdharilal 120-B, 467, 471/34, IPC(died)Badridas 120-B, 467, 471/34, , IPC-----

The charges were read over and explained to the accused persons. They denied the charges and claimed trial.

During trial, the prosecution in support of its case examined as many as 14 witnesses and got exhibited some documents. Thereafter, statements of the accused persons under Section 313, Cr. P.C. were recorded. In defence, three witnesses were produced by the accused persons.

After conclusion of trial, the learned Judicial Magistrate No. 4, Jodhpur through his judgment and order dated 22-4-1995 acquitted the accused Badridas of the charges framed against him, but convicted the present accused petitioner Jagdish of the charges for the offence under Section 120-B, 471 and 204, IPC and sentenced in the manner as indicated above holding inter alia :--

1. That it is an admitted fact of the case that disputed forged Will (Ex. P/75) was alleged to have been executed by Ganesh Das in favour of the accused petitioner Jagdish and the same was presented for registration in the office of Sub-Registrar, Jodhpur by the accused petitioner.
2. That the writings on the forged Will (Ex. P/75) were of accused Badrinarain (died) as the same were got proved by the Expert Report Ex. P/82 and they were

not in the hand-writing of deceased Ganesh Das and thus, the learned trial Magistrate came to the conclusion that Ex. P/75 was a forged Will.

3. That Ex. P/75 was a forged Will and the same was prepared by accused Badrinarain (died), but in making that forged Will (Ex. P/75), the accused petitioner Jagdish was also a party in conspiracy and thus, the learned trial Magistrate came to the conclusion that prosecution has proved its case beyond all reasonable doubts against the accused petitioner Jagdish for the offence punishable under Section 120-B, IPC.

4. That through application Ex. P/69, the forged Will Ex. P/75 was presented by the accused petitioner before the Sub-Registrar for registration and that forged Will was prepared after the death of Ganesh Das and the accused petitioner was having full knowledge that forged Will of Ganesh Das was being prepared and by producing his affidavit Ex. P/32, the accused petitioner presented the forged Will as genuine one and by doing so, he has committed the offence punishable under Section 471, IPC.

5. That prosecution has proved its case beyond all reasonable doubts against the accused petitioner Jagdish for the offence under Section 204, IPC.

6. That prosecution has failed to prove its case beyond all reasonable doubts against the accused Badridas for the offence under Sections 120-B, 467, 471/34, , IPC and thus, the learned trial Magistrate acquitted accused Badridas of the said charges.

Aggrieved from the said judgment and order dated 22-4-1995 passed by the learned Judicial Magistrate No. 4, Jodhpur, the accused petitioner has preferred an appeal before the learned Sessions Judge, Jodhpur and that appeal was transferred to the learned Addl. Sessions Judge No. 1, Jodhpur.

The learned Addl. Sessions Judge No. 1, Jodhpur through his judgment dated 4-2-1997 dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 22-4-1995 passed by the learned Judicial Magistrate No. 4, Jodhpur.

Aggrieved from the said judgment dated 4-2-1997 passed by the learned Addl. Sessions Judge No. 1, Jodhpur, this revision petition has been filed by the accused petitioner.

4. In this revision petition, the following submissions have been made by the learned counsel appearing for the accused petitioner :--

(1) That since the original Will which is said to be forged one has not been produced in this case, therefore, on the basis of photostat copy of Will Ex. P/75, the conviction of the accused petitioner should not be sustained.

(2) That when there is a finding that accused Badrinarain prepared the forged Will Ex. P/75, therefore, there is no evidence to prove that the accused petitioner was party in preparing forged Will and in absence of that, conviction of the accused petitioner cannot be sustained.

(3) That from the evidence on record, no case for the offence under Section 204, IPC is made out against the accused petitioner and thus, the findings of conviction of the said offence are erroneous one and they should be set aside.

(4) That similarly, no case for the offence under Section 471, IPC is made out against the accused petitioner for the simple reason that prosecution has failed to prove any fraudulent and dishonest intention on the part of the accused petitioner.

(5) That in case the Court comes to the conclusion that the findings of conviction recorded by the Courts below against the accused petitioner are liable to be confirmed, then, looking to the entire facts and circumstances of the case, a lenient view be taken in awarding sentence and the accused petitioner may be sentenced to the period already undergone by him.

5. On the other hand, the learned Public Prosecutor and the learned counsel appearing for the complaint supported the impugned judgment passed by the learned Addl. Sessions Judge No. 1, Jodhpur.

6. I have heard the learned counsel for the accused petitioner, the learned counsel appearing for the complainant and the learned Public Prosecutor and perused the

record of the case.

7. Before proceeding further, it may be stated here that in the report Ex. P/28 which was lodged by PW/3 Jani, there is a clear-cut averment that forged Will (Ex. P/75) in question was got prepared by one Badrinarain (died) to benefit present accused petitioner, It further appears from the report Ex, P/28 that attesting witnesses of the forged Will (Ex, p/75) in question were Badridas, Girdharilal and Ramdas and all were made accused in this ease apart from accused petitioner and Badrinarain and out of the three attesting witnesses, Ramdas and Girdharilal had died and Badrinarain, author of the so-called forged Will had also died.

8. Ex. P/29 is the affidavit of accused Badrinarain (died) dated 7-9-1995, Ex. P/30 is the affidavit of accused Badridas dated 7-9-1995, Ex. P/31 is the affidavit of accused Ramdas (died) dated 7-9-1995 and Ex. P/32 is the affidavit of accused petitioner Jagdish dated 7-9-1995 and in all these affidavits, they asserted that the Will in question was a genuine one.

9. There is evidence that application Ex. P/69 dated 8-9-1975 was presented by the accused petitioner before the Sub Registrar, Jodhpur stating therein that Ganesh Das made a Will (Ex. P/75) of his properties both movable and immovable in his favour on 7-7-1950 and that Will was got written by accused Badrinarain as per the saying of deceased Ganesh Das and upon that Will (Ex. P/75). Ramdas and Badridas put their signatures as attesting witnesses and, therefore, Will (Ex. P/75) in question be got registered.

10. The accused petitioner in his statement recorded in Court under Section 313, Cr. P.C. has admitted that he had gone in adoption to Ganesh Das and Ganesh Das made a Will (Ex. P/75) in his favour and he has further admitted that he presented the Will (Ex. P/75) before the Sub Registrar, Jodhpur for registration.

11. In this respect, the statement of PW/9 Mehtab Singh may be referred to. He has clearly stated in his statement recorded in Court that at the relevant time he was Sub Registrar, Jodhpur and the accused petitioner Jagdish presented before him the application Ex. P/69 alongwith affidavits Ex. P/29, Ex. P/30, Ex. P/31, Ex. P/32 just mentioned above and so-called Will (Ex. P/75). He has further stated that

since some complaints were received, therefore, the said Will (Ex. P/75) was returned by him to PW/8, Laxminarain, who was counsel for the accused petitioner and there is a note on the back of Ex. P/69 that original Will was returned to PW/8 Laxminarain as per the request of the accused petitioner, as PW, 8 Laxminarain was sent with the authority of the accused petitioner,

12. PW, 8 Laxminarain also corroborates the statement of PW/9 Mehtab Singh on the point that he was sent by the accused petitioner to get back the original Will in question and, thereafter, he handed over the original Will in question to the accused petitioner.

13. Similarly, there is an application Ex. P/72 which was presented before the Sub Registrar, Jodhpur on 15-9-1975 by accused Badridas (died) stating therein that some days back, accused Badrinarain (died) got his signatures on the Will (Ex. P/75) on the pretext of rent note, but he did not sign as attesting witness for the Will in question.

14. Similar is the application Ex. P/73 which was presented on 22-9-1975 by another attesting witness Girdharilal before the Sub-Registrar, Jodhpur.

15. Thus, before the original Will in question could have been registered, the same was returned by PW/9 Mehtab Singh to PW/8 Laxminarain, who was authorised by accused petitioner to take back the original Will in question from PW/9 Mehtab Singh and, thereafter, PW/8 Laxminarain handed over the original Will in question to the accused petitioner.

16. In the present case, the original Will, which was returned by PW. 9 Mehtab Singh to PW. 8 Laxminarain has not been produced and only the photostat copy of that Will i.e. Ex. P/75 has been exhibited and marked and in Ex. P/75, there is a clear cut endorsement of Sub Registrar, Jodhpur which is dated 8-9-1975 meaning thereby the original Will was really produced in the office of Sub Registrar, Jodhpur and Ex. P/75 is the photostat copy of the original Will.

17. From the statement of PW/8 Laxminarain, it is also clear that he gave original Will to the accused petitioner.

18. Thus, the facts as put forward by the prosecution in this case can be enumerated in the following manner :-

(1) That there was one Ganesh Das, who died in the year 1950 and at that time, he had no son of his own and PW/3 Jani was his second wife, who had two daughters.

(2) That in the year 1950, the accused petitioner was about 10-11 years of age,

(3) That Will (Ex. P/75) in question was prepared by accused Badrinarain (died), who was also relative of the present accused petitioner, In other words, whole forgery was got conducted by accused Badrinarain (died) and beneficiary of that Will (Ex. P/75) was present accused petitioner.

(4) That three attesting witnesses of the Will (Ex. P/75) in question were Badridas, Girdharilal and Ramdas and out of these three attesting witnesses, Badridas and Girdharilal presented applications Ex. P/72 and Ex. P/73 respectively before the Sub-Registrar, Jodhpur stating therein that their signatures were obtained fraudulently on the said Will (Ex. P/75) by accused Badrinarain.

(5) That the original Will have produced in the office of Sub-Registrar, Jodhpur and before PW/9 Mehtab Singh by the accused petitioner and the same was returned back by PW/9 Mehtab Singh to PW/8 Laxminarain as PW/8 Laxminarain was having authority of the accused petitioner to take back the original Will.

(6) That thereafter, original Will in question was not traceable and only its photocopy Ex. P/75 was got exhibited and marked during the trial of this case.

(7) That during trial, accused Badrinarain, author of making the forged Will (Ex. P/75) in question and two attesting witnesses of the forged Will (Ex. P/75) in question, namely, Ramdas and Girdharilal died during trial and proceedings against them were dropped.

(8) That another accused Badridas was acquitted by the learned trial Magistrate of all the charges framed against him on the pretext that he was not party in the alleged conspiracy.,

(9) That in the statement recorded in Court under Section 313, Cr. P.C., the accused petitioner has admitted that he had gone in adoption to Ganesh Das and Ganesh Das made a Will (Ex. P/75) in his favour and he has further admitted that he presented the Will (Ex. P/75) before the Sub-Registrar, Jodhpur for registration.

(10) That there is a finding of the Courts below that the said Will (Ex. P/75) in question was got prepared after the death of Ganesh Das.

19. Now the question that arises for consideration is whether in the above facts and circumstances, the findings, of conviction for the offence under Sections 120-B, 471 and 204 recorded by the Courts below against the accused petitioner are liable to be confirmed one or not.

20. There is no dispute on the point that accused Badrinarain, who prepared the forged Will (Ex. P/75) in question was relative of the accused petitioner and there is a finding of the Courts below that the said Will (Ex. P/75) in question was got prepared after the death of Ganesh Das and this fact can also be found in the applications Ex. P/72 and Ex. P/73 presented before the Sub-Registrar, Jodhpur by Badridas and Girdharilal respectively.

21. To prove the charge for the offence punishable under Section 120-B, IPC, the prosecution should prove :-

(i) that the accused agreed to do or caused to be done an act;

(ii) that such act was illegal or was to be done by illegal means;

(iii) that some overt act was done by one of the accused in pursuance of the agreement.

22. In the present case, the fact that the Will (Ex. P/75) in question was forged one is well established from the statement of PW/9 Mehtab Singh and from other evidence just mentioned above. There is also no dispute on the point that the said Will (Ex. P/75) was got prepared by accused Badrinarain (died), who was relative of the accused petitioner and the same was presented before the Sub-Registrar, Jodhpur by the accused petitioner for registration and thereafter, since complaints

were made, therefore, it was got back by the accused petitioner from the office of Sub-Registrar, Jodhpur through PW. 8 Laxminarain.

23. When this being the position, it cannot be said that the accused petitioner was unaware of all the circumstances and it cannot also be said that he had no knowledge of the said forged Will (Ex-. P/75). Since accused petitioner was beneficiary, therefore, what was done by accused Badrinarain (died), that was done for his benefit.

24. Thus, the findings of the Courts below convicting the accused petitioner for the offence punishable under Section 120-B, IPC are liable to be confirmed, as they are based on correct appreciation of evidence.

25. For proving the charge for the offence punishable under Section 471, IPC, the prosecution must prove the following ingredients :-

(1) Fraudulent or dishonest use of a document as genuine.

(2) Knowledge or reasonable belief on the part of the person using the document that It Is a forged one.

26. In the present case, from the statement of PW/9 Mehtab Singh, it is very well established that the accused petitioner presented the forged Will (Ex. P/75) before him and as already held above, it was within the knowledge of the accused petitioner that it was a forged one and that is why, he got back the original Will in question from the office of Sub-Registrar, Jodhpur through PW/8 Laxminarain, when complaints were made. Therefore, accused petitioner tried his best to use the document that was a forged one.

27. Hence, the ingredients of the offence punishable under Section 471, IPC are well established by the prosecution in the present case and thus, the findings of the Courts below convicting the accused petitioner for the offence under Section 471, IPC are liable to be confirmed.

28. From the statement of PW/9 Mehtab Singh, it is also well proved that the original Will in question was returned by him to PW/8 Laxminarain and from the

statement of PW/8 Laxminarain, it is further clear that he returned the original Will in question to the accused petitioner and the same has not been produced in this case, meaning thereby, the same has been destroyed by the accused petitioner.

29. Hence, the findings of the Courts below convicting the accused petitioner for the offence under Section 204, IPC are also liable to be confirmed.

30. The argument that original Will was not produced in the Court and, therefore, conviction of the accused petitioner cannot be sustained on the basis of photostat copy of the Will Ex. P/75, is not tenable in this case, in view of the fact that there is a cogent evidence that the Will in question was first produced by the accused petitioner before PW/9 Mehtab Singh and, thereafter, it was returned to PW/8 Laxminarain by PW/9 Mehtab Singh and PW/8 Laxminarain handed over the original Will to the accused petitioner and the photostate copy of the Will Ex. P/75 bears the impression of office of Sub-Registrar and in these circumstances, if reliance has been placed on the photostat copy of Will Ex. P/75, the Courts below have not committed any illegality or irregularity in doing so and furthermore, the accused petitioner has come forward with the case that the Will was made by Ganesh Das in his favour, therefore, it was his duty to produce the original Will in Court, but after presenting original Will before PW/9 Mehtab Singh, he subsequently, took it back through PW/8 Laxminarain and did not produce in Court and this shows dishonest intention on the part of the accused petitioner.

31. Apart from this, the findings of conviction recorded by the Courts below are based on correct appreciation of evidence and it cannot be said that the approach of the Courts below in dealing with the evidence is manifestly erroneous and the conclusions drawn are wholly unreasonable and perverse. I do not find that the judgments of the Courts below suffered from any illegality in the approach to the case or any perversity in appreciation of the evidence on record.

32. For the reasons stated above, the findings of the Courts below convicting the accused petitioner for the offence under Section 120-B, 471 and 204, IPC are liable to be confirmed, as they are based on correct appreciation of evidence and this revision petition against conviction for the said offences deserves to be dismissed.

On point of sentence

33. The question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere. Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch.

34. In the present case, looking to the peculiar facts and circumstances of the case and the facts that the author of making the alleged forged Will in question Ex. P/75 was accused Badrinarain (died) and he was relative of the accused petitioner and he wanted to give some benefit to the accused petitioner and for that he got prepared the alleged forged Will (Ex. P/75) in question, but the accused petitioner did not take any benefit or advantage on the basis of the said forged will (Ex. P/75) in question and the said Will (Ex. P/75) was not acted upon in any civil proceedings; that civil litigation is going on between other heirs of deceased Ganesh Das and the present accused petitioner; that incident took place in the year 1975 and since then the accused petitioner is facing trial and now more than 26 years have already elapsed and this period is sufficient to exhaust anybody mentally, physically and economically; and that when the statement of the accused petitioner was recorded in Court under Section 313, Cr. P.C. on 28-4-1992, he was about 54 years of age and now he has crossed the age of more than 63 years, in my considered opinion, it is a fit case where lenient view should be taken in awarding sentence to the accused petitioner and from the record, it appears that the accused petitioner has remained in jail for the period from 4-2-1997 to 14-9-1997 (i.e. more than 7 months) and if the sentence of the accused petitioner is reduced to the period already undergone by him, it would meet the ends of justice.

In the result, the revision petitioner filed by the accused petitioner Jagdish is partly allowed in the following manner :-

(1) That the conviction of the accused petitioner for the offence under Sections 120-B, 471 and 204, IPC recorded by the learned Judicial Magistrate No. 4, Jodhpur through his judgment dated 22-4-1995 and affirmed in appeal by the learned Addl. Sessions Judge No. 1, Jodhpur vide his judgment dated 4-2-1997 is

maintained.

(2) However, the sentence awarded to the accused petitioner for the above offences is reduced to the period already undergone by him. Thus, the order of sentence dated 22-4-1995 passed by the learned Judicial Magistrate No. 4, Jodhpur and affirmed in appeal by the learned Addl. Sessions Judge No. 1, Jodhpur vide Judgment dated 4-2-1997 stands modified accordingly to the above extent. However, the order of fine is maintained. Since the accused petitioner is on bail, he need not surrender and his bail bonds stand cancelled.

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