

Raj Kumar Vs. State

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Court : Jammu and Kashmir

Decided On : Mar-26-2004

Reported in : 2004(2)JKJ382

Judge : Y.P. Nargotra, J.

Acts : Ranbir Penal Code (IPC) - Sections 420, 466, 467, 468, 473, 474 and 511;
;Code of Criminal Procedure (CrPC) , - Sections 32, 54, 342 and 428; ;Evidence
Act - Section 27; ;Probation of Offenders Act

Appeal No. : Case No. 11 Cr. A. 1992

Appellant : Raj Kumar

Respondent : State

Advocate for Def. : A.S. Dogra, Dy. A.G.

Advocate for Pet/Ap. : B.L. Kalgotra, Adv.

Judgement :

Y.P. Nargotra, J.

1. The accused-appellant was put to trial for commission of offences Under Sections 420, 474, 467, 468 and 473 RPC. He was convicted Under Section 466, 474, 420, read with Section 511 RPC by the learned Sessions Judge Kathua by

his judgment dated 16.5.1992. Learned Sessions Judge vide his order dated 20.5.1992 sentenced the accused to undergo imprisonment for three years and a fine of Rs. 50 for commission of offences Under Sections 466, 474 & 420/511 RPC on each count, in default of payment of total fine of Rs. 150 he was directed to undergo simple imprisonment for 15 days for each default. All the sentences were however ordered to run concurrently.

2. The case of the prosecution before the trial court was that four brothers namely Bhagwant Singh, Dhanwant Singh, Patwant Singh and Gurjeswant Singh sons of S. Surinder Singh applied for issuance of permanent resident certificates in their favour under application No. 467 dated 9.1.1984. Tehsildar Kathua after holding the inquiry vide his letter No. 666 dated 10.4.84 wrote to the Assistant Commissioner that all the applicants are proved to be permanent residents of the State. The Assistant Commissioner did not agree with the finding of the Tehsildar and desired that further documentary evidence be called for from the applicants. There is no record to indicate that the applicants were so informed before the file was consigned to records by the Tehsildar on 14.7.87. However, on the file there is an order dated 10.6.87 directing for issuance of duplicate summons for the appearance of the applicants on 14.7.87 but the same appears to have not been carried out. After some time the accused Raj Kumar was introduced to one of the applicants namely Bhagwant Singh by his friend, Jagjit Singh, as a conduit to assist him in getting the certificates issued in their favour. The accused is alleged to have demanded Rs. 500 for getting all the four certificates issued. Thereafter it is alleged that all the four certificates were delivered to PW Bhagwant Singh, as promised but these were not found complete, so were returned to the accused for completion. In the meanwhile the police appears to have been informed about the matter on 21.2.1989. The accused was arrested and four permanent residents certificates purported to be issued in the name of PWs Bhagwant Singh and his three brothers came to be recovered. The arrest of the accused also led to the recovery of stamps bearing the impressions of Dy. Commissioner and Tehsildar Kathua and one certificate purporting to be of PW Miss Urmila from his possession. After investigation charge sheet against the accused came to be filed for commission of offences Under Sections 420, 467, 468, 473, 474 RPC, Charges were framed and accused was called upon to plead. He pleaded not guilty.

Prosecution examined PWs Ashok Kumar, Natha Singh, Janak Raj, Patwant Singh, Smt. Urmila, Dhanwant Singh, Isher Dass, Gurjaswant Singh, Satpal, Bhagwant Singh, Syed Abdul Qayoom, Kuldeep, Singh Manhas, Joginder Kumar Sahni, Inspector Krishan Chand Pathania and Inayatullah Khan. The incriminating circumstances appearing in the evidence of the prosecution witnesses were put to the accused while recording his statement Under Section 342 Cr.PC. He denied the allegation of having forged the permanent residents certificates. In defence he examined DWs Ram Chand and Parkash.

3. Prosecution through its evidence sought to prove following four circumstances by four sets of evidence.

Firstly prosecution sought to prove the recovery of alleged forged P.R.Cs EXP1 to EXP4 and EXP5 and two rubber stamps bearing the seal impressions of Dy. Commissioner and Tehsildar Kathua pursuant to the disclosure statements of the accused. The prosecution also sought to prove by other set of evidence that the certificates EXP1 to EXP4 and 5 were in fact forged certificates. The third set of witnesses was examined to prove that the certificates are not genuine and those were never issued by the office of the Dy. Commissioner nor these were processed by the Tehsildar Kathua. The 4th set of evidence was led to establish that these certificates were forged by the accused. Learned trial court considered the said four sets of prosecution evidence. The evidence about arrest and personal search of the accused comprises of the statements of PWs Ashok Kumar, Natha Singh and the I.O. K.C. Pathania. PW K.C. Pathana when came in the witness box stated that the case against the accused was registered on 21.2.1989 and investigation of the case was entrusted to him by the then SHO Sh. Roshanlal Abrol. According to him he arrested the accused Under Section 54 Cr.PC and from the personal search of the accused documents EXP1 to EXP4 were recovered and after recovery of said certificates the accused disclosed to him that two rubber stamps bearing the impressions of Dy. Commissioner and Tehsildar, alongwith stamp pad and one PRO of Mst. Urmila have been kept by him in one of his rooms. The disclosure was reduced into writing vide EXPWAK/2 and thereafter they left for the village of the accused. The accused picked up a suitcase from his house from where two rubber stamps and certificate EXP5 were

recovered. The marginal witness of the seizure memo EX-PWAK/1 and arrest of the accused is PW Ashok Kumar. He has stated that the accused was arrested by the police near Old Nagri Bus stand Kathua and on his search certificates EXP1 to EXP4 were recovered from his pocket; that the police officer who effected the arrest interrogated the accused who disclosed that a certificate and some stamps have been kept by him in his house. He proved the contents of the disclosure memo. The other witness of arrest and seizure is PW Natha Singh but when he came in the witness box he turned hostile but he has admitted his signatures on EXPWAK/2 which according to him was prepared in Police station Kathua. He also admitted his signatures on seizure memo EXPWAK/1. He admitted that EXP1 to EXP4 as detailed in the seizure memo were seen by him in possession of the police officer but denied that these were recovered from the possession of the accused.

4. Learned trial court finding the evidence of PW KC Pathania corroborated by PW Ashok Kumar accepted the allegations of the prosecution that from the possession of the accused EXP1 to 4, P.R.Cs. (in favour of four brothers) were recovered from the accused on being searched after his arrest. Learned trial court also came to the conclusion that the disclosure made by the accused stood proved on the corroborated evidence of PW KC Pathania, read with the evidence of PW Ashok Kumar.

5. It was also the case of the prosecution that pursuant to the disclosure statement of the accused two rubber stamps and certificate EXP5, a forged document purporting to be P.R.C. in the name of PW Urmila, were discovered. For proving the discovery prosecution relied upon PW Janak Raj and KC Pathania. PW Janak Raj is a hostile witness, he has not supported the prosecution so far as recovery of two stamps and EXP5 are concerned but in the cross-examination has admitted that the accused was brought to the village under arrest and that the police told him that two stamps were recovered at his instance. Learned trial court held the discovery at the instance of the accused proved on the evidence of PW KC Pathania alone as in the opinion of the trial court the evidence of the investigating officer could be relied upon even in the absence of corroboration and for holding so reliance was placed upon a case reported in AIR 1978 SC 1571 in which it was

held as follows: --

'The courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities. The evidence of the investigating officer cannot be branded as highly interested on ground that they want that the accused are convicted. Such a presumption runs counter to the well recognized principle that prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded normally on the ground that being public servants they are interested in the success of their case.'

Learned trial court also relied upon a case reported in 1983 Cr.LJ 1186 in which the Supreme court has held: --

'That the evidence of investigating officer could be acted upon even if not corroborated by other evidence has been ruled by the Supreme Court in State of Kerala v. MM. Mathur, AIR 1978 SC 1571.'

6. Thus according to the learned trial court the prosecution had proved that from the possession of the accused a forged P.R.C. and two stamps were recovered pursuant to the disclosure statement Under Section 27 of the Evidence Act.

7. On the second circumstance PW Bhagwant Singh has stated that he along with his three brothers had applied for issuance of permanent residents certificates some time in the year 1984 but their application was consigned to records. As he is an army personnel he happened to come back on annual leave in January/Feb.1989 and mentioned the fate of his application to his friend Jagjit Singh who introduced him to the accused in the court premises. According to him the accused asked him to purchase four blank PRC forms and accompany him to his house. On reaching his house the accused got the finger impressions of all the four on these forms and promised that the certificates would be ready within a week's time and for the service he demanded Rs. 500. According to him the accused exactly after one week returned four P.R.Cs. EXP1 to EXP4. That on examination he found that the year of issuance was missing, so he again took the said certificates to the accused and asked him to make necessary correction.

Similarly PWs Patwant Singh, Dhanwant Singh Gurjaswant Singh who are real brothers of PW Bhagwant Singh corroborated the statement of Bhagwant Singh in their testimonies. So relying upon the evidence of these four witnesses learned trial court held that the accused had handedover the PRCs. EXP1 to EXP4 to PW Bhagwant Singh who on finding the same defective, as the year of issuance was not there, returned all the four certificates to the accused in the court premises. As already stated learned trial court has found that these certificates were recovered from the possession of the accused. As regards EXP5 purported to be in the name of PW Urmila, Mst. Urmila when came in the witness box though admitted her signatures thereon but denied the fact that the accused had got the said form filled up or that she had paid him any money. She was declared hostile and subjected to cross-examination but she stuck to her stand that the person involved was not the accused but some unknown person.

8. The third circumstance which the prosecution had to proved was that the certificates EXP1 to 4 and 5 were not genuine. PW Joginder Kumar Sawhney had remained posted as Tehsildar Kathua from Feb. 1982 ro October 1984. When he came in the witness box he denied that the certificates EXP1 to 4 & 5 bore his signatures. According to him PWs Bhagwant Singh, Dhanwant Singh, Gurjaswant Singh and Patwant Singh had applied for issuance of P.R.Cs. and he had processed their case as per file No. 467 dated 9.1.1984 but this file was consigned to record on 14.7.1987; that duplicate PRC forms EXPWJK1 to 7 enclosed with the file No. 467 dated 9.1.1984 were filled by the applicants which have been duly attested by him; that all these eight forms are intact with the said file. Since he was the only Tehsildar Kathua at the time when EXP1 to EXP4 are purported to have been issued, therefore, to be genuine had to bear his signatures. While denying the signatures thereon he also denied that these certificates were ever processed in his office. PW Syed Abdul Qayoom was the Dy. Commissioner from Oct. 1981 to August 1983. He also examined EXP1 to 5 and denied his signatures thereon and asserted that some one appears to have forged his signatures on these certificates, when he was not Dy. Commissioner Kathua on 6.9.1985. PW Kuldeep Singh Manhas, who was posted as Assistant Commissioner Kathua in 1989-90 has testified that no certificate was issued in the name of Mst. Urmila on 6.8.85 against PRC No. 1342. According to him on 6.9.1985 as per PRC No. 287 and

288 two certificates were issued in the names of Mst. Bimla Kumari and Devi Rani, meaning thereby that EXP5 was not genuine. Learned trial court accepted the evidence of these three witnesses for holding that the certificates in issue were not genuine but were forged one.

9. Lastly learned trial court by relying upon the evidence of PW Mr. I.U. Khan, handwriting expert, came to the conclusion that the accused was the author of the forged certificates and it was he from whose possession the seals used for commission of forgery had been recovered. So learned trial court on the aforesaid premises held the accused guilty for commission of offences Under Sections 466, 474 and 420, read with Section 511 RPC and accordingly convicted and sentenced him as aforesaid. The judgment of conviction and sentence of the learned trial court is the subject matter of challenge in this criminal appeal.

10. I have heard the learned counsel for the appellant, Mr. Kalgotra, and Mr. A.S. Dogra, learned Dy. Advocate General.

11. As regards the first circumstance that the four PRCs EXP1 to 4 were recovered from the possession of the accused at the time of his arrest on his being searched, the evidence of Investigator Mr. K.C. Pathania stands duly corroborated by the evidence of PW Ashok Kumar. Learned trial court thus found the fact completely established. Learned counsel for the appellant however, submits that since other witness of the recovery and arrest PW Janak Raj has contradicted the stand of PW Ashok Kumar therefore no reliance should be placed upon the evidence of PW Ashok Kumar. I am not in agreement with the learned counsel. Merely because one of the witnesses of arrest and recovery turned hostile, the credibility of PW Ashok Kumar is not lost. His evidence was to be appreciated and has been appreciated on its own merits. There is nothing in the cross-examination to demolish the stand of PW Ashok Kumar. Therefore, the evidence of PW Ashok Kumar could be relied upon and has rightly been relied upon by the trial court for seeking, corroboration to the evidence of PW K.C. pathania. The prosecution, therefore, is found to have established cogently that the accused was arrested and searched by PW K.C. Pathania and from his possession four PRCs EXP1 to 4 were recovered.

12. As regards the allegation that the accused made disclosure statement in respect of two rubber stamps and certificate EXP5 is concerned it would be admissible only if the recovery of these articles at the instance of the accused is also proved. Prosecution tendered the evidence of PW Janak Raj and K.C. Pathania for proving the recovery at the instance of the accused. PW Janak Raj has not supported the prosecution. Thus, there remains the evidence of PW K.C. Pathua, the investigator. Learned trial court has relied upon the sole evidence of the investigator Mr. K.C. Pathania to hold the recovery to have been proved. Could the sole evidence of the Investigator be relied upon to hold that the prosecution has proved the recovery of the above said articles at the instance of the accused? Learned trial court has relied upon AIR 1978 SC 1571 and 1983 Cr.LJ 1186. In the latter judgment reliance was placed upon the case AIR 1978 SC 1571 to hold that the evidence of the Investigating officer could be relied upon even if not corroborated by any other evidence. I have gone through the preposition of law propounded by the aforesaid judgment of the Supreme Court. Without disputing the law laid down thereby I could not persuade myself to agree with the reasoning advanced by the trial court to hold the recovery established against the accused. As per the law laid down by the Supreme court the evidence of the investigating officers cannot be branded as highly interested on the ground that they want that the accused are convicted. Such a presumption runs counter to the well recognized principle that prima facie public servants must be presumed to act honestly and consciously and therefore their evidence has to be assessed on its intrinsic worth and same cannot be discarded normally on the ground that being public servants they are interested in the success of their case. The above said presumption refers to the acts of the investigating officer. The fact of recovery is not an act of the investigator but is attributable to the accused and therefore is required to be proved by the prosecution by leading cogent evidence. An investigator in a case is certainly an interested person, interested in the success of his investigation and his evidence with regard to a fact attributable to the accused has to be considered to be an evidence of an interested witness.

The law is well settled that courts should insist for corroboration to the evidence of interested persons. Therefore, since the recovery is attributed to the accused as it is his act on the basis of which recovery is alleged to have been effected, the sole

evidence of the investigator, in my view, would not be sufficient. Since the evidence of PW K.C .Pathania has not been corroborated by any independent evidence his sole testimony on the fact of recovery at the instance of the accused pursuant to his disclosure statement cannot be accepted and relied upon. The prosecution, therefore, has not succeeded in proving cogently and completely that the two rubber stamps and one PRc,EXP5, were recovered from the possession of the accused.

13. Be it so, the fact remains the prosecution has succeeded in proving that the PRCs EXP1 to 4 were recovered from the possession of the accused on his search, after arrest. These four certificates pertain to PWs Bhagwant Singh and his three brothers Dhanwant Singh, Patwant Singh Gurjaswant Singh. All the four of them have stated that these PRCs. Were got prepared by the accused for them. Now the question arises whether these certificates are forged or genuine. The prosecution tendered the evidence of PW Joginder Kumar Sawhney, the then Tehsildar Kathua who denied his signatures on the said certificates. According to him file No. 467/1984 stood consigned to records. PW Syed Abdul Qayoom, who was the Dy. Commissioner Kathua from October 1981 to August 1983 and stood transferred on 6.9.1985 the date on which said PRCs are purported to have been issued under his signatures, has denied the genuineness of his signatures upon the said PRCs. PW Kuldeep Singh Manhas who was posted as Asstt., Commissioner Kathua in 1989-90 testified the fact that PRC EXP5 issued in favour of Mst. Urmila was not genuine. On the basis of the evidence of said witnesses learned trial court has returned the finding that EXP1 to 4 and also EXP5 were not genuine certificates and therefore were forged ones. Learned counsel for the appellant has not contested the evidence of these witnesses not it is his case that the said certificates are genuine. Now the question remains to be answered is who is the author of these forged certificates. Learned trial court, while relying upon the statement of the handwriting expert PW I.U. Khan came to the conclusion that the accused was the author of the forged certificates. This finding of the learned trial court is being hotly contested by learned counsel for the appellant. Mr. Kalgotra has argued that the opinion of the handwriting expert Sh. I.U. Khan given in his report cannot be admitted in evidence against the accused for the reason that PW I.U. Khan has not directly deposed to with regard to such opinion in his statement

before the court. He has simply proved his report EXPWIU. In support of his contention he relies upon a case titled Hadi Kirsani v. State, AIR 1966 Orissa 21. The case before that High Court pertained to a murder. The postmortem report was available on the file but no doctor was examined to prove it by the prosecution. Learned Sessions Judge against whose judgment the appeal was being heard had not admitted the report into evidence by saying that same being not substantive evidence could not be admitted in evidence. In these circumstances the court held as follows: --

'The position of law may therefore be summarized thus-if the doctor is available for examination in court, the injury report or the postmortem report given by him is not substantive evidence and is inadmissible unless he is examined. It can be used for corroboration or refreshing memory or for contradiction of his evidence in court. If, however the doctor is dead or is not available for examination in court under the circumstances mentioned in section 32, the injury report or the postmortem report is admissible and relevant. What weight it would carry with a court of fact is altogether a different question.

Its probative value would depend on the fact and circumstances of each case.

The learned Public Prosecutor failed in his duty in not getting the injury report and the postmortem report proved through persons who knew the handwriting of the doctor who was untraceable. If the documents had been marked as exhibits after formal proof through such witnesses, we could have accepted them as admissible in evidence and would have taken them into consideration for determination of the nature and dimensions of the injury. As the documents had not been formally proved, the only alternative course open to us was to take additional evidence Under Section 428 Cr.PC. in the facts and circumstances of this case, we do not think it necessary to further protract the trial by giving opportunity to the prosecution to prove the documents by way of additional evidence.'

14. The above said authority nowhere lays down that the report of an expert witness if proved by its author cannot be taken into consideration unless the same is not corroborated by his statement before the court. In my view there is no merit in the contention of learned counsel for the appellant. Once the report of the expert

was proved and admitted into evidence it can be read as part of the statement of the author of the report i.e. PW I.U. Khan. Therefore no exception can be taken to the acceptance of the report of the handwriting expert against the accused in the evidence and learned trial court was right in holding the accused to be the author of the forged certificates, relying upon the said report.

15. In the above said circumstances the judgment of the learned trial court is found to be perfectly valid and legal. Learned trial court after due and proper appreciation of the evidence of the prosecution has found the accused to be guilty of the offences for which he has been convicted. Therefore, there is no merit in the grounds of challenge urged by learned counsel for the appellant to challenge the legality of the judgment of the trial court.

16. Learned counsel for the accused has also contended that if this court comes to the conclusion, to which it has come, the accused should be given benefit of Probation of Offenders Act as it was his first offence as no evidence is available to show that the antecedents were bad or questionable.

17. The prayer of learned counsel for the appellant cannot be allowed firstly because of the reason that Probation of Offenders Act does not extend to District Kathua and secondly the gravity of the offence is such where he does not deserve to be given the benefit of probation. However, in the circumstance of the case, in my view the imprisonment for one year and a fine of Rs. 5000 on each count for each offence shall meet the ends of justice. The appeal of the appellantis, therefore, disposed of. The order of conviction recorded by the learned trial court is upheld and the accused-appellant is ordered to undergo rigorous imprisonment for one year and a fine of Rs. 5000 for each of the offence, in default of payment of fine he shall undergo simple imprisonment for three months on each court. All the sentences shall run concurrently.

Bail bonds of the accused-appellant are cancelled and he is directed to surrender before the trial court for suffering the sentence. In case the accused fails to surrender before the trial court within two weeks from today, learned trial court shall be at liberty to take appropriate steps for his arrest and sending him to jail for suffering the sentences.

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