

Mohd. Asadullah Vs. the State

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Court : Jammu and Kashmir

Decided On : Sep-06-2002

Reported in : 2003CriLJ2355

Judge : S.K. Gupta, J.

Acts : Ranbir Penal Code (IPC), 1989 (Smvt.) - Sections 420 and 466; ;[Evidence Act, 1872](#) - Section 45

Appeal No. : Criminal First appeal No. 10 of 1985

Appellant : Mohd. Asadullah

Respondent : The State

Advocate for Def. : H. Rehman, Govt. Adv.

Advocate for Pet/Ap. : G.A. Tak, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Gupta, J.

1. This appeal is directed against the Judgment dated 28-5-1985 and order of conviction dated 30-5-1985, recorded by the learned Sessions Judge Bhaderwah in Criminal File No. 54/Session entitled State v. Mohd Asadullah and another for

offence under Sections 466/468/420/471 read with Section 109 RPC. Accused Mohd Asadullah was sentenced to undergo two years simple imprisonment and a fine of Rs. 500/- in proof of offence under Section 466 RPC and in default of payment of fine the accused shall also suffer four months imprisonment. Whereas accused Subhan Lone who was also sentenced to suffer two years simple imprisonment and a fine of Rs. 500/- for offence under Section 466 RPC read with Section 471/109 RPC as abettor in forging the Court record and in default of payment of fine, he shall also undergo four months imprisonment respectively.

2. The sheet anchor of the prosecution case discernible from the material on the record depicted in narration is that a case for offence under Sections 420/466/468/471/109 RPC was registered against accused Mohd. Asadullah and Subhan Lone on a written report of the then District and Sessions Judge, Bhaderwah dated 9-5-1981 and in verbatim is reproduced as under :--

'9-5-1981

Perused the application of Mir Baz, the appeal file titled Mir Baz v. Subhan Lone, statement of Ghulam Mohd Beg Accountant who has written the final order in appeal file on 21-4-80 under my dictation and the statement of Shri Mohd Maqbool Record Keeper of this Court, The perusal shows a serious case of forgery against Shri Asdulla Khan Civil Clerk of this Court. The said clerk is placed under suspension; The file reveals that in terms of compromise arrived at by the parties the appeal preferred against the Judgment and decree of Sub Judge Bhaderwah dated 19-8-1979 was set aside and the suit of plaintiff Abdul Subhan was dismissed. The final Judgment dated 21-4-1980 passed in terms of compromise in the appeal has been overwritten by Shri Asdulla Khan Civil Clerk and it has been shown by committing forgery that the appeal stands dismissed and the Judgment and the decree of the trial Court except costs is maintained. The decree sheet has also been forged and appeal has been shown dismissed. A similar attempt has been made in the compromise deed and certain words have been forged in the deed. There has also been the use of an ink remover and the few words actually used have been removed and overwritten to support the forgery. The object was to give the benefit to Subhan Lone S/o Meera Lone R/o Baja Cherrala and the

involvement of the said person as an abettor cannot be ruled out. The forgery committed to the record of the Court has resulted into an injury to Mir Baz petitioner in particular. The matter is very serious and requires a thorough investigation. The application along with the file, statements of Shri Ghulam Mohd Beg and Mohd Maqbool are along with this order sent to the officer Incharge Police Station Bhaderwah for registration of the case.

Dated 9-5-1981.

Sd/-

District and Sessions Judge

Bhaderwah 9-5-1981'

3. The police swung into action and on completion of investigation and after recording the statement of witnesses and after obtaining the specimen writing of accused Mohd Asadullah, the same was sent for comparison with the document alleged to have been forged by the accused, produced the challan against both the accused.

4. The trial Court after hearing the parties and perusing the record of the investigation including the First Information Repot, statement recorded under Section 161 Cr. P.C. report of the hand-writing expert, framed charge against Mohd Asadullah accused for offence under Section 420/466/468 and 471 RPC for having forged the official record consisting of the Judgment of District Judge passed in appeal in terms of compromise deed and decree sheet besides an attempt made to forge the compromise deed by using ink remover and over-writing few words after erasing the actual words used in the said compromise deed with the purpose and intent to give benefit to Subhan Lone accused No. 2, who had abetted the commission of forgery in respect of the Court record and also against accused Subhan Lone for offence under Section 420/466/468/471/109 RPC respectively. The charges were read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

5. The trial Court after recording the evidence adduced by the prosecution in sustaining the charge against the accused and after hearing the arguments, held both the accused guilty of the offence with which they stand charged and convicted and sentenced accordingly. It is pertinent to point out that during the pendency of the appeal, appellant No. 2 Mohd Asadullah informed that Subhan Lone appellant No. 1 has died, as is gathered from the interim order on the file dated 8-10-1993.

6. I have heard Mr. G.A. Tak, learned counsel appearing for the appellant as well as Mr. H. Rehman, Government Advocate, for the State in extenso. A minute examination of the facts on file has also been made.

7. Learned counsel appearing for the appellant has assailed the legality and propriety of the order of conviction and sentence passed by the learned trial Court on variety of grounds. It is submitted that the prosecution has not proved its case beyond reasonable doubt. The trial Court has not appreciated the prosecution evidence in its proper perspective. The evidence provided by the prosecution during the course of trial, suffers from glaring discrepancies and material contradictions and does not inspire confidence in the Court. There is not an iota of evidence to connect the accused with the commission of crime. None of the prosecution witnesses examined in the case has stated that the alleged forgery in respect of Court record has been committed by the accused Mohd Asadullah in their presence. Their evidence is shaky, unbelievable, untrustworthy and incredible and thus insufficient to form the basis of the conviction of the accused. Whereas Mr. H. Rehman, Government Advocate, appearing for the State in controverting the contentions of the appellant stated that there is overwhelming evidence to pointedly prove the guilt of the accused in commission of crime. Oral evidence of the prosecution further supports the evidence provided by the hand-writing expert. The trial Court has properly appreciated the evidence and there is no ground to find fault with the conclusion reached in holding the accused guilty of the crime.

8. It is true that in a country like India where it is difficult to find the witness who has not made any embezzlement or exaggeration and therefore, in such a case the Court would be justified in separating the chaff from the grain, but where the

evidence consists of only chaff, as in the present case, the question of separating the chaff from the grain would not arise. It, therefore, follows unless there is conclusive proof, the conviction cannot be made on conjectures and surmises. Trial is conducted to ascertain the guilt or innocence of the accused arraigned, in arriving at a conclusion about the truth, the Courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. It is apt to point out that Courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational and genuine approach for administering justice in a criminal trial. Criminal jurisprudence can not be considered to be a Utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. It is the duty of the Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have proved the guilt beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the Court in drawing inference from proved and admitted facts. It is cardinal principle of criminal jurisprudence that the case can be said to have been proved only when there is certain and explicit evidence.

9. Adverting to the evidence on record, PW Mohd Maqbool Kanth, Record Keeper, in the Court of District Judge, Bhaderwah stated to have made a statement on 8-5-1981 (Exp-MM/2) to the effect that over writing of words and and were written by Mohd Asadullah that and that the decree sheet dated 21-4-1980, was prepared in which over writing was also done by Mohd Asadullah and words in the compromise deed was written by Mohd. Asadullah accused. The witness stated that ink remover was not used in his presence, but Asadullah admitted before him to have committed a mistake. It is also in this evidence that the accused stated in presence of Mohd. Hanief, clerk, to pay an amount of Rs. 1000/- if Mir Baz does not file a complaint before the District Judge. The witness further stated in his evidence that prior to the reporting of the matter to the police station for registration of a case, to the effect that Copyist has taken the record of the file entitled Mir Baz v. Abdul Subhan for issuing certified copy of the compromise deed

and decree sheet, it was at that time he learnt that some cuttings, additions, and over writing have been taken in the Judgment in appeal file, decree sheet and the compromise deed. He also stated that some words were added in the documents by over writing after use of ink remover. It is also in his evidence that the over writing has been done in the documents by Asadullah accused with whose hand-writing he is well acquainted. It is also in his evidence that Asadullah admitted before him to have committed the mistake and stated in presence of PW Mohd Hanief that he will pay Rs. 1000/- if Mir Baz does not make a complaint to the Judge. Whereas PW Mohd Hanief Criminal clerk in his evidence on oath emphatically stated that the accused did not say any thing about the forgery of the papers and told him to approach the complainant not to proceed with the complaint and he will pay Rs. 1000/- as he is poor man and will be ruined. When Asadullah came to him, PW Som Nath and Yousuf were also present there. Similarly, PW Ghulam Mohd Beg stated that the original order of the appeal file is the same as dictated by the District Judge. There are however, some words incorporated in it which were not in his hand-writing. The word in line No. 4 and the word in line No. 5 were added, after erasing the words originally existing in the Judgment and the added words resembled with the hand-writing of accused Mohd Asadullah. The witness, however, clarified that the documents were not forged before him by Mohd Asadullah accused. The evidence provided by Som Nath and Mohd Yousuf Lone is that the accused Asadullah, when asked as to what had happened, told that he is under the influence of some wizard. According to Mir Baz, complainant, that Mohd. Maqbool Clerk had told him about the accused Asadullah and Subhan Lone willing to pay Rs. 1000/- and the complainant should not press for the copy of the decree sheet. Prem Nath clerk of the Advocate also told him to get Rs. 1000/ - from Subhan Lone accused and go back home. The witness however, stated to have not disclosed this fact to the police in his statement. According to the complainant, the accused did not commit any forgery in his document. He also stated that accused Mohd Asadullah does not have any animosity against him. He has only seen Subhan Lone accused with Asadullah accused. PW Mujeed Ahmed Tak, who happened to be the copyist in the Court of District Judge Bhaderwah in the year 1981, stated that PW Jagdish Raj Head Copyist did not. show anything about the forgery or over-writing. There was no

cutting in the compromise deed in line No. 41. Some ink has been used. The statement provided by PW Jagdish Raj, Head copyist, is to the effect that accused Asadullah made an application for issuance of a copy and brought a file. Certified copy was prepared by him. The accused was asked to put his signature on it as the application was moved through him. The witness further stated that he was called by Hem Raj and asked to reply in the enquiry that the certified copy was prepared after comparing with the original. He again obtained the file from the accused and compared the same and found the true copy. The witness further stated to have not found any over-writing in the original compromise deed written by the petition-writer Ghulam Mohd Goni. The witness unambiguously stated to have imbibed any doubt while preparing copies of compromise deed and decree sheet. There was perhaps no over-writing in the decree sheet. Similarly, PW Ghulam Mohd Goni deposed that he does not know as to who made the cuttings and over-writings. He however, stated that the compromise deed was written by him but some one by forging the compromise deed has shown that the appeal is reported to have been dismissed and the lower Court decision accepting Rs. 1000/- has been reversed. He also stated that Mir Baz, complainant, came to the Court in order to make a complaint but PW Mohd Maqbool, Record Keeper asked the complainant about the accepting of Rs. 1000/- provided the complaint is not made. PW Abdul Samad was an Advocate of the complainant Mir Baz in Civil case. Mir Baz engaged Kotwal Shiv Lal as his Advocate in appeal. The compromise was entered into between the parties on the basis of which the judgment of the trial Court was reversed. This is also in his evidence that Lala Hem Raj Advocate, however, apprised Subhan Lone accused that the copy of the decree sheet is incorrect and no execution application has been filed and thereafter the accused went back. The witness, however, did not have any knowledge that what has happened thereafter. The specimen signatures of the accused Asadullah are, however, taken by PW Abdul Hafiz, Naib Tehsildar Executive Magistrate 1st Class Bhaderwah on 11-5-1981. The accused was brought before him by the police. The evidence provided by PW R.L. Dhar, Assistant Director, Forensic Science Laboratory, Srinagar that the wordings of Q1, Q2 and Q5 were written by the same person who wrote S1 to S3. In his opinion, in document marked Q5, there was a word which was erased and over-written by

word.

10. In order to constitute forgery, the first ingredient is that the accused should have forged the document, or a part of such document. In the absence of proof of this ingredient, a person cannot be made liable for offence under Section 466, RPC. That apart, it is also incumbent upon the prosecution to prove that it was forged by the accused with one of the intentions mentioned in the Act. In other words, in a charge of forgery, the burden is on the prosecution to prove that the document is forged by one and it was the accused who forged it. But the forgery must be definitely proved.

11. In the instant case, the evidence produced by the prosecution is much too fragile and fractured to prove that the forgery was committed by the accused by making over writing/material alterations or mutilation in the judgment in appeal, compromise deed and decree sheet by erasing original words by using ink remover. There is no whisper in the statement of witnesses that the over-writing was done by the accused in the aforesaid documents in their presence. PW Ghulam Mohd Goni in his evidence stated to have not known as to who made the cuttings and over-writings. However, PW Jagdish Raj has deposed in unequivocal terms that he had prepared the copy after comparing it with the original. He was head copyist at the relevant time. He further clarified in cross-examination to have not entertained any doubt while preparing copies of decree sheet and compromise deed. This witness has also expressed that perhaps there was no over-writing in the decree sheet and the compromise deed. This fact is further affirmed in the testimony of PW Mujeeb Ahmed Tak, who stated that PW Jagdish Raj did not say anything about the forgery of these documents. It is also in his evidence that there was no cutting in the compromise deed in line No. 41. But some ink remover has been used. Mir Baz, complainant, in his evidence also was specific that the accused did not commit any forgery before him. He, however, deposed that accused Asadullah lives in a village where Subhan's daughter lives and that no execution was taken against Asadullah or Subhan Lone and that the decree was cancelled and no amount was paid to him. Even Ghulam Mohd Beg denied the forgery of the document by the accused in his presence. So is illustrated by PW Mohd Hanif that the accused did not say anything about the forgery, but only said

that he is poor man and will be ruined. Even PW Mohd Maqbool Khant stated that PW Jagdish Raj, Head copyist, who returned the file to him after preparing the copy, did not complain about the file. He also stated that ink remover was not used in his presence. There is nothing in this evidence to show that the forgery was committed in the record of the Court, namely, judgment in appeal file, compromise deed, and decree sheet by over-writing the words and and by Assudullah accused and that the decree sheet dated 21-4-1980 was prepared in which over writing was also done by Mohd Assadullah accused and the word in the compromise deed was written. He also stated that the decree sheet was prepared by the accused Asadullah and the words in the compromise deed were also written by him. But the statement provided by the witness stands contradicted by PW Mujeeb Ahmed Tak that when the file was returned after preparing the copies from the record, PW Jagdish Raj did not complain any- thing about the forgery or overwriting. The evidence of PW Mohd Maqbool Khant is rendered inherently improbable and does not advance the case of the prosecution. The evidence provided by the prosecution witnesses, who happened to be employees of the department, is qualitatively and quantitatively insufficient to bring the connection between the accused and the forgery of the official record by over-writing, mutilation and material alterations, actuated by dishonest and fraudulent intentions to cause wrongful gain to some one and wrongful loss to another. Whether the forgery has been committed or not has to be gathered from the evidence on record.

12. As regards the evidence of hand-writing expert, it may be pointed out that this is dangerous to come to any conclusion on a mere comparison of hand-writing. The evidence on record does not remotely connect the accused with the commission of offence of forgery in the record of the Court. The accused cannot be convicted of a crime solely and entirely upon the evidence of the handwriting expert without any corroborating evidence to support this evidence. In other words, any corroborating opinion of the expert alone cannot be made the foundation of the conviction. The opinion of the expert ordinarily cannot be accepted to prove the facts deposed by him and conviction for forgery cannot be sustained merely on evidence of handwriting expert. His evidence is not to be accepted blindly and usually required substantial corroboration. The handwriting expert's evidence,

therefore, cannot be accepted as being necessary conclusive aspect when there is no other evidence to corroborate the expert. That apart, in the absence of any evidence, the accused cannot be held guilty for committing forgery of the Court record in this case.

13. The plea of extra judicial confession of the accused raised by Mr. H. Rehman during arguments is not also proved by any credible, cogent evidence. The prosecution has miserably failed to discharge the burden of proof of guilt against the accused beyond any reasonable doubt. Link after link forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient. The trial Court has misappreciated the evidence and landed into an error in holding the accused guilty of forgery of the record of the Court with dishonest, fraudulent intention to cause wrongful gain to some one and wrongful loss to others. The conclusion drawn by the trial Court in this case is based on evidence not free from impregnable suspicion. The expert's opinion and evidence, besides being inconclusive, incredible, untrustworthy, does not inculcate the accused with the commission of offence of forgery, dishonestly and fraudulently. On an analytic appreciation and evaluation of record, the evidence from which the conviction of the accused has to be drawn, has not been established by legal, cogent, positive, consistent and independent evidence. The evidence brought on record is not of conclusive nature as to prove the sustenance of charge against the accused which attracted the provisions of Section 466 of the Ranbir Penal Code.

14. In testing the evidence of the witnesses on the touchstone of credibility and reliability, it is pertinent to point out that nothing is forthcoming from their statements as to when and where accused Asadullah has forged the record of the Court by making over writing/material alterations by using ink remover. It is also not elicited from the statements that the record of the Court, stated to have been forged by Mohd Asadullah, ever remained in his custody/ possession. He had sufficient opportunity to forge the said record because Jagdish Raj, Head Copyist, never complained about the over-writing in the judgment in appeal, decree sheet

and the compromise deed when returned the file to the record-keeper after preparing certified copy. If that be the position, the evidence of the witnesses is based on surmises and conjectures and, thus, cannot be relied upon to hold the accused guilty of offence charged against him. The Court has to judge the total cumulative effect of the circumstance, each of which re-enforces the guilt/innocence of the accused. The Court is not to accept any exaggerated, capricious or ridiculous explanation which may suggest itself to a highly imaginative mind. The evidence to be accepted must be a combination of proved facts.

15. The First Information Report in this case was registered temporarily on the report of the then District and Sessions Judge, Bhaderwah after holding enquiry. The said report was sent to the Police Station along with statement of witnesses recorded during inquiry. He was not produced by the prosecution and consequently the report, which forms the basis of the FIR, remained unproved. This further leaves a serious doubt in the prosecution case.

16. In view of the above facts and circumstances of the case, the appeal is allowed and conviction and sentence of the appellant/accused recorded by the trial Court for offence under Section 466, RPC is set aside. Bond executed by the appellant/ accused and the surety shall stand discharged. The record of the trial Court be remitted back forthwith.