

Romesh Chander Vs. State

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Court : Jammu and Kashmir

Decided On : May-20-2003

Reported in : 2004(1)JKJ304

Judge : S.K. Gupta, J.

Acts : Ranbir Penal Code (IPC) - Section 471

Appeal No. : Crl. Appeal No. 10/1997

Appellant : Romesh Chander

Respondent : State

Advocate for Def. : Shaista Hakim, Adv.

Advocate for Pet/Ap. : Harbans Lal, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Gupta, J.

1. This appeal is directed against the order of conviction recorded by learned Ist-Addl. Sessions Judge, Jammu whereby accused Romesh Chander was sentenced to undergo 5 years rigorous imprisonment and a fine of Rs. 20,000/- and in default of payment of fine to further undergo imprisonment of like nature for a period of 2

months in proof of offence under Section 471 R.P.C.

2. The facts that culminating in the prosecution of the accused Romesh Chander stemming out of the record depicted in narration are that J&K; Public Service Commission (in short PSC) invited applications from the eligible candidates for appearing in the Sub-Inspector, Excise and Taxation Departmental examination vide Notification No. PSC Ex-82/92 dated 20.10.1982. Accused Romesh Chander working as excise guard in the Excise and Taxation department also applied to the commission for appearing in the Sub-Inspector Examination after securing eligibility certificate from the Deputy Commissioner Excise Jammu.

The accused was allowed to appear in the aforesaid examination and permission was provisional subject to production of original Matriculation Certificate. The result of the accused was however with-held by Public Service Commission on account of non-production of the Original Matriculation Certificate. However, the accused was asked to produce the certificate so that his result could be declared by the PSC. An application was however submitted by the accused to Secretary PSC averring therein that he could produce a matriculation certificate and thereupon produced the matriculation certificate in original to the PSC. On taking the original matriculation certificate Secretary Public Service Commission became suspicious about its genuineness and consequently issued a direction that the certificate produced by the petitioner be forwarded to the J&K; Board of School Education to verify its genuineness. On verification by the J&K; State Board of School Education Jammu (hereinafter referred as J&K; Board), found the matriculation certificate produced by the accused to be fake and the Roll No. 16085 year 1979 Annual (June) Session reflected to be the Roll No. of the accused Romesh Chander in the Certificate produced by him in fact did not belong to the accused but it pertained to one Parshotam Kumar S/o Sain having passed the examination under the said Roll number. The matter was reported by Shri S.A. Jalali, Deputy Secretary, Administration, of the Board to Vigilance Commissioner about the fake matriculation certificate produced by the accused for investigation. The Commissioner however referred the matter to the Deputy Inspector General of Police Range, Jammu for further necessary action as the offence, according to him, did not fall within the ambit of prevention of Corruption Act. A case under

Sections 420, 467, 468, 471 RPC stood registered with the police concerned and investigation ensued. On the conclusion of investigation the accused was finally sent up to stand his trial for the alleged offences under Sections 420, 467, 468, 471 RPC and the learned Trial court found him guilty under Section 471 RPC and he was sentenced accordingly.

3. Mr. Harbans Lal, learned counsel appearing for the appellant argued that there being no direct evidence, the circumstantial evidence relied upon by the trial court does not warrant the conviction of the accused. His further submission is that prosecution has failed to prove that the fake document has been prepared by the accused and that the said document (matriculation certificate) was a forged document and the accused dishonestly or fraudulently used the forged matriculation certificate as genuine knowing the said document to be forged one. According to appellant's counsel, the trial court convicted the accused on a parverse view of the evidence. MRs. Shaishta Hakim, learned Government Advocate, argued that circumstantial evidence relied upon by the prosecution is consistent only with the hypothesis of the guilt of the accused to have used the matriculation certificate as genuine which he knew or has reason to believe to be a forged one.

4. I have heard the arguments advanced by the learned counsel appearing for the respective parties and perused the judgment rendered by the trial court in context with the evidence on record, meticulously.

5. It may be pointed out at the threshold that there is no direct evidence against the accused to link him with the commission of offence. The entire prosecution case hinges on circumstantial evidence. In case of circumstantial evidence every evidentiary circumstance is a probative link, strong or weak, and must be made out with certainty. Link after link must be forged firmly by credible testimony of the witnesses so as to form a strong chain of sure guilt binding the accused. Each link taken separately may suggest but when hooked on to the next and on again may menacle the accused inescapably, only then the concatenation of incriminating facts are sufficient to convict the accused, short of that is insufficient. In other words, all the incriminating facts and circumstances, in order to justify the

inference of guilt must be incompatible to the innocence of the accused. Circumstantial evidence, indicates the truth more unerringly than direct evidence.

6. Adverting to the factual matrix of the case, the circumstances relied upon by the trial court are :

(i) That the accused in the capacity of excise guard in the Excise and Taxation Department submitted an application accompanying eligibility certificate to appear for the departmental examination for the post of Sub-Inspector.

(ii) That the accused was permitted to appear provisionally subject to production of original matriculation certificate but subsequently the result was with-held by the Public Service Commission as the accused did not submit the original matriculation certificate.

(iii) That the original matriculation certificate purported to have been issued by the Board of School Education indicating the accused to have passed examination under Roll No. 16085 alongwith an application with a prayer for declaration of his result were produced by the accused.

(iv) That the matriculation certificate alleged to have been produced by the accused was sent for verification to the J&K; Board by the Public Service Commission.

(v) That the Board found the certificate stated to have been submitted by the accused to the Public Service Commission, and sent for verification to be fake qualification certificate.

7. It is not in dispute that the accused was working as excise guard in the year 1982 in the Department of Excise and Taxation when an application to take up the departmental examination for the post of sub-Inspector Excise and Taxation after obtaining eligibility certificate was submitted to J&K; Public Service Commission. It is also not in dispute that the accused was allowed to appear in the examination provisionally subject to production of original matriculation certificate. It is also borne out from the application-form admittedly submitted by the accused with Public Service Commission, for the examination of a sub-Inspector Excise and

Taxation wherein at column 6 of qualification indicated 'Matric'.

8. The first circumstance relied by the prosecution is that the accused submitted an application for producing the matriculation certificate and seeking declaration of his result and alongwith the application matriculation certificate mark 'D' was also produced. In order to prove this circumstance PW Mohd. Yousaf Raja was examined who was posted Deputy Secretary PSC at the relevant time. According to the witness the accused was granted provisional permission to appear in the examination on the basis of the form and eligibility certificate obtained from the department and submitted by him. It is also in his evidence that the result of the accused was with-held and asked to produce original matriculation certificate. He further stated that application mark 'A-2' alongwith original matriculation certificate mark 'D' was produced by the accused on 29-12-83. The witness further stated to have suspected the certificate to be fictitious because he was well acquainted with the signatures of Dr. Aga Ashrif, the then Chairman of the J&K; Board of School Education having worked with him. He however noted on the application for writing to the Board of School Education about the genuineness of the certificate. The note written by him on the application is marked as Expw-MY/2. The witness was definite in his evidence that this certificate has been produced by the accused. The witness further stated that communication mark 'E' was received from the Education Board which disclosed that the matriculation, certificate sent for verification is spurious and fabricated. For facility of reference the communication mark 'E' is re-produced herein below:--

'Mr. M.Y. Raja,

Deputy Secretary,

Public Service Commission, Jammu.

Sub: Verification of Matriculation Certificate.

-O-

The fake qualification certificate, with the marginally noted particular received, in this office under your Letter No. PSC/Ex-84/Gh-11(96) dt.5-1-1984, addressed to

the Chairman of this organisation, has not been issued by this Board. Obviously the said certificate is spurious and fabricated.

(i) Name : Romesh Chander

(ii) Parentage: Sh. Ram Dass

(iii) Province: Jammu

(iv) Cert. S.No. 15766

(v) Roll No. 16085

(vi) Date of birth: 9.1.1954

(vii) Session 1979(June)

Actually one Parshotam Kumar S/o Sain Dass with date of birth as 21.1.1963, who passed his matriculation Examination in June-1979 under Roll No. 16085 in second Division (IInd Division) and obtained 379 marks, has been awarded qualification certificate bearing S. No. 14655.

The fake certificate is sent herewith which may kindly be returned to this office, for onward transmission to the Vigilance Department for investigation.

Sd/-

(S.A. Jalali)

Dy. Secretary (ADM).

9. Whereas the evidence provided by PW Saida Akbar Jalali posted as Deputy Secretary Administration State Board of School Education in the year 1985-88 is to the effect that on the receipt of a letter from PSC to verify the genuineness of the matriculation certificate issued in favour of Romesh Chander issued in the year 1979(June Session), and on conducting the verification of genuineness of the certificate they found that the certificate was fake as under Roll No. 16085 actually One Parshotam Kumar had taken the examination and not the accused Romesh

Chander and the PSC was accordingly replied vide communication mark 'E' referred supra. This letter bears his signatures and marked as Ex PW-SA. It is also in his evidence that verification report was prepared but retained in the office of the Board, but neither the record nor the report prepared by him with regard to the observations about the matriculation certificate to be fake was shown to him in the court. Even the record from which he had found that under Roll No. 16085 the name of the candidate indicated was one Parshotam Kumar was also not shown to him. The witness however did not make secret of the fact that the certificate-sheets are kept confidentially in safe custody of the Board. The certificate sheets cannot be taken out from the office without the connivance of the officials of the Board. No attempt was however made by him during verification to find out as to how this certificate has come into the hands of a stranger when these are kept in the safe custody of the Board. This witness further stated that no complaint was ever received with regard to the theft of the certificate-form though the certificate-forms to have been produced by the accused bear the serial Nos.

10. Similarly, PW Gulzar Ahmed Scientific Assistant deposed that SDPO North City Jammu forwarded matriculation certificate issued by the J&K; Board of School Education and specimen writings of accused Romesh Chander for the purpose of examination and comparison. According to this witness the documents were thoroughly examined with scientific aids and reached an opinion that the signatures on matriculation certificate mark as 'Q2' (Checking Officer), 'Q3' (result checking officer) and 'Q-4' (Chairman) did not tally with the signatures and therefore were labelled as forged. It is also in his evidence that on comparison of writings of accused Romesh Chander with the questioned writings mark 'Q-1', application seeking permission to produce the matriculation certificate, it was found that both the specimen writing and the writing 'Q-1' are of the same person. The witness however categorically stated that the questioned writings 'Q-2', 'Q-3' and 'Q4' were on comparison to be not in the handwriting of accused Romesh Chander. He further made it clear that the specimen signatures of Chairman of the Board and concerned clerks whose signatures are supposed to be 'Q2', 'Q3' and 'Q4' were not made available to him for comparison and determination whether the signatures of the Chairman and the said clerks were genuine and true.

11. It is apt to point out that MRs. Saishta Hakim Govt. Advocate appearing for the respondent-state when asked by the court admitted that Dr. Aga Ashrif, the then Chairman of the Board of School Education whose signatures are stated to have been forged on the matriculation certificate alleged to have been allegedly produced by the accused is still alive, but neither his specimen signatures have been secured to be sent to the scientific officer for comparison with the questioned signatures 'Q4' nor the document (Matriculation Certificate mark 'D' was ever sent to him for ascertaining that the signatures at 'Q4' were his genuine or true signature or not. So the opinion rendered by the scientific assistant PW Gulzar Ahmed is of no avail to the prosecution as he does not give any information with regard to the questioned writing Q2, Q3 and Q4 pertaining to the signature of the Checking Officer, result checking officer and Chairman respectively whether genuine or true.

12. So what is indisputably gatherable from the aforesaid evidence is that the prosecution has failed to prove as to whether the signatures of the Chairman appearing on the matriculation certificate mark 'A', signatures of the checking officer and the signatures of the result checking officer appearing on the said certificate were genuine or forged. Even the scientific Expert examined by the prosecution expressed his inability to determine and give any opinion about questioned writing appearing on the matriculation certificate in the absence of specimen signatures of the Chairman of the Board and the concerned clerks. PW Gulzar Ahmed Scientific Assistant made it amply clear in his pungent cross-examination that the questioned writings Q2, Q3 and Q4 on comparison were not found to be in the hand of Romesh Chander. On the basis of the evidence produced by the prosecution and even in view of the opinion rendered by the Scientific Assistant PW Gulzar Ahmed, it could not show that as to how the matriculation certificate mark 'D' could be said to be a forged document when the signatures of the then Chairman appearing on the certificate have not been denounced as forged by the Scientific Assistant Gulzar Ahmed, examined by the prosecution.

13. It is pertinent to point out that a document can be said to be falsely made if the signatures, seal or the date is false. In other words, the signatures (in case of

forgery of signatures) must be affixed by a person other than the person whose signature it purports to be. The fact that a document contains false recitals or statements will not make it a false document. Where the prosecution case is not one of subsequent alteration of the document but is essentially one of making initial incorrect and unauthorised entry, the making of such entry cannot be said to constitute the making of a false document. In the instant case, the signatures of Dr. Aga Ashrif, the then Chairman when admittedly he is alive, were not sent to the hand-writing Expert for examination and opinion, the accused could not be convicted on the inference of suspicion. So where the signatures of the Chairman on the document and also of the Checking Officer and the result checking officer on the matriculation certificate have not been found forged though its contents might be incorrect, the document cannot be said to be a forged document. It therefore follows that where the preparation of a document does not amount to a forgery, the use of such document does not constitute an offence under Section 471 RPC. The prosecution having miserably failed to prove by consistent, positive and cogent evidence including the opinion of hand writing Expert that the document (matriculation certificate) allegedly produced by the accused is a forged document, its use even if attributed to the accused does not constitute a 'user' as contemplated under Section 471 RPC. This legal position emerging out of the record has not even been disputed by MRs. Saishta Hakim, Govt. Advocate, appearing for the Respondent-State.

14. In order to sustain a conviction under this section, the accused must have not only used the forged document as genuine but must have used the document fraudulently or dishonestly, otherwise the accused cannot be credited with the requisite means-rea. The burden is always on the prosecution to prove the essential ingredients of Section 471 RPC viz. knowledge or reasonable belief on the part of a person using the document that the document is a forged one; and fraudulent or dishonest use of a document as genuine. There is absolutely no evidence brought on record by the prosecution to show that the accused had fraudulent or dishonest use as genuine, the forged document, matriculation certificate and derived benefit out of it and causes wrongful gain or wrongful loss.

15. It is a settled proposition of law that when there is no evidence as in the instant case, to show that the accused knew or had reason to believe that matriculation-certificate was a forged document and with this knowledge he used the document, the accused cannot be convicted (AIR 1979 SC 1506) may be noticed). This I say so because even the opinion of the handwriting Expert does not support the prosecution case. Apart from that, the Board of School Education has nowhere stated that the certificate allegedly produced by the accused has not been issued by the Board. Even PW Saide Akbar Jalali, Deputy Secretary School Board Examination, in his evidence unambiguously stated that during verification he did not find out as to how the certificate-form which normally remains in the safe custody of the office, has gone into hands of the accused. He has further gone to the extent of telling that unless some official of the Board is conniving for this certificate cannot be obtained by any one. Parshotam Lal, who according to the prosecution, had appeared under Roll No. 16085 and not Romesh Chander in the year 1979(June Session); was not examined. Even Dr. Aga Ashrif, the then Chairman of the J&K; Board of School Education who issued the certificate, has not been examined. The prosecution has neither collected nor produced the best material evidence for the reasons best known to him and not for us to speculate which in fact leaves serious dent in the prosecution case. The prosecution has also not been able to prove the signatures of the accused on the application mark 'A2'. The evidence produced by the prosecution stated least about the accused having either signed the application in their presence or they were acquainted with his signatures. So is not explicit even in the report of the Handwriting Expert. According to Roshan Lal ASI I.O in the case, the specimen writing of the accused was taken in presence of the Magistrate, but the Magistrate has not been examined.

16. The prosecution edifice was built on circumstantial evidence. The critical rule of proof by circumstantial evidence is that such testimony can be the probative basis for conviction only if one rigorous test is satisfied. The circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and on every reasonable hypothesis the guilt of the accused must be the only inference. Mr. Harbans Lal, appellant's counsel however suggested that the case is full of maybes excluding his client's culpability, and contended that a test of

incompatibility with innocence of the accused had not been fulfilled at all. There is a considerable merit and weight in the contention of the learned appellant's counsel in view of the apparent incontrovertible facts highlighted from the record in his debate.

17. On a careful consideration of facts and circumstances of the case in its cumulative an irresistible conclusion reached is that the prosecution has miserably failed to bring offence home to the accused beyond hilt by convincing, reliable and independent evidence. The evidence assembled has neither been properly appreciated by the trial court in its proper perspective nor a probative view of legitimate inference is following from the evidence of circumstantial has been taken.

18. In the result, I allow the appeal, set aside the order of conviction and consequent sentence recorded by the trial court and acquit the accused for offence under Section 471 RPC, in resultant thereof. Record shall be remitted back to the trial court forthwith.

19. Disposed of accordingly.