

Rajinder Kumar and ors. Vs. State

Rajinder Kumar and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/901476

Court : Jammu and Kashmir

Decided On : Nov-10-2005

Reported in : 2006(2)JKJ198

Judge : Y.P. Nargotra, J.

Acts : Ranbir Penal Code (IPC), 1989 - Sections 47, 120B, 419, 420, 467, 468 and 471; ;Code of Criminal Procedure (CrPC) , 1989 - Sections 161, 342 and 510

Appeal No. : Cr. Appeal 3/1997

Appellant : Rajinder Kumar and ors.

Respondent : State

Advocate for Def. : Aruna Thapar, GA

Advocate for Pet/Ap. : Sunil Sethi, Adv.

Disposition : Appeal allowed

Judgement :

Y.P. Nargotra, J.

1. The appellants after being charged were tried for commission of offences Under Sections 419, 420, 467, 468, 471, and 120B, R.P.C. in the Court of learned Sessions Judge Jammu. Learned Sessions Judge by his judgment and order

dated 27th/28th of January 1997 convicted and sentenced each one of them for commission of offences Under Sections 419, 420, 467, 468 and 471, read with Section 120B, R.P.C. and sentenced them to undergo rigorous imprisonment for one year Under Section 419 RPC with a fine of Rs. 500/-, to rigorous imprisonment for two years and a fine of Rs. 500/- Under Section 420 RPC, to rigorous imprisonment for three years and a fine of Rs. 1000/- Under Section 467 RPC, to two years rigorous imprisonment for one year and a fine of Rs. 500/- Under Section 471-RPC, read with Section 120B, RPC. In default in the payment of fine imposed for commission of each of the aforesaid offences, all the accused-appellants were directed to undergo three months imprisonment each. All the sentences were ordered to run concurrently. Hence the appellants are in appeal.

2. The case of the prosecution was that appellant No. 1, Rajinder Kumar, personating himself to be Chakarvarti Sharma sons of Srikant Sharma R/O 317-Rani Mandir, Below Gumat Jammu, approached the New Bank of India on 12.5.1981 and opened Saving Bank account by depositing Rs. 13000A. He was introduced to the Bank by one Vijay Malhotra, an employee of the Bank who also verified his signatures. After having opened the account, appellant No. 1 on 13.5.1981 applied for grant of loan of Rs. 53000/- for purchasing a taxi and in this behalf alongwith the application he filled up the requisite form. The competent authority of the Bank accordingly sanctioned a loan of Rs. 53000/- on 22.5.1981. Cheque No. 000189/581 for a sum of Rs. 69236A which included down payment furnished by the loanee was issued by the Bank in the name of M/S Alson Motors Jammu and cheque was handed over to appellant No. 1, taking him to be Chakarvarti Sharma. After execution of the relevant documents by appellant No. 1 in the name of Chakarvarti Sharma and on furnishing guarantees/sureties of appellants 2&3 in respect of the said loan amount was sanctioned in his favour. In the year 1984 PW Satish Kumar, who was working as Special Assistant in New Bank of India and was dealing with loan/advance section while checking the loan register discovered that against one Chakarvarti Sharma who had obtained the loan for purchase of a taxi an amount of Rs. 60/70 thousands was in arrears. Accordingly notices were issued to said Chakarvarti Sharma and his guarantors, Prem Singh and Vijay Kumar (appellants 2&3) demanding repayment of the outstanding amount. In response to the notices of the Bank Chakarvarti Sharma in

turn through a legal notice took up the stand that he had not obtained any loan from the Bank. On this the Branch Manager contacted the borrower and the guarantors i.e. appellants herein, but to no avail. The Branch Manager, Sh. J.P. Gupta on inferring that the Bank stood cheated by a person who had impersonated himself as Chakarvarti, lodged the FIR EXPWJP with SSP Jammu. SSP Jammu forwarded the application of the Branch Manager to Police Station R.S. Pura, which registered FIR No. 352/84 on 15.10.1984 Under Sections 419, 420, 467, 468, 47/120B RFC and started investigation of the case. During investigation the documents pertaining to grant of loan were seized. The accused were arrested and specimen signatures of appellant No. 1, Rajinder Kumar, real Chakarvarti Sharma and appellants 2&3 were obtained and alongwith seized documents containing disputed signatures of the accused were sent to F.S.L. Dalgate Srinagar for comparison of handwriting and opinion. Statements of the witnesses Under Section 161 Cr.P.C. were also recorded. After receiving the report of the F.S.L. Srinagar the investigating agency came to the conclusion that all the three accused persons were responsible for the fraud committed by them by resorting to forgeries. Hence charge sheet was filed. Learned Trial Court, after hearing the prosecution and the defence framed charges against the accused for the aforesaid offences and called upon the accused to plead. The accused pleaded not guilty and claimed trial. Hence the prosecution was directed to lead evidence for proving the charges. Prosecution examined PWs Satish Kumar Vig, Joginder Parkash Gupta, Jagmohan Koul, Sh. S.K. Gupta and Girdharilal Raina only. After completion of the prosecution evidence all the incriminating circumstances appearing in the evidence were put to the accused and their statements Under Section 342 Cr.P.C. were recorded. The accused put up denial to the allegations and claimed false implication. They however, did not enter defence. The Trial Court principally relying upon the evidence of PWs Satish Kumar and Jagmohan Koul held the accused guilty for the offences and convicted and sentenced them as aforesaid.

3. I have heard the learned Counsel for the appellants and Mrs. Aruna Thakur, learned Government Advocate for the State.

4. Mr. Sethi, learned Counsel for the appellants has very vehemently argued that the prosecution has not established its case against the accused appellants beyond all reasonable shadow of doubt therefore they are entitled to be acquitted. According to him the signatures of Chakarvarti Sharma which were alleged to have been forged by appellant No. 1 have not been conclusively proved to be forged and if forged the accused was their author. He has submitted that the Trial Court was not justified in holding the appellants guilty on the basis of shaky evidence of the prosecution witnesses. As against this Mrs. Thakur submits that the prosecution has conclusively established the guilt of the appellants from the evidence adduced and therefore the judgment of the learned Trial Court, convicting the appellants, is legally sound and deserves to be upheld.

5. Since the alleged basis of the commission of fraud by the appellants emanates from alleged fact of appellant No. 1 impersonating to be Chakarvarti Sharma and the fact of his forging the signatures of Chakarvarti Sharma used for opening the saving bank account and obtaining loan for purchase of taxi, it was essential for the prosecution to establish conclusively and completely that appellant No. 1 is the author of forgeries. As per the story of the prosecution appellant No. 1, Rajinder Kumar on 12.5.1981 opened a saving bank account in the name of Chakarvarti Sharma. Admittedly as per the procedure which was prevalent in the Banks an account could be opened by a person only if he was introduced to the Bank by another account holder or by an employee of the Bank, so that the opening of the account on fictitious identities could be prevented. In the present case the saving bank account in issue was opened in the name of Chakarvarti Sharma he being introduced to the Bank by one Vijay Malhotra, a Head Clerk of the Bank admittedly, which means that said Vijay Malhotra identified the person opening account to be Chakarvarti Sharma Said Vijay Malhotra also identified the signatures of Chakarvarti Sharma obtained by the Bank at the time of opening the account. As per the case of prosecution the person who opened the account was not Chakarvarti Sharma but accused Rajinder Kumar. To say that the account opener was not Chakarvarti Sharma but was Rajinder Kumar, the best evidence could be that of Chakarvarti Sharma himself whose particulars were known to the Bank. Said Chakarvarti Sharma, however, has not been examined by the prosecution though he was cited as a prosecution witness. Why he has not been

examined there is no explanation. Therefore, his evidence without any justifiable reasons has been withheld by the prosecution from the court and as such from his non-examination an adverse inference can be drawn against the prosecution that had he been examined he would have stated that infact it was he who had opened the account. The prosecution has also not examined Sh. Vijay Malhotra who had introduced Chakarvarti Sharma as a person who had opened the account. His evidence was very material in the circumstances of the case because it was only he who could say as to whether he had introduced accused Rajinder Kumar as Chakarvarti Sharma to the Bank or had introduced the real Chakarvarti Sharma for opening the account. The prosecution though cited him as a witness but did not examine him. His evidence has thus also been withheld. From withholding the evidence of said Vijay Malhotra who was a Head Clerk of the Bank itself adverse inference can be drawn against the prosecution that had he been examined he would have stated that it was real Chakarvarti Sharma to whom he had introduced to the Bank for opening the account and he had identified the signatures of said Chakarvarti Sharma who had opened the account. There is no evidence on record to link the signatures of the account holder of the account of Chakarvarti Sharma with accused Rajinder Kumar. It is only in the testimony of PW S.K. Gupta an employee of Bank who was examined on 9.3.1993 i.e. after about 12 years of transaction that appellant No. 1 had opened the account in the name of Chakarvarti Sharma. In the cross-examination he has admitted that he is not acquainted with the accused, as they are not related to him. Since there is no evidence on record to link the disputed signatures of the account holder to accused Rajinder Kumar, therefore, the bald version of PW S.K. Gupta that accused Rajinder Kumar had opened the account in the name of Chakarvarti Sharma does not merit to be accepted. Corroboration to his statement could be provided by proving the fact that the signatures of the account holder Chakarvarti Sharma were in the handwriting of accused Rajinder Kumar but there is no such evidence available on record.

6. Appellant No. 1 is further alleged to have applied for grant of loan for purchase of a taxi through an application filed in the name of Chakarvarti Sharma alongwith the requisite form upon which signatures of Chakarvarti Sharma stood appended. The application form contains a photograph of accused Rajinder Kumar. As per

the case of the prosecution accused Rajinder Kumar signed the application as Chakarvarti Sharma and appended signatures as Chakarvarti Sharma on the requisite form. It was therefore incumbent for the prosecution to prove that the signatures existing on the application as well as the requisite form submitted in the name of Chakarvarti Sharma were not of Chakarvarti Sharma but were forged one, forged by accused Rajinder Kumar. For proving the authenticity of the signatures the real Chakarvarti Sharma was the best person whose signatures were purported to have been made. So Chakarvarti Sharma's evidence was most material in the case. It was he who could have come forward and said that the signatures existing on the application and the requisite form are infact not his signatures. As already stated the prosecution has not examined PW Chakarvarti Sharma. Therefore, there is no denial available on record to the authenticity of his signatures by the said Chakarvarti Sharma to whom the signatures purportedly belong.

7. Specimen signatures of Rajinder Kumar were obtained by the Investigating Officer during investigation and the same were sent alongwith disputed signatures to the handwriting expert. The Handwriting expert MR. I.U. Khan, Scientific Officer J&K; F.S.L. Srinagar has issued the report No. 134/FSL/85 in this behalf. Though the report is available on record but I.U. Khan who too was cited, as a prosecution witness has not been examined for proving his report. The report of the Handwriting Expert thus has remained unproved and therefore cannot be admitted and read in evidence against the accused. Examination of the expert as a witness was necessary for introducing his report in evidence against the accused, in view of the fact that said expert is not one of the officers specified in Section 510 Cr.P.C. whose report without his examination could be admitted in evidence. Thus the evidence of the expert is also lacking in regard to linking the disputed signatures to accused Rajinder Kumar. This apart the prosecution has not led any evidence to link the specimen signatures to the accused.

8. Learned Trial Court has held the accused to be the author of the disputed signatures simply on the basis of evidence of PW S.K. Gupta and Jagmohan Koul, both employees of the Bank. PW S.K. Gupta in examination-in-chief has testified that accused Rajinder Kumar had presented the application EXPW1SK/1 on which

he had obtained his signatures. He has also identified the signatures EXPWSK2 to EXPWSK4 on the application form submitted for obtaining the loan. In the cross-examination he admitted that the accused was not known to him which means he was not acquainted with the signatures of the accused, therefore he would not be legally competent to prove the signatures existing on the application submitted for obtaining loan. His bald assertion after a period of 12 years of the occurrence that he had obtained the signatures of the accused on the application cannot be accepted in the absence of the evidence for linking the disputed signatures to the accused. The signatures could be linked to the accused by proving the fact that disputed signatures are in the handwriting of the accused.

9. Similarly PW Jagmohan Koul in examination-in-chief has deposed that in his presence accused had appended his signatures on letter for deduction from saving account, D.P. note, hypothecation agreement, letter of waiver, irrevocable power of attorney, affidavit, hypothecation deed, form L42B and deed of guarantee. He has identified those signatures to be that of the accused. As already said the signatures on these documents have also not been linked by any other evidence by the prosecution to accused Rajinder Kumar, Therefore, his bald statement that in his presence Rajinder Kumar had appended those signatures as (Chakarvarti Sharma) in my considered opinion, cannot be relied upon. In the cross-examination he too has admitted that he did not know the accused. His statement was also recorded after 13 years of the occurrence. It seems highly improbable that he would remember the accused putting his signatures on the said documents. As Chakarvarti Sharma has not been examined so the possibility of Chakarvarti Sharma signing on these documents himself cannot be ruled out.

10. As per the story of the prosecution forgery was committed by the accused for the purpose of obtaining loan for purchasing a taxi and it is the case of the prosecution that the cheque was issued in the name of M/s Alson Motors. No person from Alson Motors has been examined for proving the fact that it was accused Rajinder Kumar who had presented the cheque for purchasing the taxi from them. Had it been proved, it could be said that the accused had obtained the cheque therefore the presumption would be that he had executed the documents for obtaining the loan amount. Thus there is no evidence that the loan amount of

the cheque was utilized by the accused for purchasing the taxi. But the fact remains that some one had purchased the taxi from Alson Motors by using that cheque amount. If the taxi had been recovered from the accused and his ownership over the taxi would have been proved still there could be some inference that as the accused was having the taxi purchased out of the loan amount from Alson Motors he was the author of the fraud. PW Satish Kumar who was Special Assistant in New Bank of India in his statement has testified that one Sudarshan Rathore who was plying that taxi had come to the Bank for obtaining no objection certificate in order to renew the permit of the taxi on which the Bank told him that firstly he should get the balance confirmation made from Chakarvarti Sharma in whose favour loan for purchase of taxi stood advanced. He was shown the photograph which stood affixed on the application submitted for obtaining loan by Chakarvarti Sharma. On seeing the photograph said Sudarshan Rathore declared that the photograph was not that of Chakarvarti Sharma and thereafter he took along the witness (PW Satish Kumar) to the shop of real Chakarvarti Sharma. Thus from the fact that said Sudarshan Rathore had taken the witness, an employee of the Bank, to real Chakarvarti Sharma and not to the person whose photograph was there on the application form (photograph of accused No. 1), leads to the assumption that said Sudarshan Rathore had purchased taxi from real Chakarvarti Sharma and not from the accused. Be it so said Sudarshan Rathore if had been examined by the prosecution he could at least throw some light on the story of the case and it could be found out as to on what basis he came in possession of the taxi allegedly purchased by him. Thus there is no evidence to link the taxi on which said Sudarshan Rathore had sought no objection certificate from the bank, to the accused Rajinder Kumar.

11. The prosecution, therefore, cannot be said to have proved any case against accused Rajinder Kumar. As far as accused No. 2&3 are concerned they have stood guarantors to Chakarvarti Sharma. Without the proof of involvement of accused Rajinder Kumar in the fraud no criminal liability can be fastened upon accused Nos. 2&3 on account of the guarantee they had furnished.

12. It may be pertinent to mention here that besides the criminal proceedings which were pending against the accused lodged on the basis of the complaint of

Branch Manager New Bank of India, the Bank also filed a civil suit for recovery of Rs. 62313.20 against three appellants as well as the real Chakarvarti Sharma on 12.5.1985 and during the course of proceedings in that suit on the orders of the civil court the taxi in issue came to be attached and handed over on the spurdnama of said Sudarshan Rathore who after plying it for some time had paid some installments which were due to the Bank. Ultimately the suit of the Bank came to be decreed by the court of learned District Judge (bank cases) on 26.2.1990 and it appears that during the execution as per the decree of the civil court said taxi came to be sold in an open auction and the amount realized therefrom was paid to the Bank towards satisfaction of the decree. The Bank thus seems to have realized the amount for which fraud was alleged to have been committed by the appellants herein.

13. Mrs. Thakur learned Government Advocate submits that because Rajinder Kumar in his statement recorded Under Section 342 Cr.P.C. has admitted that the disputed signatures, EXPWSK1 to EXPWSK4 on the application form EXPWSK1 submitted for obtaining loan are his signatures. She argued that the admission of the accused can be used as evidence against him.

14. Accused Raj Kumar has admitted his signatures in his statement Under Section 342 Cr.P.C. in a qualified manner. He has admitted that these are his signatures obtained by the police while he was in custody in Police Station R.S. Pura. In his statement he has not said that he had forged the signatures of Chakarvarti Sharma. Be it so, the question arising for consideration is whether statement of the accused recorded Under Section 342 Cr.P.C. can be used as evidence against him.

15. The object of recording statement of accused Under Section 342 Cr.P.C. is to provide him an opportunity to explain the circumstances appearing against him in the evidence so that the court is in a position to appreciate the circumstances appearing against him by keeping in mind the viewpoint of the accused. The questioning by the court is intended for the benefit of the accused and not for the benefit of the prosecution for securing a conviction of an accused. It is always for the prosecution to prove its case to the hilt against him independently. The

statement made by an accused cannot be used against him as a substantive piece of evidence by the prosecution towards proof of its case. The accused in the present case in his statement has not directly admitted the guilt. He has not admitted that he signed as Chakarvarti Sharma but has only said that police had obtained his signatures while he was in custody. Therefore his statement cannot be read to mean that he had signed as Chakarvarti Sharma. In such a situation on the basis of the said statement the prosecution cannot take any advantage of his statement towards proof of its case against him.

16. The law is well settled that examination of an accused Under Section 342 Cr.P.C, does not amount to evidence and conviction solely on the basis of such examination is not permissible (refer 1990 Cr.L.J. 119 MP, Keley Khan v. State of MP 1984 Cr.L.J. 373(Ori) Makarbhawaja Bhole v. State of Orissa. Such examination cannot be used as evidence against the accused (State v. Sheikh Khader Sheikh Budjan 1991 Cr.L.J. 3208 Kant). On the basis of a statement made Under Section 342 Cr.P.C. conviction of the accused cannot be secured as it is for the prosecution to prove to the hilt by reliable and dependable evidence that the accused is responsible for the forgery.

17. For what has been said above, the prosecution, in my view, cannot be said to have proved its case against the appellants beyond all reasonable shadow of doubt. They, therefore, deserve to be acquitted. Accordingly the appeal is allowed and the

JUDGMENT / ORDER

dated 27/28.1.1997 of the learned Trial Court is set aside. The appellants are acquitted of the charges framed against them and their bail bonds are discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com