

Raghunath and Others

Vs

State of U. P. and Others

Criminal Appeal No. 238 of 1969

(C.A. Vaidialingam, I.D. Dua JJ)

23.01.1973

JUDGMENT

DUA, J. -

1. This is an appeal on certificate under Article 134(1)(c) of the Constitution granted by the Allahabad High Court from its judgment, dated March 7, 1969, convicting the three appellants for an offence under Section 109, read with Section 465, I.P.C.
2. The three appellants Raghunath Prasad, Viswanath and Pyarelal were tried for offences under, inter alia, Sections 114/465, 114/467, and 114/468, I.P.C., and Section 82(d) of the Indian Registration Act. Raghunath Prasad was in addition tried for an offence under Section 471, I.P.C. The Second Temporary Civil and Sessions Judge, Kanpur acquitted them of the offences under the Penal Code on the ground that it was not safe to convict them on the sole testimony of the complainant Smt. Sukh Devi. So far as the offence under Section 82(d) of the Registration Act is concerned there was the additional ground for acquittal, namely, absence of sanction of the registration authorities for their prosecution under Section 82 of that Act. The necessary permission having not been obtained the prosecution failed on this ground as well. This view was taken on the basis of Emperor v. Kushal Pal Singh. (ILR 1953 All 804)
3. On appeal by the complainant Smt. Sukh Devi the High Court went into the evidence and in a well considered judgment came to the conclusion that the offence under Section 109, read with Section 465, I.P.C., was fully established and sentenced Raghunath Prasad to rigorous imprisonment for one year and Viswanath and Pyarelal to rigorous imprisonment for six months each. The point on which the High Court granted certificate of fitness related to the requirement of the complaint by the court as contemplated by Section 195(1)(c), Cr.P.C. for the appellants' prosecution. In order to appreciate the question arising for our determination we may briefly state the fact giving rise to the appellants' prosecution.
4. One Chhidami, resident of village Taranpur, died somewhere about 1940 leaving behind his widow Smt. Sukh Devi, who, after sometime started living with her brother Muzajilal in village Itkhuda. Raghunath Prasad, appellant, is a resident of village Taranpur whereas accused Viswanath and Pyarelal are residents of village Itkhuda. On July 3, 1961, Raghunath Prasad got a sale deed executed by an unknown lady in respect of the properties of Smt. Sukh Devi which she had inherited from her husband Chhidami. The unknown lady had been put forward to personate Smt. Sukh Devi. Pyarelal and Viswanath identified that lady as Smt. Sukh Devi before the Sub-Registrar in the registration officer at Bhognipur knowing that she was not in fact Smt. Sukh Devi. It was in these circumstances that a forged sale deed was secured by Raghunath Prasad with the aid and

abetment of his two co-appellants. After thus securing a sale deed Raghunath Prasad filed an application in the court of the Tehsildar for mutation of revenue entries in his favour and in those proceedings he used the said forged sale deed as genuine knowing it to be forged. Smt. Sukh Devi, on receipt of notice, resisted Raghunath Prasad's application by denying having ever sold the plot in question or having ever executed and got registered the alleged sale deed. Raghunath Prasad's claim for securing the mutation in his favour failed and his prayer was rejected. The matter was taken by him unsuccessfully to the highest revenue authorities and indeed he went right up to the High Court on revision but without success. Smt. Sukh Devi, after her success in the High Court, filed a complaint against the appellants (and an unknown woman whose name was struck off as per order, dated December 21, 1961) under Section 465, 468 and 471, I.P.C., in the Court of the judicial officer, Bhognipur which was later transferred to the court of the Sub-Magistrate, Shri J. N. Mehrotra. After the necessary enquiry the appellants were committed for being tried in the Sessions Court. The charges were amended in the Sessions Court and the three accused were charged under Section 114/419, 114/465, 114/466 and 114/467, I.P.C., as also under Section 82(d) of the Indian Registration Act. Raghunath Prasad was further charged under Section 471, I.P.C., for having fraudulently and dishonestly used in the court of Tehsildar, Pukhrayan, District Kanpur the impugned sale deed as genuine which he knew or had reason to believe to be forged. Smt. Sukh Devi appeared as P.W. 6 and stated on oath that she had never executed any sale deed relating to the land in question in favour of anyone. She expressly swore that she had never purchased any stamp paper for execution of such sale deed nor had she got any such documents scribed by any petition-writer, nor did she go to the Tehsil officer or anywhere else in connection with the execution of such a deed. She also denied having gone before the Sub-Registrar for getting any such deed registered. After seeing the sale deed she denied having affixed her thumb-impression on it and further denied having ever received any consideration for any sale of the land in question. She denied having ever known Raghunath Prasad but admitted that she knew Viswanath and Pyarelal, appellants. She had come to know about the sale deed on receipt of summons from the Tehsildar, Bhognipur where she opposed Raghunath Prasad, appellant's application for entering the mutation in his favour. On her denial of the execution of the sale deed Raghunath Prasad's application for mutation was rejected. She also deposed about her success right up to the High Court in the controversy relating to the mutation. She further swore that specimens of her thumb-impression had been obtained in the court of the Magistrate for examination by the handwriting expert. Shri Malkhan Singh, Government Fingerprint Expert, appeared as P.W. 2 and stated that after comparison of the specimen thumb-impression of Smt. Sukh Devi with the thumb-impression on the disputed sale deed he had come to the conclusion that the thumb-impression on the sale deed were not those of Smt. Sukh Devi. He was cross-examined at some length. Shri Shiv Baran Singh, counsel for Smt. Sukh Devi and Shri Bhairav Prasad Srivastava, counsel for the accused also appeared in the Trial Court as P.Ws. 5 and 7 respectively to prove that the specimen thumb-impression of Smt. Sukh Devi in this case sent to the Government Fingerprint Expert were hers. The trial Court, it may be pointed out at this stage, was influenced by the fact that the specimen thumb-impression of Smt. Sukh Devi had not been taken in the presence of the presiding officer of the court and it was mainly on this ground to be hers. The evidence of Shri Bhairav Prasad Srivastava, counsel for the appellant and that of Shri Shiv Baran Singh, counsel for Smt. Sukh Devi given on this point did not impress the Trial Court. With respect to the evidence of Shri Bhairav Prasad Srivastava the Trial Court also observed that it was settled principle of law that an accused is not bound by the admission made by this counsel. The prosecution case was on this view thrown out and the accused persons acquitted.

5. On appeal the High Court took a different view and felt convinced that the specimen signatures taken in court were those of Smt. Sukh Devi. The High Court felt so convinced for the reason that

on the specimen signatures both the counsel for the State and for the accused persons had signed as a token of their acceptance that the thumb-impression in question was that of the complainant. Shri Bhairav Prasad Srivastava, the counsel for the accused in the committing court, appeared in the Sessions Court as P.W. 7 and Stated on oath that he was the counsel for the accused persons in the court of Shri J. N. Mehrotra, Special Magistrate as well. This is what he stated on oath :

"Then specimen of the thumb-impression of Smt. Sukh Devi complainant were obtained in the Subordinate Court. The specimens of her thumb-impression are in Ex. Ka-10. Ex. Ka-10 bears my signature as Vakil for the accused persons. It bears the signature of Sri Sheo Baran Singh Bachan, Advocate for the plaintiff also".

6. When cross-examined he re-stated "so far I think Ex. Ka-10 bears the thumb impressions of Sukh Devi, P.W. 7 in this case present in court". When cross-examined by Viswanath, accused Shri Srivastava explained that after affixing his signatures on Ex. Ka-10 Shri Shiv Baran Singh approached him and told him that he (Shiv Baran Singh) had affixed his signatures and asked the witness also to do so. The thumb-impression on Ex. Ka-10, according to this witness, had not been obtained in the court room but in the portico in front of the court. It was also not obtained in his presence. He, however, stated that Shiv Baran Singh had told him that the thumb-impression of Smt. Sukh Devi had been obtained on Ex. Ka-10. Shri Shiv Baran Singh who was the counsel for accused in the commitment court, it may be recalled, appeared in the Trial Court as P.W. 5 and deposed that Smt. Sukh Devi had affixed her thumb-impression on Ex. Ka-10 in his presence. Relying on the evidence of Smt. Sukh Devi and on that of her counsel and on the fact that the counsel for the accused had also signed the paper on which Smt. Sukh Devi had affixed her specimen thumb-impression the High Court found those thumb-impression to be of Smt. Sukh Devi and accepting the testimony of the Government Fingerprint Expert, Shri Malkhan Singh, P.W. 2, held the sale deed in question to be forged and not having been executed by Smt. Sukh Devi. As the appellants persisted throughout in their plea that the sale deed in question had been executed by Smt. Sukh Devi and that she was rightly identified by Viswanath and Pyarelal, the High Court held that all the three appellants had abetted the offence of forging the sale deed. It may be pointed out that there was no evidence as to who had actually forged that document. All the three appellants were, therefore, held guilty of the offence under Sections 109/465 and convicted and sentenced as already noticed. The conviction of Raghunath Prasad under Section 471 was held to be unsustainable in the absence of complaint by the court concerned as required by Section 195(1)(c), Cr.P.C.

7. In this Court the main contention raised on behalf of the appellants by their learned counsel was that even prosecution for an offence under Section 465, I.P.C., requires complaint by the revenue court concerned as such an offence is covered by Section 195(1)(c), Cr.P.C. This contention is difficult to accept. This Court has recently in *Patel Laljibhai Somabhai v. The State of Gujarat*, ((1971) 2 SCC 376 : 1971 SCC (Cri) 548 : 1971 Supp SCR 834) after considering the conflict of judicial opinion on this point, approved the view taken in *Kushal Pal Singh* case (supra). According to that decision the words "to have been committed by a party to any proceeding in any court" in Section 195(1)(c) mean that the offence should be alleged to have been committed by the party to the proceeding in his character as such party, that is, after having become a party to the proceeding. The appellants' learned counsel tried to distinguish the decision of the Allahabad High Court in *Kushal Pal Singh* case (supra) by pointing out that in that case the offence of forgery was alleged to have been committed in 1898, more than 25 years before it was produced or given in evidence in court and it was for this reason that Section 195(1)(c), Cr.P.C. was held to be inapplicable. In our view, the duration of time between the date of forgery and the production or given in evidence of the forged document in court is not a governing factor. The principle laid down in *Somabhai's* case

(supra) was not founded on any such consideration. Reference to such delay was made in that decision in another context. After taking notice of the fact that Section 195(1)(c), Cr.P.C., deprives a private aggrieved party of the general right recognised by Section 190, Cr.P.C. of directly initiating criminal proceeding this Court observed in the case :

"The offence about which the court alone, to the exclusion of the aggrieved privates, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 195(1)(c) only to those cases in which the offences specified therein was committed by a party to the proceeding in the character as much party".

8. This Court then referred to Sections 476, 476-A and 476-B, Cr.P.C. and observed :

"All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in Section 195(1)(c), Cr.P.C., to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party. It is no doubt true that quite often - if not almost invariably - the documents are forged for being used or produced in evidence in court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged long before the commencement of a proceeding in which they happen to be actually used or produced in evidence, years later by some other party would also be subject to Sections 195 and 476, Cr.P.C. This in our opinion would unreasonably restrict the right possessed by a person and recognized by Section 190, Cr.P.C., without promoting the real purpose and object underlying these two sections. The court in such a case may not be in a position to satisfactorily determine the question of expediency of making a complaint".

9. It is true clear that the factor of delay between the forgery and the production or use of the document in court had no direct bearing on the ratio.

10. Writ respect to the merits, the decision of the High Court seems to us to be fully justified. The appellants' plea has throughout been that the sale deed was in fact executed by Smt. Sukh Devi and that she had herself appeared for getting that deed registered. This position is wholly inconsistent with the finding that the sale deed does not bear Smt. Sukh Devi's thumb-impression and she was no party to the sale deed and further that she never got it registered. On the material on the record it is not possible to hold that the appellants are innocent and we entertain no reasonable doubt about their guilt. The Trial Court was clearly wrong in declining to rely on the testimony of the two lawyers and in face of the sworn testimony of the counsel for the accused, it was wholly out of place to apply the rule that the accused are not bound by their counsel's admission. The testimony of the counsel related to something which happened in connection with the proceeding in court with respect to the thumb-impression of Smt. Sukh Devi and the High Court was fully entitled to rely on his sworn testimony. There is no legal infirmity in the judgment of the High Court as we are unable to find any injustice to the appellant on the material on the record. This appeal accordingly fails and

is dismissed.

</html