

Lal Chand and Others

Vs

State of Haryana

Criminal Appeals Nos. 82-84 of 1977

(Thakkar, J.)

25.10.1983

JUDGMENT

THAKKAR, J. -

1. Whether the courts below were right in convicting the appellants under Section 120-B of IPC for being parties to a criminal conspiracy to fraudulently deprive an illiterate woman of her agricultural lands by deceiving her into affixing her thumb-mark on a document under a misrepresentation and for offences under various other provisions is the problem posed before this Court in these three allied appeals by special leave.
2. The prosecution culminating in these appeals was initiated by an FIR instituted on January 15, 1969 on an allegation that a fraud had been practised in respect of a sale deed purporting to have been executed by one Smt. Ghogari for a consideration of Rs. 30,000 on November 18, 1968 in respect of about 36 kilas of land situated in village Mehrana in Haryana. The thumb impression of Smt. Ghogari was obtained under the misrepresentation that she was affixing her thumb impression on a complaint to be lodged with the police in regard to the unlawful entry made by one Lacchi and others on her land without any legal right or authority. These offences were said to have been committed in pursuance of a conspiracy hatched by PW 5, Bhimal, who at the material time enjoyed the confidence of Smt. Ghogari and was acting as her 'Pairokar', and seven others including Tehsildar Lal Chand before whom the document was presented for registration. In respect of this document registered on November 19, 1968, a written complaint was lodged by Smt. Ghogari on November 23, 1968, with the then Chief Minister who happened to visit village Imlota near Dadri. The written complaint was handed over to PW 13 Gupta, who was at the material time Deputy Commissioner-cum-District Magistrate, Mahendragarh District. He in turn passed on the same to PW 1, Superintendent of Police Kalyan Rudra, and instructed him to make a confidential enquiry. Ultimately, PW 1 passed order Ex. PA-5 on January 7, 1969 directing the registration of the case and making of investigation. And pursuance thereto an FIR was lodged at the police station on January 15, 1969, that is to say, some two months after the commission of the offence.
3. It may be mentioned that Bhimal, who was accused of being one of the conspirators, had meanwhile made an application for becoming an approver. The application was made on July 21, 1970 and pardon was tendered on August 6, 1970. Under the circumstances, Bhimal was one of the witnesses (PW 5) at the trial whereat the seven persons said to have been his co-conspirators were tried by the learned Special Judge.
4. The learned Special Judge by his judgment and order dated October 28, 1975 accorded benefit, of doubt to original accused 1, Lacchi Ram, original accused 4, Manohar Lal, and original accused 7,

Shiv Narain, and acquitted them. He recorded a finding of guilt as against original accused 2, Sumer Singh, original accused 3 Lal Chand (Tehsildar under suspension), and original accused 5, 6, and 8. He convicted them for various offences including offences under Sections 12-B, 420, 467 of the Indian Penal Code and imposed a sentence of imprisonment ranging from 2 years' R.I. to 4 years' R.I. and a sentence of fine on each of them.

5. The five convicts approached the High Court of Punjab and Haryana by three separate appeals. The High Court disposed of the said appeals by a common judgment dated August 6, 1976 whereby the order of conviction was confirmed. The sentence was however modified in respect of two of the convicts, namely, Kanhi Ram and Harbans, by reducing the substantive term of imprisonment imposed on them by the trial court. This judgment rendered by the High Court has given rise to the present group of appeals by special leave. For the sake of convenience the appeals will be disposed of by this common judgment.

6. The facts have been fully recounted and the evidence has been elaborately set out in the judgments of the trial court and the High Court. It is not necessary to advert to the evidence in detail for the present purposes. The most important question which calls for an answer is as to whether the courts below were right in taking the view that the prosecution has satisfactorily established that Smt. Ghogari was, in fact, defrauded. That is to say, whether Smt. Ghogari had affixed her thumb-mark on the document in question not knowing that what was being executed by her was document conveying her agricultural lands for a consideration of Rs. 30,000 to be parties named in the document. And if, so whether it was as a result of the machinations of the conspirators. Who had practised a fraud on her. The validity of the finding of guilt recorded by the courts below must depend on the answer to this question, for if there is a reasonable doubt in regard to the question whether or not her thumb-mark was obtained on the document on a misrepresentation made to her with a view to defraud her, the conviction cannot be sustained. This basic question going to the root of the matter must therefore be tackled in the first instance.

7. In tackling this issue reliance has been placed by the trial court and the High Court mainly on the testimony of PW 5, Bhimal a self-confessed traitor, who has turned an approver, and that of PW 27, Smt. Ghogari, who is said to have been defrauded. The crucial evidence of these two witnesses has been accepted by both the courts in the face of strong criticism levelled on behalf of the appellants.

8. Certain salient features relating to the testimony of these two witnesses are required to be highlighted for the purposes of the present appeals in the context of the criticism levelled by the defence. So far as PW 5, Bhimal, is concerned, it must be realised that on his own admission woman (Smt. Ghogari) who had engaged him to look after her affairs and had placed implicit trust in him. PW 5 has brazenly stated that he had joined hands with the other conspirators in order to practise a fraud on Smt. Ghogari with a view to deprive her of her land, as he was promised a share in the booty. According to his own admission he was paid Rs. 5000 for betraying Smt. Ghogari. By the very nature of things, therefore, the evidence of such a witness deserves to be scrutinised closely and carefully and in the absence of corroboration in regard to material aspects of the case, the Court would be reluctant to accept his testimony apart from the fact that he being an approver his evidence calls for corroboration even otherwise. The other point of criticism which requires to be borne in mind in regard to his testimony is that while the offence was committed on November 18, 1968 he made an application for becoming an approver about twenty months thereafter on July 21, 1970. Meanwhile, his statements were recorded by the police officers on five occasions during March-April, 1969 (March 27, 28, 30, 31 and April 1). Thus even the statements made before the police were recorded four months after the occurrence. Copies of these statements were not made available

to the defence on the specious plea that the prosecution did not seek to rely on these statements. The trial court was wholly wrong in taking the view that it was not necessary to make available these statements to the defence for the purposed of cross-examination inasmuch as the prosecution did not wish to rely on these statements. The defence cannot be deprived of or denied the right to avail of these statements in order to test the evidence of the concerned witness or confront him with his earlier version in case the evidence in court is inconsistent with the earlier version in case the evidence in court is inconsistent with the earlier statements made before the police. Evidently the High Court did not realise that the defence had been wrongly deprived of a very valuable right, even though a grievance was made in this behalf. The High Court might well have directed the prosecution to make available the copies of the statements to the defence. Failing compliance the High Court could have drawn an adverse inference. In case the copies were furnished the High Court upon a request being made in this behalf could have directed the learned Sessions Judge to record additional evidence by recalling PW 5 for cross-examination in the light of the said statements if the High Court was satisfied that the ends of justice so demanded. Be that as it may, in view of what has transpired the evidence of PW 5 will have to be assessed in the light of the aforesaid infirmity, which gives rise to an adverse inference, that if the statement had been made available in response to the demand made by the defence, the same would have impaired the value of the testimony of PW 5.

9. Turning now to the evidence of principal witness for the prosecution, namely, PW 27, Smt. Ghogari, the following glaring features pertaining to her testimony and the prosecution case deserve to be placed into focus :

- (1) In her complaint Ex. PA dated November 23, 1968 she did not as much as mention that she had not been paid Rs. 30,000, though it was so mentioned in the document.
- (2) The only person who has been directly implicated in her complaint Ex. PA is PW 5, Bhimal, who was managing her affairs in his capacity as 'Pairokar' and who has now turned an approver.
- (3) She did not implicate original accused 3, Tehsildar Lal Chand, directly, in the sense that she did not state that he had played any positive role in defrauding her. All that she said was that he had not asked her any questions.
- (4) She did not as much as advert to original accused 2, Sumer Singh, who is said to have entered into the conspiracy along with PW 5, Bhimal, accused 3, Lal Chand, and others and said to have played an active role in deceiving her.
- (5) Even in the formal FIR lodged some two months later on January 15, 1969 she did not implicate original accused 2, Sumer Singh, or original accused 3, Tehsildar Lal Chand.
- (6) She did not even refer to the fact that though a reference was made to a payment of Rs. 30,000 in cash to her in the presence of Tehsildar Lal Chand, she had not, in fact, been paid a single pie.
- (7) Though she had realised that her thumb impression was obtained on a sale deed conveying her lands for Rs. 30,000 on November 18, 1968 even till the case came up

for trial in 1974 about five years thereafter, she did not initiate any legal proceedings seeking a declaration that the document in question was a nullity, it having been procured by fraud.

(8) Even her husband does not appear to have raised any hue and cry in regard to the non-payment of Rs. 30,000 or to have advised her to consult a lawyer in order to take legal steps to safeguard her title to the property. (He did not even enter the witness-box in the case giving rise to these appeals.)

(9) Even at the time of the hearing of the present appeal in September 1, 1983, though pointedly questioned, the learned counsel for the State was not in a position to state that any civil proceedings has been initiated by PW 27, Smt. Ghogari, till now.

10. The crucial issue as to whether the prosecution has established that a fraud was practised on PW 27, Smt. Ghogari, and that her thumb impression was obtained on a document purporting to be a sale deed conveying her lands for Rs. 30,000 under the pretext of obtaining her thumb impression on an application to the police complaining of encroachment on the part of Lacchi and others in pursuance of the alleged conspiracy will have to be resolved in the light of the aforesaid factors. It is not possible to conceive of any good reason why PW 27 did not implicate any of the accused persons in complaint Ex. PA handed over to the Chief Minister on November 23, 1968, four days after the fraud was discovered. The evidence of PW 5, Bhimal, is to the effect that he had apprised the husband of PW 27 as also PW 27 about the fraud on the very next day. In any case, PW 27 has deposed in no uncertain terms that she had come to know about the fraud on the very next day. If that be so, it is not possible to believe that she would not have implicated any of the accused persons in her complaint Ex. PA dated November 23, 1968 or in the FIR lodged some two months later on January 15, 1969. Her anger and indignation must have been aroused as against the appellants and she would not have failed to name them, when she knew that the appellants had practised a fraud on her. In her evidence she has stated that original accused 2, Sumer Singh, had maintained the pretence of helping her to obtain police help. As soon as PW 27 realised that a fraud had been practised on her, she must have also realised that accused 2, Sumer Singh, was one of the conspirators. In that event she would not have failed to mention his name in Ex. PA handed over on November 23, 1968, that is to say, four days after the fraud was discovered, or in the FIR dated January 15, 1969 lodged two months later. So also it is incomprehensible why if a fraud had been practised and her thumb impression had been obtained on a document purporting to be a sale deed conveying her lands for a consideration of Rs. 30,000 she failed to initiate civil proceedings for the purpose of protecting her rights. It is not possible to believe that when her title to property worth Rs. 30,000 was in jeopardy, she would have rest content with lodging a criminal complaint wherein only PW 5, Bhimal, was implicated without doing anything more in order to protect her titled to the property in question. The point deserved to be understood (and its importance cannot be over-emphasised) that the lands in dispute were inherited by her from her father and uncle and she stood to lose entirely her entire personal immovable property so inherited. She could not have therefore been oblivious of the need to protect her title to this property by recourse to the civil court. The criminal prosecution could at best have resulted in the persons responsible for the fraud being punished. The same could not have protected her civil rights in regard to the title to her property. Again, how could she be sure that the prosecution was bound to succeed and that the courts were ultimately bound to hold that a fraud had been practised on her. It is, therefore, not possible to believe that she would have remain indifferent and waited for years together without instituting any civil suit for a declaration that the sake deed in question was obtained by fraud. No explanation at

all has been forthcoming as to why she had not instituted any civil action in order to obtain a declaration that the document in question was obtained by fraud. The prosecution version is therefore rendered extremely doubtful. The evidence of the approver, PW 5 Bhimal, cannot improve the prosecution case. As discussed earlier, his testimony requires to be viewed with great caution inasmuch as he is a self-confessed traitor and his earlier statements have been kept back by the prosecution which given rise to the adverse inference that the earlier statements did not support the prosecution. What is more he has turned an approver about 20 months after the occurrence. If, therefore, he has implicated appellants Sumer Singh or appellant Lal Chand for the first time in his statement 20 months later, no reliance can be placed on his evidence. In the result, his evidence cannot support the finding of guilt recording by the courts below.

11. Since the prosecution has failed to establish beyond reasonable doubt that a fraud had been practised on PW 27, Smt. Ghogari, the prosecution must fail as against all the persons arraigned as accused at the trial on all counts. In any view of the matter, having regard to the aforementioned ramifications of the matter, the appellants are entitled to benefit of reasonable doubt. The finding of guilt recorded by the trial court and confirmed by the High Court must, therefore, be set aside. The appeals of all the appellants are allowed. The order of conviction and sentence as against each of the appellants is set aside. The bail bonds shall stand cancelled. Fine, if recovered, shall be refunded.

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