SUPREME COURT OF INDIA

Suresh Chandra Sharma

Vs.

State of M.P.

Crl.A.No.42 of 2004

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

15.04.2009

JUDGEMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 194 of the *Indian Penal Code, 1860* (in short the `IPC'). However, the sentence of three years rigorous imprisonment as was awarded by learned III Additional Sessions Judge, Sagar, was reduced to one year and the fine of Rs.500/- as was imposed was enhanced to Rs.5,000/- with default stipulation.

2. Background facts which led to the trial and subsequent conviction of the appellant are as follows:

> The appellant was a Sub-Inspector of Police. During the trial of Sessions Trial No.118/90, the Sessions Judge came to a prima facie conclusion that the appellant who was the Investigating Officer in that case in the course of trial fabricated false evidence by surreptitiously inserting the timings in various documents prepared during investigation and that he thereby committed an offence punishable under Section 194 IPC. He filed a complaint before the competent Magistrate who received the same on file and in due course committed the case to the Sessions Court for trial. To the complaint were annexed documents in which timings were inserted by the appellant and the copy of his evidence recorded in Sessions Trial No.118/90. In the said Sessions Trial No.118/90 four accused persons were tried for commission of offences punishable under Sections 302, 302 read with Section 34, 394 and 397 IPC. But they were acquitted.
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> The documents in which the appellant was found to have surreptitiously inserted the timings are memorandum, (Exs.P14, P20, P23 and P25), spot map (Ex.P11), Panchnama (Ex.P12 and P13) and Seizure Memo Exs. (P16, P19 and P20).

The trial Court as noted above found the accused appellant guilty and directed his conviction. In appeal, the stand before the High Court was that there was no evidence to show that the appellant had done any interpolation in any of the aforesaid documents during the course of trial as he had already mentioned timings in those documents before he had submitted the challan papers in the Court and if the timings were left out in the carbon copies which were supplied to the accused persons it was a bona fide mistake on his part. It was also his stand that the appellant did not give or fabricate false evidence with an intention to procure conviction of the accused persons in the concerned case who were being tried for murder and robbery. The High Court with reference to evidence of PWs 2 and 5 and the statement of the appellant while being examined under Section 313 of the *Code of Criminal Procedure, 1973* (in short the `Code') held that the conviction was in order.

3. The stand taken before the High Court was reiterated by learned counsel for the appellant.
4. It was submitted that PW-2's evidence is not acceptable because he had at no earlier point of time stated that the manipulation was done in his presence.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the trial Court as affirmed by the High Court.

6. The learned Sessions Judge found subsequent insertion of the timing with different ink in Exs. P11, P12, P13, P16, P19 and P20. He has deposed that after appreciating the evidence in paragraph 26 of the judgment had observed that in the interest of justice, a show cause notice was to be issued and thereafter challan for the prosecution of appellant for an offence under Section 194 IPC was to be served on him.

7. PW-2 has deposed that he was the defence counsel for accused Mangal and Mohan in Sessions No.118/90 and had cross examined the appellant. He also deposed that he had already obtained the certified copies, Exs.D1 and D4 of the memorandum statements of Mangal and Mohan on 1.3.1990 and had confronted the appellant with their originals Exs.P14 and P21. He further deposed that in the certified copies, (Exs.Dl and D4), timings are not mentioned as mentioned in their originals, i.e. Exs.P14 and P21, and he had requested the court to enquire as to when the timings were inserted in the originals. Chotelal (P.W.2) deposed in his cross-examination that he had actually seen the appellant making corrections in the original documents on 18.1.1991 though he did not complain to anyone.

8. The appellant in his examination as an accused in the present case under Sections 313 of the Code has admitted that his evidence was recorded before Shri N.S. Azad (P.W.5) and it was certified by his signature. The appellant, as a witness (P.W.16) in Sessions Trial No. 118/90 in paragraph 22 of his evidence, also admitted that in Ex.P14 time 9:20 a.m. was written by him. Ex.Dl, which is certified copy of Ex.P14, was obtained by Chotelal (P.W.2) on 1.3.1990 in which no such time is mentioned. Ex.D1, certified copy of Ex.P14 was obtained after the filing of challan papers.

9. It is to be noted that during cross-examination the appellant had admitted that the timing was mentioned later on.

10. Section 194 appears in Chapter 11 of IPC under the heading "Of False Evidence and Offences against Public Justice". Section 194 makes punishable the act of giving or fabricating false evidence with intent to procure conviction of capital offence. Both Sections 194 and 195 provide for aggravated forms of giving or fabricating false evidence. The stress on these provisions is on giving or fabricating false evidence intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is not capital by the law for the time being in force in India. On the facts of the case it has been established that there was fabrication of official records by manipulating the records in large number of documents. The appellant was the investigating officer. The obvious purpose was to get the accused persons convicted. The purpose could have been achieved had the fabrication gone unnoticed. Additionally, the defence lawyer himself had deposed to have seen manipulation.

> “Though, his conduct in not reporting the same to anybody is not certainly to be appreciated yet the evidentiary value thereof, and the evidence of the then Presiding Officer who was examined as PW-5 clearly established the accusations.
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> That being so, the trial Court and the High Court were justified in holding the appellant guilty.”

11. That being so, the appeal deserves to be dismissed, which we direct.

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