

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

Criminal Appeal No. 1/2007
Criminal Appeal No. 17/2006.

Date of Decision: 26.12.2008

Bodh Raj v. State & Ors.

Bodh Raj v. State & Ors.

Coram:

Hon'ble Mr.Justice Vinod Kumar Gupta

Counsel:

For the appellant(s): Mr. D.S. Saini, Advocate

For the Respondent(s): Mr. P.C. Sharma, AAG

i/ Whether to be reported in
press, Journal/Media : Yes/No

ii/ Whether to be reported in
Digest/Journal : Yes/No

1. Accused appellant Bodh Raj is a teacher and in the month of September 1976 he made a representation to the District Education Officer, Jammu for his transfer from central School Kanyala to any other School in Jammu proper. He was transferred to Govt. Higher School Gole Gujral vide order No. 4450-54 dated 18.10.1976 under the orders of District Education Officer. In compliance with this transfer order, the accused-appellant joined in Govt. High School Gole Gujral on 23.10.1976. Subsequently he was given the charge of clerk also and was authorized to draw salary and other bills by the

Headmaster vide communication dated 15.2.1977 from the Government Treasury, Town Hall Jammu. The Headmaster of the school was the Drawing and Disbursing Officer of the Institution. During the period from August 1978 to August 1980, it is alleged that the accused-appellant prepared 25 forged bills and drew different amounts from the Treasury and misappropriated that amount. This withdrawal of the amount after preparing forged documents was detected when one Shri S.N. Dhar received a letter from Accountant General, Srinagar to deposit an amount of Rs. 3000/- drawn by the Headmaster of Govt. High School Gole Gujral during 1978 and debited in his account. After verification of the record, this whole affair was detected. Report was lodged with police Station Domana, Jammu by the Headmaster Govt. High School Gole Gujral on 17.12.1980.

2. On this report, FIR No. 168/80 under sections 420/471 RPC was registered with the Police Station Domana. During investigation it was found that the accused-appellant had prepared 25 fraudulent bills during 1978 to 1980 and has withdrawn an amount of Rs. 67,950/- from the Treasury and misappropriated the same. The investigation was subsequently handed over to the Crime Branch and after completion of the investigation 8 different charge sheets(challans) were produced in the court of law. After trial of all these cases, the accused was acquitted of charges in six cases, but was convicted in two cases in challan Nos. 124 and 128 under

sections 420/465/471 RPC and sentenced him to undergo simple imprisonment of six months and a fine of Rs. 1000/- under section 420 RPC, simple imprisonment for six months for the commission of offence under section 465 RPC and a sentence of simple imprisonment for six months for the commission of offence under section 471 RPC in both cases vide orders/judgment dated 11.10.2007 and 09.01.2007. Sentences were to run concurrently.

3. The learned trial court convicted and sentenced the accused-appellant in both cases on the ground that it stands proved that the accused prepared forged bills in both the cases under the signatures of Drawing and Disbursing Officer and drew the amount of the bills from the Treasury and misappropriated the same. Aggrieved by these impugned orders/judgments, the accused appellant has preferred these two appeals.

4. I have heard the learned counsel for the parties. I have also perused the record on the files.

5. Both these appeals are taken up together because the facts in the case are identical and same question of law is involved in both the appeals.

6. Mr. D.S. Saini, Advocate appearing for the accused-appellant, has submitted that the evidence relied upon by the learned trial court in the case is inadmissible because the statements of the witnesses have been transferred from one file and the accused has not been afforded any opportunity for cross-examination in other cases and

thereby accused is prejudiced. The handwriting and signatures of the accused on the bills have not been proved by the prosecution. He has further submitted that the statement of the accused under section 342 Cr.P.C. has not been recorded properly inasmuch as all the accusations found in the prosecution evidence were not put to the accused. He has further submitted that Investigating Officer has not been produced in the case which has caused prejudice to the accused/appellant. On the other hand, Mr. P.C. Sharma, learned Additional Advocate General, has submitted that the prosecution has succeeded in proving its case and the evidence of the witnesses in the case is admissible under sections 47 and 73 of the J & K Evidence Act in respect of handwriting and signatures of a person. He has further submitted that under section 510 Cr.P.C. the certificate of handwriting expert is admissible without examination of the expert.

7. It is admitted by the trial court itself that the evidence in these cases has been recorded in one case only and the copies of the same have been transferred to the other cases and the entire record has been seized in one case only and there is no documentary evidence on other files. He has admitted that this is the wrong procedure because there is no provision in the Code of Criminal Procedure for clubbing of the cases. At page 4 of the judgment, the trial court has observed as under:-

“Complicity of accused in commission of offences under section 420/471 RPC was

established, and the transactions were split, into seven cases, in terms of section 234 Cr.P.C. Charges were not only split, but different cases were even registered against the accused, in respect of different fraudulent withdrawls, one could understand the necessity of splitting the cases but registration of different reports was not needed at all, as during the investigation of case FIR No. 168/80, different fraudulent withdrawals were unearthed, so even a single FIR could fulfill the procedural requirement. Anyway, it is no use to comment upon it now. Instant case is the end result of investigation in case FIR No. 98/1984, and this judgment shall be limited to this case only. Ordinarily, convenient course would have been to dispose off all the seven cases through a single judgment, because all these cases have emanated from case FIR 168/80, and evidence has also been recorded in one case only though placed on separate files, and the entire seized record, and the other documentary evidence lies on one case file pertaining to case FIR No. 168/80, but that would again be a wrong track as in criminal procedure there is no provision for clubbing of cases. So, each case has to be taken up individually for decision though it would be highly inconvenient. Since record lies on one file only, so reference to the record where ever inevitable in this judgment would mean reference to record on File No. 130/Session which relates to case FIR No. 168/80, and so it would be the mother file, for rest of the files including this one.”

8. Although the learned trial court has admitted that the wrong procedure has been adopted in splitting the cases by the investigation and subsequently tried by the court by clubbing those cases as there is no such provisions evidence in the Code of Criminal Procedure itself. He has also admitted that the evidence

oral as well as documentary is in File No. 130/Session relating to the case FIR No. 168/80. By doing so, in my opinion, this is an illegality which has caused serious prejudice to the accused-appellant because he has been convicted in two cases where the evidence has been taken from other file in which the accused has been acquitted of the charge.

9. In order to substantiate the charges against the accused, the prosecution has examined Bank Manager Bal Krishan Gupta PW, Kuldip Raj Sharma PW a bank employee, Paras Ram, Har Dutt, Sharma and Bodh Raj PWs employees of treasury proving that the accused-appellant had been withdrawing amount of the treasury. The prosecution has also examined Gullu Ram and Som Nath Dhar PWs, who were teachers posted in the School and amount of Rs.2500/- and Rs. 3000/- had been withdrawn from their G.P Fund account without their applications. Gyan Chand, I.D.Soni and Gurbachan Lal PWs are witnesses to the seizure of record. The depositions of these witnesses do not connect the accused-appellant with the commission of offence even remotely.

10. The other evidence on the mother file is the depositions of Yogya Dutt PW and Kanwarjeet Singh PW, who were Head Masters at the relevant time and as Head Master they were the Drawing and Disbursing Officers. They have deposed that they have not signed the withdrawal bills and the same are forged or fraudulent. The evidence relied upon by the learned trial court is the statement of PW Yagya Dutt, the then Headmaster Govt. High School Gole Gujral. He has also deposed that he is acquainted with the signatures of the accused. The accused has prepared and signed the bills in dispute. He has further submitted that the accused-appellant has forged his (witness) signatures on these bills. He has admitted that he has not signed any bill but the accused has forged his signatures.
11. The learned trial court has held that this statement of the Yogya Dutt PW is admissible in evidence because it fulfills the requirements of section 47 of the Jammu and Kashmir Evidence Act. In taking this view the learned trial court was not correct because section 47 is not applicable and the opinion given by the witness

is not admissible under section 47 of the Jammu and Kashmir Evidence Act, section 47 reads as under:-

“47.Opinion as to handwriting, when relevant.

When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.”

From the plain reading of this section, it is clear that the opinion of the person acquainted with the handwriting of the person by whom it is supposed to be written or signed is admissible if the said person is well conversant and acquainted with the handwriting of said person. In this case the signatures and handwriting of the accused on the forged bills is not in dispute. The allegation against the accused is that he has forged the signatures of Drawing and Disabusing Officer of the institution namely, Headmaster of that school. Headmaster Yagya Dutt PW has deposed that he has not signed those bills. He has exceeded in deposing that these signatures have been forged by the accused. This evidence of the witness is not admissible because he is neither expert in forming any opinion that the signatures have been forged by the accused on the disputed bills nor he is acquainted with the forged signatures of the accused-appellant of different persons including himself. He can only state that he has not signed those bills. Heavy burden lies on the prosecution to prove that the accused has forged those signatures.

12. Section 47 of the J&K Evidence Act makes relevant the opinion of ordinary witness in absence of opinion of expert and the same is admissible sometimes in respect of handwriting or signature. The opinion of expert is also relevant under section 45. In the instant case, the handwriting expert has not been examined although his report was on record. The learned trial counsel has held that the report of the expert cannot be admitted in evidence on the ground that the expert has not been examined and cross-examined on account of his non production.
13. The contention of learned AAG that the report of the handwriting expert although not proved during the trial is admissible in evidence under section 510 Cr.P.C. In my opinion, this contention of the learned counsel for the State is devoid of any force. Section 510 reads as under:-

“510. Report of Chemical Examiner.

- i. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or the Chief Inspector of Explosives or the Director of Finer Print Bureau or an officer of the Mint, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry trial or other proceeding under this Code.

ii. The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject-matter of his report.”

This provision does not cover the case in hand. Sub section (2) provides that the witness be summoned on the application of prosecution. This provision can be invoked only if the prosecution gives a statement in the court for taking on record the report of the Chemical examiner or the authority mentioned in the provisions itself. There is nothing on record to show that the prosecution ever made a request to the trial court for taking into consideration the report of handwriting expert. This report is inadmissible in evidence unless it is proved that this report is covered under this provision. Even otherwise the report of the handwriting expert is a weak evidence cannot be considered conclusive in arriving at a final conclusion without any corroborative evidence. As stated above there is no other evidence on the file to prove this fact.

14. Now the question arises in the case as to whether the opinion of Yagya Dutt PW that the accused-appellant has forged his signatures is admissible in evidence. It is a settled law that opinion evidence is hearsay and becomes relevant only if the condition laid in section 47 of the Evidence Act is proved. Reliance is placed on case Rahim

Khan Vs. Khurshid Ahmed, AIR 1975 SC 290.

The opinion given by the witness is that the accused-appellant has forged the signatures of said witness. As stated earlier that the witness is not well conversant with the forged signatures made by the accused. He has not stated on what basis the witness has formed this opinion and how he is conversant with the signatures alleged to have been forged by the accused-appellant. Thus this opinion is irrelevant and is inadmissible in evidence. It is now well settled that the opinion of the expert or person shall be received with great care caution and alone cannot be made basis for conviction of an accused. It can be relied upon when supported by other evidence. It is unsafe to base a conviction solely on the opinion without substantial corroboration. The learned trial court has also taken aid of section 73 of the Jammu and Kashmir Evidence Act which permits the court to comparison of signatures/writing etc of a person with the writing/signatures of that person as stated above. This provision would also not help the prosecution in probing its case. There is no

admitted forged signatures of Headmaster by the accused which are admitted and as such the same cannot be compared with the forged signatures on the bills. Further also the court cannot come to the conclusion that the accused has forged those signatures only on the basis of comparison of its own without any other evidence on record.

15. The learned trial court has also taken aid of section 73 of the Jammu and Kashmir Evidence Act which permits the court to compare the disputed signatures/writing etc. of a person with the admitted writing/signature of that person. This provision would also not help the prosecution in proving its case. The trial court has not taken the signatures from the accused like forged one in its presence and thereby compared the same with the disputed forged signature. The trial court has also not taken the signatures of Head Master, witness Yogyta Dutt, the Drawing and Disbursing Officer to see as to whether those signatures were genuine or forged one. There is no admitted forged signatures of Headmaster by the accused and as such the same cannot be compared with the forged signatures on the bills.

Further also the court cannot come to the conclusion that the accused has forged those signatures only on the basis of comparison of its own without any other evidence on record. The conviction cannot be based solely on the evidence of comparison of signature by court.

16. There is set procedure and norms for withdrawal of any amount by any institution from the Treasury. The bills can be prepared by any person but the amount is withdrawn from the Treasury only on the authority and signatures of Drawing and Disbursing Officer. After withdrawal of the amount from the Treasury the said amount is disbursed to the concerned by the Disbursing Officer. In the instant

(Vinod Kumar Gupta)
Judge

Jammu
26.12.2008
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