



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 13th AUGUST, 2015

S.B. : HON’BLE MR. JUSTICE S. P. WANGDI , JUDGE

Crl.A. No.02 of 2014

Appellant : The State of Sikkim

versus

Respondent : Shanti Kumar Sharma,
S/o Bednidhi Sharma,
R/o Khamdong,
Rhenock,
East Sikkim.

Appeal under Section 378 of the Code of
Criminal Procedure, 1973

Appearance

Mr. Karma Thinlay Namgyal, Additional Public
Prosecutor with Mrs. Pollin Rai, Assistant Public
Prosecutor for the State-Appellant.

Mr. Thinlay Rapden Bhutia, Sub-Inspector, Sikkim
Vigilance Police, in person.

Mr. Ajay Rathi, Advocate with Ms. Pema Wangmu
Bhutia, Advocate for the Respondent.


Mr. Shanti Kumar Sharma, Respondent in person.

J U D G M E N T

Wangdi, J.

1. This Appeal is preferred by the State-Appellant under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking to assail the judgment dated 30-09-2013 of the Judicial Magistrate, First Class, East Sikkim at Gangtok in Vigilance Case No.01 of 2009 by which the Respondent-Accused was acquitted of the charges under Sections 417/465/471 of the Indian Penal Code, 1860 (for short "IPC").

2(i). The gravamen of the prosecution case is that on an enquiry made on a credible source information received at the Sikkim Vigilance Police that the Respondent-Accused had secured a job as P.G.T., Geography, at Sadam Senior Secondary School, South Sikkim, on the strength of a fake/forged M.A. (Geography) Pass Mark Sheet purportedly issued by the Magadh University, Bodhgaya, Bihar, Regular Case No.RC-10/2007 dated 15-10-2007 under Sections 420, 468 and 471 IPC was registered against him.



(ii) Investigation carried out by the Sikkim Vigilance Police after registration of the case resulted in a charge-sheet under Sections 417/465/471 IPC being filed against the Respondent-Accused before the Court of the Judicial Magistrate, East Sikkim at Gangtok, who eventually found the Respondent-Accused not guilty of the charges and accordingly acquitted him.

3. Without going much into details, it would be sufficient to note that the principal ground raised by the Appellant-State in the Appeal is that the Learned Trial Court while rendering the impugned judgment had overlooked glaring evidence, both oral and documentary, and mis-directed itself in passing the impugned judgment.

4. It is pointed out that the evidence of P.W.5, Ramani Kant Singh, Controller of Examinations, Magadh University and P.W.10, Shailendra Kumar Sinha, Principal, Firoj Gandhi Mahavidyalaya, Patna, Bihar and documents, Exhibits 13 to 16 and 22, having noted by the Trial Court, erroneously strayed into wrong premises in passing the impugned judgment.

5. Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, would submit that the discrepancy in the impugned judgment as indicated above is evident on the face of the record. Mr. Ajay Rathi, Learned Advocate for the Respondent-Accused, on the other hand strenuously defended the impugned judgment and submitted that there was no error in the judgment that called for interference by this Court.

6. Before we embark upon the merits of the Appeal, it will do well for us to remind ourselves of the circumstances under which this Court can interfere with an order of acquittal in exercise of its powers under Section 378 Cr.P.C. It is trite that High Court should not disturb an acquittal if it is based on reasonable and plausible grounds and will not interfere unless compelling reasons exist or that the judgment is perverse and based on irrelevant materials. We may usefully refer to *Syed Peda Aowalia vs. Public Prosecutor, High Court of A.P., Hyderabad : AIR 2008 SC 2573*, which sets out as under the position of law on this most succinctly relying upon a number of its earlier decisions: -

"5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors. v. State of Madhya Pradesh* (2002 (2) Supreme 567)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra* (AIR 1973 SC 2622), *Ramesh Babulal Doshi v. State of Gujarat* (1996 (4) Supreme 167), *Jaswant Singh v. State of Haryana* (2000 (3) Supreme 320), *Raj Kishore Jha v. State of Bihar and Ors.* (2003 (7) Supreme 152), *State of Punjab v. Karnail Singh* (2003 (5) Supreme 508), *State of Punjab v. Pohla Singh and Anr.* (2003 (7) Supreme 17) and *V.N. Ratheesh v. State of Kerala* (2006 (10) SCC 617)."



State of Sikkim vs. Shanti Kumar Sharma

7. Let us, therefore, examine the present case on the anvil of the above principle. As noted earlier, the foundation of the Appeal is that the Trial Court had overlooked the evidence of P.W.5 and P.W.10 and the documentary evidence Exhibits 13 to 16 and 22. In the Appeal, the prosecution case rests completely on this.

8(i). I have given careful consideration to the rival contentions of the Learned Counsel for the parties, the impugned judgment and the evidence on record and am not persuaded to be convinced by the submissions made on behalf of the State-Appellant. I am rather inclined to agree with the Trial Court that the prosecution has failed to prove the charge against the Respondent-Accused beyond reasonable doubt.


(ii) The principal charge against the Respondent-Accused is under Section 465 IPC which provides for punishment for forgery explanations of which is set out under Section 464 IPC. In the present case, the Respondent-Accused is alleged to have made false documents, namely, Mark Sheet of M.A. (Geography), Exhibit 13; Provisional Certificate of M.A. Examination,

Exhibit 14; Emigration Certificate, Exhibit 15; Certificate of M.A, Exhibit 16 and Admit Card, Exhibit D3, issued by the Magadh University, Bodhgaya; and, also the Leaving/Transfer Certificate, Exhibit 22, issued by the Firoj Gandhi Mahavidyalaya, Patna.

(iii) It is alleged that the Respondent-Accused cheated the Department of Education (now Human Resource Development Department), Government of Sikkim, by intentionally inducing it to accept those documents while seeking employment as a Post-Graduate Teacher (Geography) to which post he was successful in getting appointed. It is also alleged that he fraudulently used as genuine those documents which he knew to be forged and false thereby committing offences under Sections 417 and 471 IPC. Thus, the principal offence said to have been committed by the Respondent-Accused was the one under Section 464 IPC punishable under Section 465 IPC which requires the prosecution to prove that the Respondent-Accused had made the documents said to be false, dishonestly and fraudulently, an offence falling under Explanation 1 to Section 464 IPC.

9. In the vintage case of *The Empress* VS. *Riasat Ali* : (1881) ILR 7 Cal 353, Richard Garth, CJ, held that making of a document does not necessarily mean signing or otherwise executing it. It only means creating or bringing it into existence. From the brief facts indicated earlier, the case of the Appellant-State is that the Respondent-Accused had made the questioned documents which were false on the strength of which he had got employment. It was, therefore, incumbent upon the prosecution to have established beyond reasonable doubt that the Respondent-Accused had made the questioned documents which were false.

10. On a careful examination, Mark Sheet of M.A. (Geography), Exhibit 13; Provisional Certificate of M.A. Examination, Exhibit 14; Emigration Certificate, Exhibit 15; Certificate of M.A, Exhibit 16; Leaving/Transfer Certificate, Exhibit 22; and Admit Card, Exhibit D3, appear to be genuine. The dates contained in the documents also appear to be in credible sequence as the Mark Sheet of M.A. (Geography), Exhibit 13, Leaving/Transfer Certificate, Exhibit 22, Provisional Certificate of M.A. Examination, Exhibit 14 and



Emigration Certificate, Exhibit 15, are dated 10-12-1998, 15-12-1998, dated 20-12-1998 and 25-12-1998 respectively. Admit card said to have been issued to the Respondent-Accused for the M.A. Examination, the Mark Sheet, Leaving/Transfer Certificate have the same Roll No.4700 with Registration No.46305. Even the Emigration Certificate bears the same registration number. In questioning the genuineness of these documents, the prosecution has relied upon the evidence of P.W.5 and P.W.10.

11. In his evidence, P.W.5 has no doubt has stated that the documents, Exhibits 13 to 16, are forged documents and were not issued by the Magadh University. But this, as per him, was based on his verification of the questioned documents with the records available in the Examination Department of the University. However, we find that neither the original of the records nor its certified copies have been produced by the prosecution. The signatory to the Mark Sheet, Exhibit 13 and the Provisional Certificate, Exhibit 14, who was the then Controller of Examinations, was not examined as he is undoubtedly

the best witness to those documents and as to whether or not (i) he had indeed signed on those and, (ii) were in fact issued by the University. Even the other officials, like the S.O. and the Tabulator whose signatures also appear on Exhibit 13, were not examined by the prosecution. Similarly, neither the dealing Assistant nor the S.O. nor the Deputy Registrar whose signatures appear on Emigration Certificate, Exhibit 15 and, the signatory as "Kulpati" (in Hindi vernacular) on the original M.A. Certificate, were examined. The prosecution failed to examine even those whose signatures appear on the Leaving/Transfer Certificate, Exhibit 22, namely, the Asstt. and the H/A. No doubt, P.W.10 said to be the Principal of Firoj Gandhi Mahavidyalaya, denied the signature on the document said to have been signed by the Principal as being his, but admittedly no steps were to take specimen handwriting and signature of both the Respondent-Accused and the P.W.10 for examination and expert opinion.

12. In the absence of such vital evidence, it is difficult for this Court to accept that the documents are



State of Sikkim vs. Shanti Kumar Sharma

false and were made by the Respondent-Accused solely based upon the oral evidence of P.W.5, who admittedly took over the Office of the Controller of Examinations only in the year 2007 when the documents pertain to the years 1996-98.

13(i). There is another aspect which further erodes the case of the State-Appellant. It is the case of the Respondent-Accused that he had got the M.A. (Geography) degree from the Magadh University through its Distance Education Course. No investigation was conducted in this direction at all as admitted in his evidence by the Investigating Officer (for short "I.O."), P.W.20. Although, as per the evidence of P.W.5, no Distance Education Programme was being run by the Magadh University during the years 1996-98, nothing has been produced in support of this. We rather find from the information downloaded from the Website of the Magadh University, Exhibit D2, that Distance Education Course was indeed conducted by the University. It is conceded by the I.O. that he did not make enquiry as to whether there were two set ups in the University, i.e., one in



State of Sikkim vs. Shanti Kumar Sharma

the Distance Education Mode and the other in the Regular Course, and also did not seize samples of Certificates or verify Exhibits 13 to 16 and 22 from the regular Board as well as Distance Education Board of Magadh University for the purpose of matching those with the originals and to obtain opinion of the GEQD. Also, no samples or seals were seized from the Offices of the Controller of Examinations, Chancellor, Deputy Registrar of the Magadh University and that of the Principal, Firoj Gandhi Mahavidyalaya.

(ii) It is further admitted by the I.O. that he did not verify the documents, Exhibits 13 to 16 and 22 from B. N. College, Gaya, Patna, the Centre where the M.A. Examination was held and also that those documents were not sent to any Expert along with the sample Certificates from the concerned University/ Colleges to ascertain their authenticity and genuineness. The I.O. in fact did not exchange any communication with the Controller of Examinations, Magadh University and the Distance Education Board and did not investigate into Exhibits 13 to 16 and 22 with the Distance Education Board and the Regular



State of Sikkim vs. Shanti Kumar Sharma

Board of the Magadh University. He also did not cross-check with the records of B. N. College and Firoj Gandhi Mahavidyalaya in connection with the case. As per the I.O., he had conducted investigation into Exhibits 13 to 16 and 22 only in the context of Regular Courses offered by the Magadh University and the Colleges and no inquiry was made from the Distance Education Board that offered various programmes at the Post-Graduation level including in the subject of Geography. The charge-sheet would reveal that the I.O. neither visit the Magadh University nor the Firoj Gandhi Mahavidyalaya but, based his case solely on the letter of the Controller of Examinations, P.W.5, Exhibit 17.

14. I, therefore, do not find any reason to differ with the finding of the Trial Court on this aspect but, rather hold that the prosecution case suffers from serious inadequacies in passing the muster of the burden of proof beyond reasonable doubt placed upon the prosecution.

15. On a careful scrutiny of the documents, Admit Card, Exhibit D3, appears to have been issued to

the Respondent-Accused for his examination at the B. N. College Centre. This stands established by the fact that the roll number and registration number mentioned therein are the same as the ones contained in the Mark Sheet, Exhibit 13. The Emigration Certificate, Exhibit 15, which apparently is issued to a candidate leaving the University, also mentions the same registration number as contained in the Admit Card, Exhibit D3, and Mark Sheet, Exhibit 13. Similarly, in the Leaving/Transfer Certificate, Exhibit 22, which obviously is a "Leaving Certificate" considering the fact that the Emigration Certificate was issued by the Magadh University, also contains the same roll number and the registration number. These lend credence to the case of the Respondent-Accused that he had undergone M.A. (Geography) course in the Distance Education Programme of the Magadh University in the Firoj Gandhi Mahavidyalaya, examination of which was held at the B. N. College Centre as would appear from Admit Card, Exhibit D3.

16. This is also the categorical case of the Respondent-Accused in his evidence where he has

stated that he had appeared for Post-Graduation Degree from the Distance Education Board which was awarded as per the norms and procedures of the Magadh University and Firoj Gandhi Mahavidyalaya, a college affiliated with Magadh University to conduct examination of the Distance Education Board. It is also in his evidence that the Admit Card, Exhibit D3, was issued to him by the Magadh University and accordingly, appeared for his M.A. Examination in Geography. These facts could neither be contradicted nor disproved by the Prosecution. Although it has come in the evidence of P.W.10, the Principal, Firoj Gandhi Mahavidyalaya, that the roll number and the registration number was actually issued to one 'Rakhi Mishra' who was a student of BA (Hons) for the years 1995-96, neither the records of the Firoj Gandhi Mahavidyalaya pertaining to the years 1996-98 nor for any other period, have been produced nor has the said 'Rakhi Mishra' been examined as witness. Indisputably, therefore, the investigation was incomplete as held by the Trial Court.



State of Sikkim vs. Shanti Kumar Sharma

17. Considering the case at another angle, in *Adikanda Swain VS. Emperor : AIR 1947 Patna 251*, it has been held as follows: -

"3. In order to convict the petitioner for dishonestly or fraudulently using a forged document the prosecution had to prove beyond reasonable doubt that the accused knew that the document was forged and in order to convict him under Section 199, Penal Code, the prosecution had to prove that he either knew or believed his statement to be false or that he did not believe it to be true. Now, if there was a reasonable possibility that the defence story was true, then these essential ingredients of the prosecution case would not be established."

In other words, in order to convict a person for dishonestly or fraudulently using a forged document, the prosecution is obliged to also prove beyond reasonable doubt that the accused person knew that the document was forged. Where even if the accused fails to establish his version as regards the disputed document by reliable evidence, but there exist a reasonable possibility that his story may be true, the essential ingredients of the prosecution case would not be established. The failure of an accused to establish his story regarding the document cannot inevitably lead to his conviction.

18. What follows from the above, therefore, is that the sequence of facts narrated by the Respondent-Accused which the prosecution was unsuccessful in displacing, establishes the genuineness of the documents, Exhibits 13 to 16, 22 and D3. Even assuming that the documents were not genuine, the Respondent-Accused does not appear to be aware that those were false which, in any case, does not appear to have been proved by the prosecution having failed to pass the rigors of the burden of proof charged upon it by law.

19(i). Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, strongly urged that Mark Sheet, Exhibit 13, was not of MA final year but, of the previous year of that course which, as per him, was evident from the prospectus of Magadh University, Exhibit D1. Mark Sheet, Exhibit 13, reflect papers I to VIII which are evidently the course for MA (previous) Geography. For the final year, it is prescribed differently at page 19 of the prospectus, Exhibit D1.

(ii) It is next contended that the falsity of the claim made by the Respondent-Accused that he passed out from the Distance Education Course of the Magadh University from Firoj Gandhi Mahavidyalaya, Patna, is belied by the Leaving/Transfer Certificate, Exhibit 22, which shows that he was a student in the regular course of MA in the College.

(iii) Further that the Leaving/Transfer Certificate is false stands established by the fact that the Firoj Gandhi Mahavidyalaya did not run M.A. Course as established by the evidence of P.W.10 and the entry in the print out of the webpage of Magadh University, Exhibit D2.

20. I am, however, unable to accept the arguments of the Learned Additional Public Prosecutor. Exhibit 13, no doubt appear to be the result of the M.A. (previous) year but, the MA Pass Certificate, Exhibit 14, Emigration Certificate, Exhibit 15, and the M.A. Certificate of the Magadh University in Hindi issued to the Respondent-Accused are over-whelming evidence appearing in favour of the Respondent-Accused that

establish beyond reasonable doubt that the Respondent-Accused had completed the M.A. Course.

21(i). As regards the contention of the Learned Additional Public Prosecutor on the Leaving/Transfer Certificate, Exhibit 22, it is not the case of the Respondent-Accused that he was a regular student of Firoj Gandhi Mahavidyalaya but, that he had undergone M.A. Course of the Magadh University in the Distance Education Mode from the Firoj Gandhi Mahavidyalaya, a college affiliated with Magadh University to conduct examination of Distance Education Board. As observed earlier, these facts have been stated by him categorically in his oral evidence which remained firm and undemolished in his cross-examination. That apart, I find his evidence consistent with the documents, Exhibits 13 to 16 and 22, as well as Exhibit D3.

(ii) Although the Learned Additional Public Prosecutor laid emphasise on the part of the evidence of P.W.10 where it has come that the Firoj Gandhi Mahavidyalaya had only Regular Courses and did not have Distance Education Course, I do not find that this



State of Sikkim vs. Shanti Kumar Sharma

would in any manner detract from the fact that the College could have and appears to have been, a Study Centre of the Distance Education Board of the Magadh University. All that the evidence of P.W.10 establishes is that the Firoj Gandhi Mahavidyalaya did not have Distance Education Course of their own. In any case, it has already been observed that the prosecution has not at all investigated on this aspect.

22. This would thus explain as to how the Leaving/Transfer Certificate was issued to the Respondent-Accused. The evidence of P.W.10 and the entry in the webpage of Magadh University, Exhibit D2, referred to by the Learned Additional Public Prosecutor obviously pertain to the regular courses conducted by different colleges affiliated to the University including the Firoj Gandhi Mahavidyalaya in the regular stream and not of the courses run by the Distance Education Board of the Magadh University.

23. From the facts and circumstances, it can reasonably be assumed that the Distance Education Board of the Magadh University ran Study Centers at



State of Sikkim vs. Shanti Kumar Sharma

different places one of which was at the Firoj Gandhi Mahavidyalaya where Respondent-Accused had got himself admitted and ultimately passed out after having sat for the final year examination in the Examination Center at B.N. College, Patna, as would appear from the Admit Card, Exhibit D3. Consistency in his stand gets reinforced by his answer to Questions No. 10, 20 and 21 while being examined under Section 313 Cr.P.C. where he has emphasised that the documents, Exhibits 13 to 16, are genuine documents and that he sat for the examination from Firoj Gandhi College through the Distance Education Mode and also that College Leaving Certificate, Exhibit 22 was indeed issued to him.

24. Clearly, therefore, the version of the Respondent-Accused cannot be overlooked as it appears to be a distinct possibility. The trite position is that when two views are possible, the one in favour of the Respondent-Accused is necessarily to be accepted.

25. For all these reasons, I find no compelling or substantial reasons to interfere with the impugned judgment of the Trial Court acquitting the Respondent.

State of Sikkim

vs.

Shanti Kumar Sharma

I also do not find the Trial Court having overlooked or unjustifiably eliminated convincing materials.

26. From the facts and circumstances alluded to above, there can be no doubt of the fact that the Trial Court has considered all the available evidence, both oral and documentary, in arriving at its finding in the impugned judgment.

27. The Appeal thus fails and is accordingly, dismissed. Resultantly, the impugned judgment of the Trial Court is upheld and the Respondent stands acquitted and discharged from bail.

28. No order as to costs.

29. A copy of this judgment and the original records be transmitted forthwith to the Court below for its due compliance.

Sd/-
(**S. P. Wangdi**)
Judge
13-08-2015

Approved for reporting : **Yes**

Internet : **Yes**