

(2012) 01 GAU CK 0054

Gauhati High Court

Case No: Criminal Revision No. 465 of 2011

Mijanur Rahman

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Jan. 4, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 - Section 397, 401
- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401

Citation: (2012) 4 GLR 913 : (2012) 1 GLT 498**Hon'ble Judges:** I.A.Ansari, J**Bench:** Single Bench

Advocate: Advocates appeared for the Petitioner: Mr. A. S. Choudhury & Mr. A. M. Choudhury., Advocate appeared for the Opposite Party: Mr. K. Munir, Addl. PP, Advocates appearing for Parties

Judgement

I.A. Ansari, J.

By judgment and order, dated 18.8.2009, passed, in GR Case No. 1600/2005, by the learned SubDivisional Judicial Magistrate, Nagaon, the present petitioner stood convicted under Sections 468 and 471 IPC and he was sentenced, for his conviction under Section 468 IPC, to suffer rigorous imprisonment for six months and also pay fine of Rs. 1,000/ and, in default of payment of fine, undergo rigorous imprisonment for a further period of one month and he was also sentenced, for his conviction under Section 471 IPC, to suffer rigorous imprisonment for six months and pay fine of Rs. 1,000/, and, in default of payment of fine, undergo rigorous imprisonment for a further period of one month. Aggrieved by his conviction and the sentences passed against him, the accusedpetitioner preferred an appeal, which gave rise to Criminal Appeal No.22/2009. By judgment and order, dated 20.09.2011, the learned Sessions Judge, Nagaon, on having concurred with the findings of guilt reached by the learned trial Court, dismissed the appeal. Dissatisfied by his conviction and the sentences passed against him, the accused has filed this revision.

2. The case of the prosecution may, in brief, be described thus: On 12.09.2005, Bhogeswar Bora, Principal of Sri Sri Sankardev College, Batadrava, lodged an FIR with Batadrava Police Station alleging, inter alia, that the present accused petitioner was admitted, provisionally, into BA Part I in his college, for the academic session 2005-2006, and, on verification of the documents, submitted for the purpose of admission, it was found that the accused had placed a forged pass certificate of HSSLC examination and, upon enquiry, it had come to the light that the certificate, bearing Roll 0521 No.274, which the accused had used as his pass certificate, was actually of one Shamima Akhtar and though the accused was asked to submit relevant original documents for the purpose of onward transmission to the University, the accused did not produce the same and remained absent from the college thereafter. Based on this FIR, Batadrava Police Station Case No.85/2005 under Sections 468/471 IPC (corresponding to GR Case No. 16007 2005) was registered. During investigation, the certificate and the marksheet, which the accused had allegedly used for the purpose of obtaining admission into BA Part I, in Sri Sri Sankardev College, Batadrava, were seized and, on completion of investigation, chargesheet was laid against the accused under Sections 468/471 IPC.

3. During trial, the accused pleaded not guilty to the charges framed under Sections 468 and 471 IPC.

4. In all, prosecution examined seven witnesses in support of their case. The accused was, then, examined under Section 313 Cr.PC, wherein he denied that he had committed the offences alleged to have been committed by him, the case of the defence being that of total denial. No evidence was, however, adduced by the defence. The learned trial Court, having found the accused guilty of the offences charged with, convicted him accordingly and passed sentences against him as mentioned above. As the findings of guilt and the sentences passed having been upheld by the learned appellate Court, the accused has, now, filed this revision.

5. I have heard Mr. A.S. Choudhury, learned counsel, for the accused petitioner, and Mr. K. Munir, learned Addl. Public Prosecutor, Assam.

6. It has been submitted by Mr. Choudhury, learned counsel for the petitioner, that in the present case, the attendance register had not been seized and produced and, in such circumstances, when the accused had denied that he had taken admission in BA Part I in Sri Sri Sankardev College, Batadrava, the prosecution's case cannot be taken to have been proved and, therefore, the conviction of the accused is wholly unfounded, illegal and may be set aside.

7. Resisting the revision, the learned Additional Public Prosecutor has submitted that there is adequate evidence on record convincingly proving that the accused had used forged documents to obtain admission in Sri Sri Sankardev College, Batadrava, and, in the face of the convincing and creditworthy evidence on record, the findings of guilt, reached against the accused, cannot be said to be bad in law and the

revision is wholly without merit

8. Let me, now, come to the evidence on record.

9. It is the evidence of PW1, Principal of Batadrava Sri Sri Sankardev College, Batadrava,, which is pivotal in nature, and is, therefore, necessary to be carefully examined. According to the evidence of this witness, on 12.09.2005, he was functioning as Principal of the said college and, for the academic session 20052006, accused Mijanur Ahmed had filled up his form for admission into B A PartI and along with his form, accused also gave documents and, on the basis of the documents, so submitted by the accused, the accused was given provisional admission in the college in the TDC (First year).

10. It is in the evidence of PW1 that for registration with the University, when he examined the documents submitted by the accused, he developed suspicion about the genuineness of the pass certificate, which the accused had submitted, and though he (P W1) looked for the accused, the accused was not traceable. It is also in the evidence of PW1 that as the HSSLC certificate of the accused had been issued by the Principal, Katahguri Junior College, he wrote to the said Principal requesting him to give the pass certificate of the accused and, in response to the letter so issued by him, he received Material Ext. A from the Principal, Katahguri Junior College. PW1 has proved Ext. A1 as the signature of the Principal, Katahguri Junior College, making it clear that he is acquainted with the handwriting of the Principal, Katahguri Junior College. It is further in the evidence of PW1 that by the said letter, the Principal, Katahguri Junior College, conveyed that the pass certificate, in question, belonged to one Shamima Akhtar, who had passed HSSLC examination, in second division, from Katahguri Junior College. On receiving the letter of the Principal, Katahguri Junior College, indicating that the pass certificate, which the accused had used, for the purpose of obtaining admission in Sri Sri Sankardev College, Batadrava, was in respect of Shamima Akhtar and not of the accused, FIR (Ext.1) was lodged by him (PW1) with the police.

11. Though crossexamined by the defence, nothing was really elicited from the crossexamination of PW1 to show that what he had deposed was untrue or false. The material aspects of the evidence of PW1, thus, remained unshaken. Though it has been pointed out, on behalf of the petitioner before this Court, that the attendance register has not been brought and proved in the present case, it was not, to my mind, imperative to prove the attendance register, when the evidence given by PW1 has, otherwise, remained unshaken.

12. Coming to the evidence of PW2, who is a teacher of Sri Sri Sankardev College, Batadrava, what is noticeable is that according to this witness too, accused was a student of their college, namely, Sri Sri Sankardev College, Batadrava, inasmuch as the accused had taken admission in the TDC (First Year) and that at the time of sending to the University for registration, when they checked the document, they

developed some suspicion and they accordingly asked for the original document to be produced by the accused but the accused could not be contacted and that their Principal (PW1), then, wrote a letter to the Principal, Katahguri Junior College, and, in response thereto, Principal, Katahguri Junior College, informed PW1 that accused had not passed HSSLC examination and that it was a female candidate, who had passed the HSSLC examination. This witness too has proved the Material Ext. A as the letter of the Principal, Katahguri Junior College. The material aspects of this witness's evidence too remained unshaken.

13. Close on the heels of the evidence of PW1 and PW2, PW3, who is the Principal of Katahguri Junior College, has deposed that the accused was a student of his college and the accused told him (PW3) that he wanted to take admission in Sri Sri Sankardev College, Batadrava. It is also in the evidence of P W3 that he received a letter enquiring from him if the certificate, given by PW3 for the purpose of obtaining admission, was forged and he gave his reply by Material Ext. 1, which, admittedly, shows that PW3 had written therein that the Roll Number, which had been used by the accused, was Roll 0521 No.274, which was not of the accused, but of another female candidate, who had passed the HSSLC examination in second division. I do not find that the evidence, given by PW3, has, in any manner, weaken the evidence of P W1 or PW2; rather, the evidence of PW3 supports and strengthens the evidence of PW1 andPW2.

14. As far as PW4, who is UDA of Sri Sri Sankardev College, Batadrava, is concerned, his evidence is to the effect that they developed suspicion with regard to the genuineness of the document, which had been submitted by the accused.

15. Coming to the evidence of PW5, who is LDA in Katahguri Junior College, I notice that according to his evidence, the accused was a student of their college and he had appeared in the HSSLC examination, 2005, but the accused did not pass. From the evidence of PW5, it becomes clear that the accused was a person, who had not passed HSSLC examination in 2005. Consequently, he could not have taken admission, in the first year of TDC, in Sri Sri Sankardev College.

16. Thus, the evidence on record convincingly proves beyond any shadow of doubt that the accused had taken admission in Sri Sri Sankardev College, Batadrava, by using forged marksheet and pass certificate inasmuch as he had shown to have passed HSSLC examination under Roll 0521 No.274, which roll number really belonged to a female candidate, who had passed her HSSLC examination, in second division, from Katahguri Junior College and when Sri Sri Sankardev College, Batadrava, started making enquiry about the genuineness of the pass certificate, which the accusedappellant had introduced, the accusedappellant disappeared. In such circumstances, the findings of guilt, reached against the accused by the learned trial Court under Sections 468 and 471IPC, cannot be said to be faulty or not sustainable inasmuch as the accusedappellant, in the absence of anything showing to the contrary, can be safely held to have forged the documents, based on which he

had obtained admission in Sri Sri Sankardev College, Batadrava, and he had committed such forgery for the purpose of cheating inasmuch as he had dishonestly induced Sri Sri Sankardev College, Batadrava, to give him admission in the TDC (First) Year, which Sri Sri Sankardev College, Batadrava, would not have done, but for the fraudulent inducement, which the accusedappellant applied. This apart, the accused used forged documents knowing or having reason to believe the same to be forged. The accused, thus, committed not only offence under Section 468IPC, but also under Section 471 IPC. The learned appellate Court committed no error in concurring with the findings of guilt so reached by the learned trial Court, particularly, when it is not the case of the accusedappellant that he had been falsely implicated in the case, because of enmity or with any ulterior motive.

17. As far as the sentences passed against the accusedappellant are concerned, the same also, in the facts and attending circumstances of the present case, cannot be said to be excessive, harsh and unreasonable. The sentences too, therefore, do not deserve any interference in revision.

18. In the above view of the matter, this Court does not find any merit in the present revision. The revision, therefore, fails and the same shall accordingly stand dismissed.