(2011) 02 BOM CK 0140

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 289 of 1998

The State of Maharashtra		APPELLANT
	Vs	
Dwarkabai Rathod and Others		RESPONDENT

Date of Decision: Feb. 24, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 418, 420, 467, 468

Hon'ble Judges: S.S. Shinde, J

Bench: Single Bench

Advocate: V.D. Rakh, app, for the Appellant; Ajay T. Kanwade, h/f. S.B. Talekar, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Shinde, J.
This appeal is filed challenging the judgment and order dated 11.03.1998 passed by the Additional Sessions Judge, Parbhani in Criminal Appeal No. 17/1991, thereby quashing order of conviction passed by the learned Magistrate in R.C.C. No. 33/1989 dated 01.02.1991.

2. Brief facts of the prosecution case are as under :

The complainant is Murlidhar S/o Mohanlal Randad R/o Nandgaon, Tq. Georai, Dist. Beed. He is agriculturist by occupation. The accused Nos. 1 to 4 are resident of village Satona and accused No. 5 is resident of village Tidi Pimpalgaon, Tq. Pathri Dist. Parbhani. The accused No. 1 to 5 are agriculturists by occupation. Accused No. 1 is the wife of accused No. 2. Accused No. 2 and 3 are real brothers.

3. It is the prosecution case that, complainant Murlidhar is adopted son of one Rambhabai Mohanlal Randad. Rambhabai was the owner of field Gat No. 48 situated at

village Aher Borgaon. She had faith on God Maroti. Hence, she gifted field Gat No. 48 to the temple of Got Maroti and handed over the possession of field Gat No. 48 to the panch committee for the use of temple of God Maroti in the year 1961 and since the year 1961, panch committee was in the possession of Gat No. 48.

4. After the death of Rambhabai, complainant became the owner of the said field. On 12.11.1986 Murlidhar executed registered gift deed in favour of panch committee. Behind the back of Murlidhar, Rama Lalu Rathod (accused No. 3), Keshav Lalu Rathod (accused No. 2) and Dwarkabai Keshav Rathod (accused No. 1) on 22.10.1986 by act of impersonation obtained the signature of complainant from such other person and got executed sale deed purported to have been executed by the complainant. Murlidhar came to know about this fact on 12.11.1986 about execution of sale deeds. Such sale deeds were forged one. Such sale deeds were forged with intent to cause loss to the complainant and panch committee and for the benefit of aforesaid three accused.

5. It is the prosecution case that, sale deeds referred above do not bear the signature of complainant or his thumb impression .Due to the forged sale deeds, it had caused damage to the 4 cri appeal 289.98 complainant and panch committee. On the strength of forged sale deeds, aforesaid accused were making the efforts to dispossess the panch committee in whose possession aforesaid lands were given. The accused Nos. 4 and 5 attested such forged sale deeds.

6. The present complaint was filed by Murlidhar on 23.11.1986 at Police Station, Sailu, on the basis of which crime was registered against the accused for the offence punishable u/s 418, 420, 467 and 468 r/w Sec. 34 of the I. P. Code. Accused were arrested on 01.10.1987. Investigation was carried out. During the investigation, statement of witnesses were recorded. After due investigation, accused were charge sheeted.

7. The learned Additional Sessions Judge, Parbhani after considering the evidence and hearing the parties acquitted the accused/respondents herein. Hence this appeal is filed by the State of Maharashtra challenging the order of acquittal.

The learned A.P.P. appearing for the appellant/State submitted that, the order passed by the Trial Court was in consonance with the evidence brought on record. The property is in possession of the panch committee. The said property was handed over to the panch committee and is in possession of the panch committee since long. Even during life time of Rambhabai the said property was in possession of the panch committee. It is further submitted that, the complainant himself renounces his signature on the sale deed and, therefore, there remains a little doubt to suspect the prosecution case. It is further submitted that, the Trial Court has given reasons for not forwarding the documents for examination of hand writing expert. Therefore, the learned A.P.P. would submit that, the impugned judgment and order deserves to be quashed and set aside and the judgment and order passed by the learned Trial Court may be confirmed.

The learned Counsel for the respondents submitted that, the complainant in his complaint has stated that, the respondents i. e. original accused substituted another person for Murlidhar Mohanlal Randad for getting executed the sale deed and for signing for Murlidhar. However, the complainant Murlidhar has not stated this fact in his evidence. It is further submitted that, the persons who committed forgery should have been brought before the Court. The prosecution has not brought on record who has actually forged the signature of Murlidhar. Murlidhar in the examination in chief at Exhibit 48 stated that, sale deed on which the prosecution relies does not bear his signature or thumb impression. Merely, because the complainant has stated so cannot form the basis for conviction, in absence of any other evidence brought on record by the prosecution about said contention of the complainant. The prosecution has failed to prove that, respondent Nos. 1 to 3 executed documents in their favour nor proved that accused/appellant No. 4 and 5 have put their signature as attesting witnesses. The Sub Registrar was not examined to prove that accused or any other person has executed the alleged sale deed and signed the sale deed in presence of Sub Registrar. The legal presumption is that official acts have been duly performed and registration of the document was properly done unless contrary is proved. The alleged act of forgery had come to the knowledge of complainant on 12.11.1986, however the complaint is registered on 23.11.1986. There is delay of 11 days in filing the complaint. The same has not been properly explained. Therefore, according to the counsel for the respondent, on this ground alone the complaint should have been rejected. It is further submitted that, the crime was registered on 23.11.1986 and respondents were arrested on 01.10.1987. There was inordinate delay in effecting arrest of the accused person. It is further submitted that, P.W. 3/complainant in his deposition before the Court has stated, "I had filed private complaint against the same accused. It was dismissed." Therefore, the counsel would submit that, the present appeal is devoid of any merits and same may be dismissed.

8. The learned Counsel for the respondents placed reliance on exposition of the Supreme Court in case of Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others, and submitted that standard of proof required in the Civil and Criminal cases is entirely different. The civil cases are decided on the basis of preponderance of probabilities of evidence, while in the criminal cases the entire burden lies on the prosecution to prove its case beyond reasonable doubt. Therefore, the counsel for the respondents would submit that, in the instance case the prosecution has failed to bring on record cogent and convincing evidence to convict the accused/respondents for the alleged offence against them. He further placed reliance in case of Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, and more particularly para 22 and 23 of the cited judgment and submitted that, the evidence of the expert is not substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. It is further submitted that, mere opinion of the expert cannot override the positive evidence of the attesting witnesses. The learned Counsel further placed reliance on the reported judgment of the Supreme Court in case of Ishwari Prasad Mishra Vs.

Mohammad Isa, and in particular para 26 of the said judgment which concludes that, the evidence given by expert of handwriting can never be conclusive, because it is, after all, opinion evidence. Therefore, the learned Counsel for the respondent would submit that, the judgment and order of the lower Appellate Court of acquittal needs no interference. A possible view has been taken by the lower Appellate Court.

9. I have given due consideration to the submissions of the learned A.P.P. for the appellant and learned Counsel for the respondents and also perused the impugned judgment and order and the record and proceedings. The respondents herein were convicted by the Judicial Magistrate First Class at Selu for the offences punishable u/s 420, 467, 468 r/w Sec. 34 of the Indian Penal Code and they were sentences. The accused No. 1 was 9 cri appeal 289.98 sentenced till rising of the Court and to pay fine of Rs. 3000/in default to under go S. I. for two months on all counts. Remaining accused were sentenced to under go S. I. for six months each and to pay fine of Rs. 3000/each in default to under go S. I. for three months, on all counts.

On careful perusal of evidence brought on record and the judgment and order passed by the Trial Court, it clearly emerges that prosecution has not brought any convincing, cogent and sufficient evidence to convict the respondents for the offences punishable u/s 420, 467 and 468 r/w Sec. 34 of the Indian Penal Code. It appears that, the Trial Court placed heavy reliance only on the evidence of complainant and without sending the documents to hand writing expert or without having any other evidence on record collected by the prosecution convicted the respondents. It is the case of prosecution that the complainant never signed the alleged sale deeds and his signature was forged by some other person. It was incumbent upon the prosecution machinery to find out who has forged the signature of the complainant. The prosecution case is that, the complainant never went to the Sub Registrar Office. He has never signed the sale deeds, in that case the prosecution should have made serious attempts to find out who was the person substituted in place of Murlidhar. As many as five accused persons were facing trial and therefore, it was duty of the prosecution to find out the roll of each accused in commission of crime. Whether respondents have made forged signature of the complainant or there was any other person who forged the signature of the complainant has not been convincingly brought on record by the prosecution. When the prosecution case is that in furtherance of common intention of the accused, they knowingly substituted another person for Murlidhar Randad, the owner of gat No. 48 for getting executed the sale deed in the name of Murlidhar Randad in order to get some property transferred ,in that case the prosecution was bound to bring on record cogent, sufficient and clinching evidence to find out the involvement of the accused in commission of crime. On perusal of the entire evidence brought on record, it does not appear that there was even attempt on behalf of the prosecution to collect the evidence.

As rightly concluded by the lower Appellate Court, it was necessary to send the signature for verification of the hand writing expert so as to ascertain whether said signature is forged signature or the complainant himself has signed the said sale deed. Merely,

relying on the statement of the complainant, conviction cannot be sustained. Therefore, the conclusion drawn by the lower Appellate Court that, the prosecution has failed to prove that, the accused singly or jointly forged the signature of Murlidhar needs to be confirmed. The lower Appellate Court is also correct in reaching to the conclusion that the examination of Sub Registrar would have been certainly revealed as to who had presented the document for registration. There is legal presumption that, official acts have been duly performed and registration of the document is properly done unless, contrary was proved by the prosecution. There was also delay in filing the complaint. The lower Appellate Court has taken into consideration infirmities in the prosecution case and ultimately acquitted the respondents.

11. Though the learned A.P.P. submitted that, in Civil case the signature of the complainant was sent to the hand writing expert and it has come on record that, said signature was forged. However, in the criminal case such exercise is not done as stated earlier. The standard of proof which is required in civil cases is different than in the criminal cases, unless the prosecution proves its case beyond reasonable doubt, the person cannot be convicted. The learned A.P.P. further submitted that, the Civil Court has decided the civil proceedings in favour of the panch committee. This Court has not expressed any opinion about said proceedings. The Civil Court is competent to decide the civil proceeding and if the Civil Court has decided the proceedings in favour of panch committee or complainant as the case may be, the upholding acquittal order of the lower Appellate Court by this Court cannot construed as impediment in the civil proceedings. Therefore, for the reasons stated herein above, in my opinion, the impugned judgment and order is in consonance with the evidence on record, same stands confirmed. The appeal stands dismissed. Bail bonds stand cancelled.