Yogarani vs State By Inspector Of Police on 23 September, 2024

Author: Aravind Kumar

Bench: Aravind Kumar, Sanjay Kumar

2024 INSC 721 RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.477 of 2017

YOGARANI …APPELL

VERSUS

STATE BY THE INSPECTOR OF POLICE …RESPONDE

JUDGMENT

Aravind Kumar, J.

1. The appellant who has been arraigned as accused No.2 has challenged the concurrent conviction and sentence ordered under Section 420 Indian Penal Code (for short 'IPC') read with Section 12(2) of the Passports Act, 1967 (herein after referred as 'Passports Act') and sentenced to one-year rigorous imprisonment for each of the offences which are to run concurrently.

2. The short and long of prosecution story is that appellant had wrongfully and illegally facilitated accused No. 1, for obtaining a second SWETA BALODI Date: 2024.09.23 16:59:58 IST passport, who was already holding an Indian passport. It was further alleged Reason:

> that accused No.1 having deposited his passport with his employer at Dubai had applied for second passport in order to have better employment opportunities and said application was forwarded/ routed through the appellant. The prosecution alleged that second passport which was issued and dispatched to Accused No.1 had been returned undelivered to the Passport Office Trichy and was kept in safe custody and later it was delivered to the appellant by accused No.3 who was in charge of safe custody of the passports through accused No.4 who was working as a casual labourer in the Passport Office. It was also alleged that appellant had demanded payment of Rs.5,000/- from accused No.1 for handing over the passport and he having refused resulted in appellant returning the second passport to the Passport Office by

registered post.

3. Along with the appellant other accused persons namely Mr. J. Joseph (Accused No.1), Smt. Sasikala (Accused No.3) - in charge of safe custody of passports, Mr. P. Manisekar (Accused No.4) working as a casual labour in the Passport Office, Trichy and Mr. S. Raghupathy (Accused No.5) then working as an Upper Division Clerk in Passport Office, Trichy who had made an endorsement that no passport had earlier been issued in favour of Accused No.1 were also tried for the offences punishable under Section120B read with Section 420 of IPC, Section 12(1)(b), 12(2) of Passports Act and Section 13(2) and Section 13(1)(d) of Prevention of Corruption Act, 1988 before the Special Judge for CBI cases, Madurai, which resulted in acquittal of all the accused persons in respect of charge of conspiracy. Accused Nos.3 and 4 were acquitted of all other charges also. The CBI did not prefer any appeal against acquittal of accused Nos.3 and 4. However, accused Nos.1 and 2 were convicted for offences punishable under Section 420 IPC and Section 12(1)(b) and Section 12(2) of Passports Act respectively. Accused No.5 was convicted under Section 12(2) of Passports Act and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Accused Nos.1, 2 and 5 preferred criminal appeals challenging their conviction and sentence and by impugned common judgment the High Court allowed the appeals filed by accused Nos.1 and 5 and acquitted them and said judgment has attained finality as it has not been challenged by the CBI. However, the appeal filed by accused No.2 came to be dismissed and as such she is before this Court.

4. We have heard the arguments canvassed on behalf of the appellant and the respondent.

5. The thrust of the argument advanced by the learned counsel appearing on behalf of the appellant is that conviction of appellant alone is not sustainable for more than one reason. Firstly, when accused Nos.3 and 4 who were charged for similar offences had been acquitted of all the charges and no appeal having been filed challenging their acquittal; secondly, when accused No.1 for whose benefit the alleged second passport had been issued, had been acquitted by disbelieving the story of the prosecution namely accused No.3 who was in charge of safe custody of passport had illegally given the second passport to the appellant through accused No.4. It is further contended that both the courts had erroneously convicted the appellant on the strength of the testimony of PW-3 though she had not deposed that appellant being aware of the details of the previous passport held by accused No.1 had knowingly processed the application of accused No.1. It is further contended that PW-3 had turned hostile and had not supported the story of prosecution and as such conviction could not have been sustained on the basis of the testimony of the said witness. He would also further contend that the High Court had erroneously evaluated the evidence of PW-16 (handwriting expert) who had not expressed any definite opinion with regard to the hand writing found on the returned postal cover with that of admitted hand writing of the appellant and thereby the guilt of the accused was not proved or established beyond reasonable doubt. Learned Counsel would also elaborate his submissions by contending that the testimony of PW-15 did not establish as to when the application of the accused No.1 had been received by the appellant and there was no iota of evidence placed by the prosecution in this regard including the purported payment of registration fees and service charges from appellant by PW-15. Pointing to these gaping holes in the prosecution story it is contended that the judgment of conviction and sentence imposed on the appellant would not be sustainable as such he has prayed for appeal being allowed and appellant being acquitted.

6. On the contrary, learned counsel appearing for the respondent would support the case of the prosecution and would contend that both the courts on proper evaluation of evidence has arrived at a conclusion that the appellant had committed the offence and convicted her, which finding does not suffer from any infirmity either in law or on facts calling for interference. Hence, learned counsel appearing for the respondent has prayed for dismissal of the appeal.

DISCUSSION AND FINDING

7. The case of the prosecution as noted herein above is that appellant had illegally facilitated the issuance of second passport in favour of accused No.1 or in other words accused No.1 who held an Indian Passport had deposited the same with his employer at Dubai and in search of better employment opportunities had clandestinely applied for second passport through the appellant and other accused persons had connived with the appellant in procuring second passport to Accused No.1.

8. The conviction of appellant is based on the deposition of three witnesses namely PW-3 (Selvi Sakila Begum), PW-15(Mr. Selvaraj), and PW-16 (Mr. Ravi). PW-3 is an employee of the proprietorship firm of appellant i.e. Kamatchi Travels and in her examination-in-chief she has deposed that she was working in the said travels which was offering various services including facilitating and obtaining the passports. She has further deposed that as the firm in which she was working could not render such services directly and the applications of their customers for issuance of passports were routed through Eagle Travels run by PW-15. She has also deposed that the application of accused No.1 was filled by her. However, she had turned hostile and nothing worthwhile was elicited in her cross- examination except to the extent of her admission that appellant was sitting next to her while she was filling the application form of accused No.1. She does not depose that appellant had any knowledge of Accused No.1 was already possessing a passport or appellant having informed her about the passport already held by Accused No.1.

9. PW-15 (Mr. Selvaraj) who is the proprietor of Eagle Travels has deposed that the application Ex.P-7 for issuance of passport in favour of accused No.1 was submitted through his firm and it was received from the appellant and appellant had paid the registration fee. PW-16 (Mr. Ravi), the Principal Scientific Advisor of Central Forensic Sciences Laboratory who has been examined by prosecution to drive home the fact that hand writing found on the returned postal cover is that of the appellant, though had deposed that there are similarities in the writings has also admitted that it is not possible for him to express any opinion in that regard on the basis of material on hand. It is pertinent to note at this juncture that prosecution had contended that accused No.3 who was in charge of safe custody of returned passports in the Passport Office had illegally removed the returned passport of accused No.1 from safe custody and had handed over the same to the appellant through accused No.4. However, trial court has not accepted this version of the prosecution and had acquitted accused Nos.3 and 4. The prosecution had failed to place on record any evidence to establish as to the how the passport kept in the safe custody had gone missing and in what manner it was handed over to the appellant or appellant in turn having returned the same back to Passport Office by post. Thus, for lack of direct evidence the accused No.3 and 4 have been acquitted.

10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v State of Gujarat reported in 2023 INSC 829, this court has held that:

> "15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.'' In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.

11. There is no direct incriminating information emanating from the evidence of the PW-3 against the Appellant. All that she has deposed is that she had filled the application form of accused No.1 and Appellant was by her side while she was filling the application and she has also deposed that appellant would verify and check the application after filling of the application. PW-3 was treated as hostile by prosecution as already noted herein above and prosecution was not able to elicit any incriminating material against the Appellant in her cross examination. As such the evidence of PW-3 is not reliable and trustworthy.

12. PW-15 has deposed that application of accused No.1 has been submitted to his firm by Appellant herein and that the charges were paid by Appellant. Apart from the said statement, no documentary evidence was produced to show that charges were paid by the Appellant and that the Appellant had prior knowledge of accused No.1 having a passport. Evidence of this witness does not inspire confidence and even if the same is taken at its face value, it would not discharge the burden cast on the prosecution to prove the guilt of the Appellant beyond reasonable doubt.

13. Evidence of PW-16 would also not come to the assistance of prosecution and, merely because he has deposed there are some similarities between the writings found on postal cover i.e. Ex.P8 and that of admitted writings of Appellant, by itself would not be sufficient to convict the Appellant, since he has admitted that it is not possible for him to express any opinion on the rest of the questioned items except with regard to handwriting of PW-3. It is pertinent to note that with regard to signature found in Ex.P7/passport application, no opinion was given by him as to who signed the same. It is crucial to note that evidence of PW-16 is not corroborated by any other evidence. This Court in catena of decisions has held that, without independent and reliable corroboration, the opinion of the handwriting experts cannot be solely relied upon to base the conviction. This Court in Padum Kumar v State of Uttar Pradesh reported in (2020) 3 SCC 35 has held as under :-

> "14. The learned counsel for the appellant has submitted that without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction. In support of his contention, the learned counsel for the appellant has placed reliance upon S. Gopal Reddy v. State of A.P. [S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596 : 1996 SCC (Cri) 792] , wherein the Supreme Court

held as under: (SCC pp. 614-15, para 28) “28. Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering “conclusive” proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In Magan Bihari Lal v. State of Punjab [Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] , while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7) ‘7. ...we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [Ram Chandra v. State of U.P., AIR 1957 SC 381 :

1957 Cri LJ 559] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa [Ishwari Prasad Misra v. Mohd. Isa, AIR 1963 SC 1728] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] where it was pointed out by this Court that an expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. [Fakhruddin v. State of M.P., AIR 1967 SC 1326 : 1967 Cri LJ 1197] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.’”

15. Of course, it is not safe to base the conviction solely on the evidence of the handwriting expert. As held by the Supreme Court in Magan Bihari Lal v. State of Punjab [Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] that: (SCC p. 213, para 7) “7. ... expert opinion must always be received with great caution ... it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.”

> 16. It is fairly well settled that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In Murari Lal v. State of M.P. [Murari Lal v. State of M.P., (1980) 1 SCC 704 : 1980 SCC (Cri) 330] , the Supreme Court held as under: (SCC pp. 708-09, paras 4 and
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> 6) "4. ... True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses — the quality of credibility or incredibility being one which an expert shares with all other witnesses — but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him.

An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence [Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his evidence] .

5. ***

6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact. ... So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard-and-fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it."

14. Appellant has also been charged for the offence punishable under Section 12(2) of the Passports Act, 1967 which reads as under:

> "12. Offences and penalties.— (1) Whoever—
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> (a) contravenes the provisions of section 3; or
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> (b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or
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> (c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or
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> (d) knowingly uses a passport or travel document issued to another person; or
>
> (e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) xxxxxxx (2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence." It is needless to state that burden is cast on the prosecution to prove that the appellant had knowingly furnished false information or supressing known material information with the intent of securing a passport or travel document to a person and thereby had abetted in the commission of offence punishable under Section 12(1) and thereby punishable under Section 12(2) of the Passports Act.

15. In the case on hand the prosecution failed to place any evidence to prove that the appellant had prior information of accused No.1 was already possessing a passport or knowingly had furnished false information to the passport authorities namely after knowing that accused No.1 had possessed or holding a passport was applying for second passport or having known the fact of accused No.1 possessing the passport was applying for the second passport and thereby there has been suppression of material information. In other words, the prosecution had failed to place on record any evidence to prove that appellant had any previous knowledge of accused No.1 was already possessing a passport. In the absence of any cogent evidence placed in this regard and accused Nos. 1 and 3 to 5 having been acquitted of the offences alleged, the conviction and order of sentence imposed against the appellant alone cannot be sustained or in other words it has to be held that prosecution had failed to prove the guilt of the appellant beyond reasonable doubt.

16. For the reasons afore-stated the appeal succeeds and appellant- accused No.2 is acquitted of the offences alleged against her. The judgment of the Trial Court passed in C.C. No.5 of 2007 as affirmed in C.A.(Md) No.203 of 2008 by the High Court of Madras at Madurai Bench dated 18.08.2011 are hereby set aside.

17. The bail bonds of the appellant stands cancelled. The appeal stands allowed in the above terms.

.....J. (Sanjay Kumar) .....J. (Aravind Kumar) New Delhi September 23 , 2024