

Sukh Ram vs State Of H.P on 25 July, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3548, AIR 2016 SC (CRIMINAL) 1122

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Bench: R. Banumathi, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 224 OF 2012

SUKH RAM

..Appellant

Versus

STATE OF HIMACHAL PRADESH

..Respondent

WITH

CRIMINAL APPEALS NO. 2290-2291 of 2014 & 2292-2293 of 2014

J U D G M E N T

R. BANUMATHI, J.

Present batch of appeals arise out of three separate judgments of the High Court of Himachal Pradesh passed in Criminal Appeals No. 418 of 2007, 419 of 2007 and 420 of 2007 in and by which the High Court reversed the acquittal of the appellant and convicted him for the offences punishable under Sections 468 and 471 of the Indian Penal Code and imposed six months imprisonment.

2. Common facts arising out of these criminal appeals are as follows:- During the relevant point of time i.e. 1983-1986, there was a government scheme for providing loans at the cheaper interest rates to poor persons living below the poverty line to enable them to purchase sheeps, buffalos, horses and for running small businesses and for development of land etc. Upon recommendation of the Block Development Officer (BDO), the bank disbursed these loans to the beneficiaries. Appellant-Sukh Ram was a Gram Sewak, Navgaon under Arki Sub-Division during said period, 1983 to 1986.

3. It is the case of the prosecution that appellant-Sukh Ram, Gram Sewak, while submitting

applications on behalf of the villagers for these loans, was involved in misappropriation of loan amounts by forging their signatures and thumb impressions on the applications and acknowledgement receipts. All three appeals have been heard together as the offences committed by the same accused persons appellant-Sukh Ram and others as also the modus operandi of committing the forgery and falsification of records being the same. Criminal Appeal No.224 of 2012 is taken as the lead case.

4. On the basis of the preliminary enquiry, it came to light that PW-5 Nathu Ram, PW-7 Kirpu and PW-8 Garja Ram had loans disbursed to them despite not having applied for the loans. Consequently, a case was registered against the appellant-Sukh Ram, Balbir Singh-Block Development Officer and Arun Kumar Sood, Branch Manager, UCO Bank Darlaghat. During enquiry, it further came to light that disbursement of loans was not actually made to the beneficiaries. An FIR was registered and on completion of the investigation and after obtaining sanction from the government, chargesheet was filed against the appellant-Sukh Ram Gram Sewak, Balbir Singh-Block Development Officer and Arun Kumar Sood, Branch Manager, UCO Bank Darlaghat. Charges were framed against the appellant and the said accused under Sections 409, 467, 468, 471, 120-B and 420 IPC and under Section 13(2) of the Prevention of Corruption Act. During the course of investigation, PW-5 and PW-7 gave their specimen signatures in the presence of the executive magistrate and the same were sent to the handwriting expert for comparison with their disputed signatures in the loan application and other documents. Handwriting expert opined that the signatures in the loan application and other documents did not match the signatures of Nathu Ram, Kirpu and others but only matched the signature of appellant-Sukh Ram.

5. To substantiate the charges, in the trial court, prosecution examined 22 witnesses. The trial court discarded the testimony and opinion of handwriting expert (Ex.PW20/C-1 to Ex.PW20/C-5) on the ground that the handwritten specimen given by PW-5 and PW-7 were taken before the executive magistrate who did not have the authority to enquire into or try the offence. Trial court came to this conclusion that charge against the accused was not proved by placing reliance on the decision of this Court in Sukhvinder Singh & Ors. vs. State of Punjab, (1994) 5 SCC 152. Trial court held that the appellant-Sukh Ram's (Gram Sewak) task was to take the applications for loan as well as subsidy and accused Balbir Singh's (BDO) task was to sanction the loan and subsidy and issue letters to the bank and Arun Kumar Sood's (Branch Manager, UCO Bank) task was to release the loan and subsidy after securing the requisite documents to that effect. Trial court held that in the absence of legal evidence that appellant and others have forged the loan documents, it cannot be concluded that the accused had entered into conspiracy of committing forgery and cheating etc. and on those findings, the trial court acquitted appellant-Sukh Ram and others.

6. Aggrieved by the judgment of acquittal, State of Himachal Pradesh preferred appeal before the High Court assailing the correctness of the decision of the trial court. The High Court differentiated the cases relied upon by the trial court from the case at hand on facts as also on law. The High Court pointed out that even though the executive magistrate before whom the specimen signatures were given did not have the authority to enquire into or try the case; however, PW-5 and PW-7 gave specimen signatures voluntarily during the course of investigation and differentiated the cases relied on by the trial court. High Court relied on the decision of this Court in Vijay alias Gyan Chand Jain

vs. State of M.P., 1994 SCC (Crl) 1755: (1994) 6 SCC 308 to hold that the exercise of power under Section 73 of the Evidence Act does not apply in cases where the investigating officer approaches the executive magistrate or tehsildar for taking specimen signatures or writings or where specimen is admitted by the accused or concerned persons.

7. On the charges of criminal conspiracy, High Court accepted the plea made by Balbir Singh (BDO) that he sanctioned the loans because the applications were verified by the appellant. High Court acquitted Balbir Singh (BDO) observing that there was lack of evidence suggesting conspiracy and held that no criminal conspiracy could be made out. The plea of Arun Kumar Sood, Bank Manager, UCO Bank Darlaghat that he released the loan amounts because the loans were sanctioned by Balbir Singh (BDO) and he disbursed the amounts when the loanees were identified before him by the appellant was also accepted by the High Court and Arun Kumar Sood, Bank Manager, UCO Bank Darlaghat was acquitted. The High Court reversed the judgment of acquittal and found the appellant guilty of forging loan applications of PW-5 and PW-7 (Ex.PW5/B and Ex.PW7/A) and other documents and convicted him for the offences punishable under Sections 468 IPC and also for the offence of using said forged applications as genuine punishable under Section 471 IPC. On being convicted, the appellant appeared before the High Court and he was questioned about the sentence and the High Court sentenced the appellant to undergo simple imprisonment for six months and to pay a fine of Rs.10,000/- for each of the offences for he had been convicted. Being aggrieved, the appellant is before us.

8. Learned counsel for the appellant submitted that High Court failed to appreciate that no case was pending before the executive magistrate and he was not competent to take the specimen signatures of the witnesses; there was no occasion for the police to produce the witnesses before him and obtain their signatures. It was further submitted that while setting aside the acquittal of the appellant, High Court has not properly construed the provisions of the Evidence Act and erred in relying upon the evidence of handwriting expert to convict the appellant.

9. Per contra, learned counsel for the respondent submitted that the prosecution has proved the guilt of the accused by relying on convincing evidence, oral testimony of witnesses amply corroborated by the documentary evidence and also the opinion of the handwriting expert. It was submitted that since the trial court failed to appreciate the evidence against the appellant, the trial court has laid great emphasis on the alleged lacunae in the investigation, High Court rightly reversed the judgment of acquittal and convicted the appellant and the impugned judgment warrants no interference.

10. We have carefully considered the rival contentions, judgment of the trial court, impugned judgment of the High Court and also material on record.

11. During the relevant time, admittedly, appellant-Sukh Ram was posted as Gram Sewak and he was to collect applications from the prospective loanees duly signed, thumb impressions marked by them and certain columns of the application were required to be filled up by him. After that, the loan papers were presented to BDO–Balbir Singh and BDO used to sanction loan and subsidy and then send a letter of sanction to the Bank Manager-Arun Kumar Sood, who after opening the account of

loanees and after following the requisite formalities, used to disburse the loan and subsidy to the beneficiaries. From the very beginning, the concerned officials were required to scrutinize the papers i.e. economic viability, technical feasibility and antecedents of the beneficiaries and after doing this, beneficiaries were asked to execute the documents like application, term loan agreement, hypothecation agreement, proforma bills etc. In all these cases, case of the prosecution is that neither the loan amount nor the subsidy was actually disbursed to the beneficiaries but was misappropriated by the appellant and others.

12. To substantiate the prosecution case, PW-5 Nathu Ram, PW-6 Sant Ram and PW-8 Garja Ram were examined who deposed that they did not apply for any loan and nor did they put their signatures in the documents. PW-5 Nathu Ram has categorically stated that he did not apply for any loan from the UCO Bank Darlathat and that application for loan Exs.PW5/A and other documents, PW5/B and PW5/C were not signed by him. Likewise, PW-6 Sant Ram has also stated that he did not apply for any loan from UCO Bank Darlathat and specifically denied the execution of the loan documents (Exs.PW6/A to PW6/G). PW-7 Kirpu has also deposed that he had not signed any document for obtaining loan. PW-8 Garja Ram, the alleged beneficiary, has stated that he is an illiterate and does not sign and only thumb marks documents. PW-8 has further stated that he has never applied for loan from UCO Bank Darlathat and never visited the bank for that purpose and has also not made any application for grant of loan. The statement of the above witnesses would clearly show that the documents were forged to avail the loan and the loan amount and subsidy amount were misappropriated.

13. To corroborate the version of the witnesses that they did not sign on loan documents and receipts and to prove that the signatures on the documents are that of the appellant-Sukh Ram and to prove the guilt of the accused that he forged the documents to misappropriate the government money, prosecution has examined PW-20 Mohinder Singh (handwriting expert) who opined that the disputed signatures of the witnesses PW-5 (Nathu Ram) and PW-7 (Kirpu) in the loan applications were not that of the said witnesses. During the course of investigation, specimen signatures of the witnesses PW-5 (Nathu Ram) and PW-7 (Kirpu) were obtained before the executive magistrate, Arki and sent to the handwriting expert and fingerprint bureau. On comparison of the specimen signatures of the witnesses with the disputed signatures and also the admitted signatures of the appellant-Sukh Ram, in his report (Ex.PW20/C-1 to Ex.PW20/C-3), PW-20 opined that the disputed signatures in the loan application and other documents were not that of witnesses (PW-5 Nathu Ram and PW-7 Kirpu) but they tallied with the signature of appellant-Sukh Ram.

14. Trial court discarded the opinion evidence of PW-20 on the ground that the executive magistrate was not the competent authority before whom the fingerprint and handwriting of the witnesses could be taken as no proceeding was pending before the executive magistrate. In this regard, trial court placed reliance upon Sukhvinder Singh's case and held that the opinion evidence of handwriting expert cannot be used against the accused.

15. In Sukhvinder Singh's case, it was held that the direction given by the Tehsildar-Executive Magistrate to the accused to give his specimen writing was clearly unwarranted and, therefore, the

said specimen writing could not be made use of during the trial and the report of handwriting expert was rendered of no consequence at all and could not be used against the accused to connect him with the crime. It was held that the direction to an accused to give specimen handwriting can only be issued by the court holding enquiry under the Criminal Procedure Code or the Court conducting the trial of such accused.

16. High Court differentiated Sukhvinder Singh's case from the case at hand on facts as also on law. High Court pointed out that in the matter at hand, admittedly, the authority-Executive Magistrate before whom the specimen signatures were given did not have the authority to enquire into or try the case. However, as observed by the High Court, during the course of investigation, PW-5 and PW-7 gave the specimen signatures willingly. In Sukhvinder Singh's case, specimen writing of accused was taken as per the direction of the tehsildar; whereas in the present case PW-5 and PW-7 were produced before the Executive Magistrate by the police with a request that their signatures be taken by the Executive Magistrate. Sukhvinder Singh's case is clearly distinguishable on facts from the case at hand. High Court further relied on another decision rendered in Vijay alias Gyan Chand Jain's case wherein in the facts and circumstances of the said case, it was held that procurement of specimen handwriting of accused by Naib Tehsildar was not in violation of Section 73 of Evidence Act.

17. The question is whether the Judicial Magistrate/ Executive Magistrate was authorized to take specimen writing and signatures of the said accused during the investigation of the case when no matter was pending before either of them. Section 311-A of Cr.P.C. has been introduced by Act No.25 of 2005 with effect from 23.06.2006 with respect to the powers of the Magistrate to order the person to give specimen signatures or handwriting; but no such powers were there prior to the year 2006. Section 311-A Cr.P.C. has been inserted on the suggestions of the Supreme Court in State of Uttar Pradesh v. Ram Banu Misra, (1980) 2 SCC 343: AIR 1980 SC 791, that a suitable legislation be brought along the lines of Section 5 of Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting but no such powers existed prior to such amendment. The said amendment is prospective in nature and not retrospective.

18. In State of Uttar Pradesh v. Ram Babu Misra, (1980) 2 SCC 343:

AIR 1980 SC 791, the Supreme Court dealing with the scope and ambit of Section 73 of the Evidence Act held as under:

“The second paragraph of Section 73 enables the Court to give specimen writings ‘for the purpose of enabling the Court to compare’ such writings with writings alleged to have been written by such person. The clear implication of the words ‘for the purpose of enabling the Court to compare’ is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of ‘enabling the Court to compare’ and not for the purpose of enabling the investigating or other agency ‘to compare’. If the case is still under investigation there is no present proceeding before

the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should not make any difference if the investigating agency seeks the assistance of the court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?”

19. After referring to Section 5 of the Identification of Prisoners Act, 1980 in Ram Babu Misra’s case, this Court suggested that a suitable legislation be made along its lines to provide for investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting. Accordingly, a new Section 311-A was inserted in the Criminal Procedure Code. Section 311-A Cr.P.C. reads as under:-

“Section 311A. Power of Magistrate to order person to give specimen signatures or handwriting.-If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.” The said amendment is prospective in nature and not retrospective.

20. Similarly, in Criminal Appeal Nos.2292-2293 of 2014, Gurditu Ram-PW-2, Sohan Lal-PW-3, Badri Ram-PW-4, Mast Ram-PW-5 deposed that their signatures were obtained on some papers by the accused-Sukh Ram on the pretext that loan would be distributed to them as well as subsidy, but they did not get the entire amount, they were promised. While Smt. Savitri Devi- PW-8 deposed that she did not sign on any of the documents as she is illiterate and Smt. Vidya Devi-PW-1 deposed that she did not apply for any loan and did not sign on any of the documents.

21. In Criminal Appeal Nos. 2290-2291 of 2014, Gandhi Ram-PW-1, Mahanto-PW-2, Shankroo Devi-PW-4, Sant Ram-PW-5, Chhote Ram-PW-6 and Paras Ram-PW-10 deposed that they neither applied for any loan nor signed on any document. Upon consideration of evidence adduced by prosecution, in our view, High Court rightly reversed the judgment of acquittal. The conviction of appellant in all the criminal appeals is confirmed.

22. In the present case, the occurrence was of the year 1983-1986 and, therefore, the authority of the Executive Magistrate to take specimen signatures of PW-5 and PW-7 during the course of investigation cannot be disputed. In any event, even de hors opinion evidence of handwriting expert, there is clear oral evidence of PW-5 and PW-7 denying their signatures in the loan application and other documents. Affirming the evidence of PWs 5 and 7 and analysis of evidence, the High Court has rightly reversed the judgment of acquittal and found the appellant guilty of the offences under Sections 468 and 471 IPC.

23. Learned counsel for the appellant submitted that the appellant is more than 75 years of age and is suffering from severe ailments; he has prayed for reduction of sentence of imprisonment. Considering the facts and circumstances of the case and that the innocence of the villagers has been misused to siphon the public money, we are not inclined to reduce the sentence of imprisonment of the appellant.

24. In the result, all the appeals are dismissed. As directed by the High Court, the sentence of imprisonment imposed on the appellant shall run concurrently. The appellant is on bail and his bail bonds shall stand cancelled. The appellant shall be taken to custody to serve out the remaining sentence.

.....J. (V.GOPALA GOWDA)J. (R. BANUMATHI) New Delhi;

July 25, 2016