

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(1) Criminal Appeal No. S-1112-SB of 2005
Date of Decision: 14.9.2015.**

Kashmir Singh

..Appellant

Versus

State of Punjab

..Respondent

(2) Criminal Appeal No. S-1137-SB of 2005

Amarjit Singh

..Appellant

Versus

State of Punjab

..Respondent.

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present: Mr. S.P.S.Sidhu, Advocate,
for the appellant in CRA S-1112-SB of 2005.

Mr. Harinder Sharma, Advocate,
for the appellant in CRA S-1137-SB of 2005.

Mr. Mehardeep Singh, DAG Punjab.

JITENDRA CHAUHAN.J.

This judgment of mine shall dispose of two Criminal Appeals bearing Nos. S-1112-SB of 2005 and 1137-SB of 2005 filed by Amarjit Singh and Kashmir Singh as both the appeals have arisen out of common judgment.

The appellant Kashmir Singh has preferred the

Criminal Appeal No. S-1112-SB of 2005 and the appellant, Amarjit

Singh has filed the Criminal Appeal No. S-1137-SB of 2005, impugning the judgment dated 30.5.2015 and order dated 1.6.2005 (hereinafter referred to as `impugned judgment') passed by the learned Special Judge, Kapurthala whereby they were convicted and sentenced as under:

<i>Name of the Convict</i>	<i>Conviction U/s</i>	<i>Sentence</i>	<i>In default</i>
Kashmir Singh	120-B IPC	RI for Four years & fine of Rs.1000/-	Further RI for one month
	466 IPC	RI for five years & fine of Rs.1000/-	Further RI for one month
	466 IPC	RI for five years and fine of Rs.1000/-	Further RI for one month
	468 IPC	RI for five years and fine of Rs.1000/-	Further RI for one month
	471 IPC	RI for two years and fine of Rs.1000/-	Further RI for one month
Amarjit Singh	120-B IPC	RI for four years and fine of Rs.1000/-	Further RI for one month
	466 read with 120-B IPC	RI for four years and fine of Rs.1000/-	Further RI for one month
	466 read with 120-B IPC	RI for four years and fine of Rs.1000/-	Further RI for one month
	468 read with 120-B IPC	RI for four years and fine of Rs.1000/-	Further RI for one month
	471 read with 120-B IPC	RI for one year and fine of Rs.1000/-	Further RI for one month

However, all the substantive sentences were ordered to run concurrently.

Brief facts of the case as noticed in para 2 of the impugned judgment are being reproduced as under:-

“According to the history of the case, it came to the notice of the Vigilance Bureau Kapurthala from reliable sources that that Kashmir Singh, Revenue Patwari, Halqa Bhahiana and Shingara Singh son of Bisa Singh, resident of Bhabiana, were having relations with each other. Kashmir Singh in connivance with Shingara Singh son of Bisa Singh, forged the death certificate of Darshan Singh son of Bisa Singh, his brother. The death of Darshan Singh son of Bisa Singh, was wrongly verified by Amarjit Singh, Numberdar of the village. Kashmir Singh, Patwari, accused on the basis of the said forged death certificate of Darshan Singh son of Bisa Singh, after obtaining illegal gratification, mutated his land, measuring 25 kanals 4 marlas, in favour of his alleged legal heirs. It also came to the notice of the Vigilance Bureau, that after the mutation of inheritance of the estate of Darshan Singh, was sanctioned in favour of his alleged legal heirs Kashmir Singh interpolated the same by writing the names of only some alleged legal heirs of Darshan Singh for illegal gain.

In this manner, Shingara Singh sold 8 kanals of land, in

favour of Kuljit Kaur wife of Tarlochan Singh, resident of village Bhabiana. Copy of mutation No.2229, was given by Kashmir Singh, to Shingara Singh. It was further stated that Kashmir Singh, Patwari, Shingara Singh, brother of Darshan Singh and Amarjit Singh, Nambradar forged the death certificate of Darshan Singh as also the mutations, with regard to the inheritance of his estate, and used those documents, as genuine, knowing or having reason to believe the same to be forged. Since the information was reliable, Ruqa, Ex.PN was sent to the police station, on the basis whereof, FIR Ex.PN/1 was registered. Special report, Ex.PN/2 was sent to the Illaqa Magistrate.”

Thereafter, the investigation was conducted and after securing the presence of accused, challan/charge-sheet under Section 173 Cr.PC was presented before the Court.

On presentation of the challan, copies of the documents as provided under Section 207 Cr.P.C. were supplied to the accused free of costs.

The accused were charge sheeted for the commission of offence under Sections 120-B, 467, 468 and 471 of IPC and accused Kashmir Singh was also charge sheeted under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 to which they pleaded not guilty and claimed trial.

In order to substantiate its case against the accused,

the prosecution examined PW-1 Naresh Kumar, PW-2 Joga Singh, Gujjar Ram PW-3, Pawan Kumar PW-4, Mohinder Pal PW-5, Sarwan Singh PW-6, Sat Pal PW-7, Surinder Kumar PW-8, Rajinder Singh PW-9, Harjinder Kaur PW-10, PW-11 Rajwant Kumar and closed its evidence.

PW1 Naresh Kumar MHC produced file Ex.PB relating to this case before DSP Rajwant Kumar.

PW2 Joga Singh, Computer Clerk office of the Civil Surgeon, Kapurthala deposed that death certificate (Ex.PO) of Darshan Singh placed on record, was not supplied by their office.

PW3 Gujjar Ram, Chowkidar of village Bhabiana stated that Darshan Singh and Tara Singh were brothers whereas Harjinder Kaur is the wife of late Tara Singh. He further stated that Darshan Singh did not die in village Bhabiana. He further stated that he had left Bhabiana about 30-35 years ago and thereafter, he did not come to the village. He further stated that he did not make any report with regard to his death nor did he get make any entry regarding the death of Darshan Singh in the police station. He further stated that Ex.PO death certificate of Darshan Singh, placed on record, was not prepared by him nor got prepared by him. He further stated that Kashmir Singh, Patwari accused took the record from him. He further stated that he did not know as to what he was to do with the same.

PW4 Pawan Kumar, Sadar Kanungo, Office of the Deputy Commissioner, Kapurthala proved the sanction Ex.PC accorded

by the District Collector, Kapurthala for launching prosecution against the accused.

PW5 Mohinder Pal, Clerk, Office of the Deputy Commissioner, Kapurthala proved Ex.PD attested to be true copy of the appointment letter of Kashmir Singh accused. He also proved Ex.PE attested to be true copy of the posting order of Kashmir Singh accused in Halqa Bhabiana. He also proved Ex.PF attested to be true copy of the extract of the service record of Kashmir Singh accused.

PW6 Sarwan Singh, Sub Inspector stated that on 27.1.2004 the accused were produced in the Court and an application Ex.PJ was moved before the then Chief Judicial Magistrate, Kapurthala for obtaining the specimen thumb impression of Amarjit Singh, Nambardar accused who refused to give his specimen thumb impression.

PW8 Surinder Kumar, Statistical Clerk, Local Registrar Births & Deaths, Phagwara brought the Births and Deaths record of the Municipal Council, Phagwara, starting from 7.1.98 and ending on 18.12.98.

PW7 Sat Pal, Kanungo Moharrir Mall, office of the Deputy Commissioner, Kapurthala brought the Jamabandis register (Parat Sarkar) pertaining to mutation No.2172. He further stated that the mutation with regard to the inheritance of the estate of Darshan Singh son of Bisa Singh, resident of village Bhabiana was sanctioned in favour of Tara Singh, Shingara Singh, sons and Sibbo, Taro and

Resho, daughters of Bisa Singh son of Dhian Singh. This mutation was entered by Kashmir Singh, Patwari accused. He identified the handwriting and signatures of Kashmir Singh. He proved Ex.PJ, attested to be true copy of the mutation.

PW9 Rajinder Singh, Patwari Halqa Bhabiana, Tehsil Phagwara brought the mutation registers of village Bhabiana one starting from 8.10.98 and ending on 10.11.2000 and the other starting from 10.11.2000 and ending on 6.9.2003. At entry No.2172, dated 13.9.1999, the mutation of inheritance of the estate of Darshan Singh son of Bisa Singh son of Dhiana, resident of village Bhabiana, was entered in the names of Tara Singh, Shingara Singh, sons and Sibbo, Taro, Resho, daughters of Bisa Singh son of Dhiana. He further stated that according to the record, Darshan Singh, died on 9.12.1975. He further stated that when the entry was made, Kashmir Singh was the Patwari of Halqa Bhabiana and he identified his handwriting, in respect of the entry. He further stated that there was no entry with regard to the inheritance of the estate of Darshan Singh aforesaid.

PW10 Harjinder Kaur stated that the mutation of inheritance of the estate of Darshan Singh shown to be dead was entered by Kashmir Singh accused in the name of Tara Singh, Shingara Singh, Nasib Kaur, Taro and Resho. She further stated that for entering Ex.PL, Kashmir Singh obtained a sum of Rs.70,000/- from her. She further stated that Shingara Singh accused was also conniving with him. She further stated that Shingara Singh also sold land, measuring 8

kanals, in favour of Kuldip Kaur wife of Tocha alias Tirlochan Singh, r/o village Bhabiana.

PW11 Rajwant Kumar, retired Deputy Superintendent of Police, Vigilance Bureau is the Investigating Officer.

The accused were examined under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to them which they denied and pleaded false implication.

It was argued before the ld. trial Court that Ex.PL mutation was entered in favour of Shingara Singh and Tara Singh, two brothers of Darshan Singh and others. The word “Aad” (others) was written in Ex. PL so, Ex. PL could not be said to be a forged document. It was further contended that Gujjar Ram in his statement Ex.DA made before the Police, in the first instance, did not state that Kashmir Singh, accused took away his chowkidara register and made interpolation therein. Therefore, the statement made by Gujjar Ram in the Court was an improvement over his earlier statement.

After hearing learned counsel for both the parties and considering material/evidence on record, the learned trial Court vide impugned judgment and order convicted and sentenced the appellants as mentioned above after holding that the accused intentionally created confusion by recording word “Aad” (others) after the names of Tara Singh and Shingra Singh. The document Ex. PL was forged by the accused Kashmir Singh. The statement of Gujjar Ram was relied upon

as in the inquiry before the DSP, Gujjar Ram made statement that the relevant record was taken away by Kashmir Singh from him by practising deception upon him.

Aggrieved against the aforesaid judgment of conviction and order of sentence, the present appeal has been directed by the appellants.

Learned counsel for the appellant Kashmir Singh submits that admittedly, Darshan Singh was not heard of for the last about 30-35 years. He refers to the statements of PW-3, Gujjar Singh Chowkidar, PW-6 SI Saran Singh, PW-10 Harjinder Kaur and PW-11, Rajwant Kumar, retired DSP. All these witnesses have admitted that Darshan Singh was not heard of for the last 30-35 years. In such circumstances, it was the bounden duty of prosecution to prove that Darshan Singh was still alive. As per the provisions of Section 107 and 108 of Indian Evidence Act, if a person has not been heard of for seven years by those who would naturally have heard of him, if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. So, by virtue of Section 108 of the Evidence Act, Darshan Singh is presumed to be dead. After his death, as per Hindu Succession Act, the property would have devolved upon his brothers and sisters being Class-II heirs and in the present case, the property had actually been mutated in favour of brothers and sister of the deceased. Therefore, no offence has, in fact, been committed by the appellants.

The next contention of learned counsel for the

appellant Kashmir Singh is that when the matter is pending before the Civil Court with regard to Will executed in favour of Harjinder Kaur then the registration of FIR in the present case is nothing but an abuse of process of law.

He further submits that Kashmir Singh-appellant was posted as a Revenue Patwari and as a Revenue Patwari, he was bound to record the reports of inheritance and incorporate the mutation of inheritance. The mutation is to be sanctioned by the Revenue Officers i.e. AC IInd Grade. The appellant had performed his duty in ordinary course of business and in good faith. The death certificate being the photocopy is not admissible unless permission to lead secondary is obtained. When the statement of PW-10 Harjinder Kaur has been found to be false by the trial Court on some counts then her testimony should be totally rejected and no reliance should be placed on her statement.

Learned counsel further states that Harjinder Kaur has filed a civil suit claiming herself to be the only heir according to the Will executed by Darshan Singh, who had died. This witness had admitted in her civil suit that Darshan Singh had died. If Darshan Singh had actually died then by no stretch of imagination, it can be said that the death certificate had been forged. He further states that the appellant Kashmir Singh has been wrongly convicted under Section 466 IPC without framing a charge in this regard.

On behalf of accused Amarjit Singh, it is contended

that there is no allegation against him. Whatsoever forgery has been

committed in this case, that was done by Kashmir Singh in collusion with Shingara Singh. Accused Amarjit Singh had no role to play. The Patwari, Kashmir Singh had taken record from the Chowkidar and had made forgery therein. No recovery was effected from the appellant Amarjit Singh.

On the other hand, learned State counsel contends that the accused have rightly been convicted by the trial Court under Sections 120-B, 466, 468 and 471 IPC. Both the accused appellants by hatching a conspiracy with Shingara Singh, forged death certificate of Darshan Singh and further forged the mutation of inheritance in favour of Shingara Singh. The prosecution witnesses have successfully proved the guilt of the accused. A prayer for dismissal of the appeals have been made.

I have heard learned counsel for both the parties and have gone through the record of the case.

In this case, the admitted position is that Darshan Singh was not heard of for the last 30-35 years and that his death had not taken place in village Bhabiana. PW-2, Joga Singh, the Computer Clerk had deposed that Ex. PO, the Death Certificate of Darshan Singh was not issued by any official. PW-3, Chowkidar Gujjar Ram of village Bhabiana testified that Darshan Singh did not die in village Bhabiana. He had left the village about 30-35 years ago. He did not make any entry with regard to his death. The Death Certificate, Ex.PO

was not prepared by him or got prepared by him. Kashmir Singh

Patwari had taken away record from him. Further PW-9, Rajinder Singh Patwari deposed that entry with regard to death of Darshan Singh on 9.12.1975 was made by the accused Kashmir Singh and the mutation of inheritance was also entered into by Patwari, Kashmir Singh. The signatures of Kashmir Singh were identified by Rajinder Singh PW-9. This witness further deposed that there was no entry with regard to the inheritance of estate of Darshan Singh in the names of Tara Singh and Shingara Singh in the record brought by him. The mutation, Ex.PL was in the handwriting of Kashmir Singh Patwari. It bore his signatures. That mutation was in favour of Shingara Singh and Tara Singh only. It was not entered in the mutation register brought by the witness. In this manner, the prosecution has proved the guilt of the accused beyond shadow of reasonable doubt.

The contention of learned counsel that Darshan Singh ought to have been presumed to be dead as he had not been heard of and once it is presumed, the offence of forgery would be wiped out, carries no weight at all. The presumption under the Evidence Act as provided under Sections 107 and 108 operates in a different realm. The presumptions are like litmus. They hold the field in the absence of evidence but when evidence appears, presumption recedes. In the present case, there is a positive evidence that the accused, Kashmir Singh had forged the death certificate of Darshan Singh. If a person prepares a forged document, even if in a set of circumstances, it appears to be genuine but that will not obliterate the crime. The factum

of death of Darshan Singh having taken place earlier or it having taken place subsequent to forgery does not undo the offence. In the presence of positive evidence of forgery, the presumption is going to carry the case of accused nowhere. Similarly, the pendency of another civil suit at the hands of PW-10, Harjinder Kaur in which she claims herself to be the beneficiary of Will, does not bar the trial of present case. No doubt, A Revenue Patwari is bound to record the reports of the inheritance and incorporate the mutation of inheritance but he is not supposed to forge a false mutation of inheritance. Ex. PL the mutation of inheritance in favour of Shingara Singh and Tara Singh is nothing but a concoction at the hands of Kashmir Singh. If something is done malafide then nothing remains sacrosanct. The principle of falsus-in-uno-falsus-in-omnibus is not applicable in the Indian criminal justice system. Therefore, the statement of Harjinder Kaur cannot be rejected in toto.

Regarding conviction under Section 466 IPC, the trial Court has rightly dealt with this point and held that offence under Section 466 IPC being minor, the accused can be convicted under this Section without there being any charge. Therefore, the contention stands repelled.

The argument of learned counsel for Amarjit Singh that he had no role to play is wholly insignificant. It is Amarjit Singh who being the Lambardar of the village verified the factum of death of

Darshan Singh and on the basis of which forged death certificate was

prepared. He is the facilitator of the crime. The offence would not have been committed had he not verified the death of Darshan Singh. The conspiracy is always hatched in the mind of a person. It cannot be seen. It can be perceived by taking into consideration the attending circumstances.

In view of above observation, both the the appeals stand dismissed. The accused are on bail, their bail bonds stand forfeited. They be taken into custody to serve the remaining part of sentence.

A copy of this judgment be sent to the trial Court for compliance.

14.9.2015
Meenu/SN

(JITENDRA CHAUHAN)
JUDGE