

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

1)

CRR No.772 of 2017

Date of Decision: 28.07.2017

Subhash and another

...Petitioners

Vs.

State of Haryana

...Respondent

2)

CRR No.854 of 2017

Rajesh Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S. K. Aggarwal, Advocate,
for the petitioner(s).

Amol Rattan Singh, J.

Both these revision petitions challenge the judgments and orders of the appellate Court, i.e. the learned Additional Sessions Judge, Palwal, dated 17.02.2017 and the trial Court, i.e. the learned Sub Divisional Judicial Magistrate, Hathin, dated 24.03.2014.

Vide the judgment of the learned appellate Court, the petitioners in both these petitions, i.e. Subhash and Jayanti Prashad (petitioners in CRR no.772 of 2017) and Rajesh Kumar (petitioner in CRR no.854 of 2017), have been held guilty of the commission of offences punishable under Sections 468 and 471 IPC, both read with Section 120-B of the IPC.

Vide the judgment of the trial Court, the three petitioners herein as also another co-accused, Deepak, were found guilty of having committed

offences punishable under Sections 468 and 471 of the IPC read with Section 120-B IPC.

The petitioners and their co-accused Deepak were all sentenced to three years rigorous imprisonment for the commission of each of the aforesaid offences, with all the sentences ordered to run concurrently.

They were also imposed a fine of Rs.1000/- each, in respect of each offence.

2. In appeal, the learned Additional Sessions Judge acquitted co-accused Deepak altogether, holding that his involvement in the conspiracy was not proved in executing a forged power of attorney in favour of petitioner Rajesh Kumar, on the basis of which a sale deed was got executed by Rajesh Kumar in favour of petitioner Jayanti Prashad, who was found to be the maternal nephew (sisters' son) of Rajesh Kumar. Deepak was found to be only an attesting witness to a sale deed of which he was not the beneficiary, nor was he a witness to the GPA shown to be executed in favour of Rajesh Kumar by one Moharli.

One Budhan son of Kanhi Ram was also arraigned as an accused before the trial Court, but had died during the course of the trial.

3. The case of the prosecution against the petitioners and their co-accused Deepak, emanated from a letter received at Police Station Hathin (now District Palwal), on 05.06.2007, from the Tehsildar Hathin, stating therein that all the accused got registered a sale deed bearing Vasika no.3524 dated 15.02.2006, thereby transferring property situated in village Swamika, Tehsil Hathin, on the basis of a general power of attorney bearing no.1535 dated 07.02.2006, registered at Mubena, District Bhind (MP).

It was further stated by the Tehsildar, that upon query it was found

that the alleged executrix of the GPA, Smt. Moharli, had died in 1988 in village Tijara (Rajasthan), and therefore, the sale deed was executed on the basis of a forged and fabricated instrument of power of attorney.

4. Consequently, FIR no.117 dated 05.06.2007 was registered at Police Station Hathin, alleging against the accused the commission of offences punishable under Sections 420, 467, 468, 471 and 120-B IPC.

5. Upon a report under Section 173 Cr.P.C. having been filed, the accused were all eventually charged by the trial Court of having committed offences punishable under Sections 468 read with Section 120-B of the IPC and Section 471, again read with Section 120-B of the IPC, as stated by the learned appellate Court.

6. The accused having pleaded not guilty and having claimed trial, the prosecution examined 13 witnesses as follows:-

Dharam Pal	PW1
Sukh Ram	PW2
SI Rajinder Singh	PW3
Dev Kishan	PW4
Om Parkash	PW5
Sohan Lal	PW6
Majlish Khan	PW7
Jakir Hussain	PW8
SI Siri Chand	PW9
Kishan	PW10
Ram Niwas, Patwari	PW11
Akhtar Hussain	PW12
Rajinder Parshad	PW13

Statements of the accused having been recorded under Section 313

Cr. P.C., they again pleaded their innocence and false implication, after which they examined the following three witnesses:-

Jagdish Chand, Reader	DW1
Nadmim Ahmad, Clerk	DW2
Naresh Kumar, MPHWH	DW3

They also led in evidence the following documents:-

A report of a finger print expert	Ex.D6
An affidavit of Dr. Satya Dev Aggarwal	Ex.D7
A copy of a statement of Dr. Satya Dev Aggarwal	Ex.D8
A copy of a ration card	Mark X

7. Upon appraising the evidence led before it, the learned trial Court came to the conclusion that as per the testimonies of PWs1 and 2, Dharam Pal and Sukh Ram, Moharli died at Tijara in Rajasthan about 20 years earlier, with PW1 Dharam Pal describing her as his aunt and stating that she had died about 15-20 years ago. Sukh Ram stated that she died 20-22 years ago. These witnesses also testified to having attended her last rites. Rajinder Parshad, Tehsildar, i.e. the complainant (PW13) was found to have conducted a thorough enquiry into the matter, to the effect that Moharli had died in the year 1988 in Tijara, with PWs 4, 5 and 10 (Dev Kishan, Om Parkash and Kishan) also supporting the case of the prosecution in that respect.

Though a report (Mark-Y) was referred to by the defence, which was prepared by the Municipal Committee, Tijara, and it was also noticed that the date and year of death of Moharli was given differently by the prosecution

witnesses, however, the defence in that regard was rejected by the trial Court, holding that the enquiry conducted by the Tehsildar was wholly conclusive, ordered at the instance of the Deputy Commissioner, Mewat, duly proved by PW13 Rajinder Parshad, Tehsildar, as Ex.PW13/A.

8. The trial Court concluded on the basis of the enquiry report that Moharli and Harli was actually the same person, wife of Akali, who had died in the year 1988 and therefore, she could not have executed a power of attorney in favour of accused Rajesh Kumar in February 2006.

The instrument of power of attorney prepared from Mubena, District Bhind (MP), shown to be executed in February 2006, was actually by producing a different lady claiming to be Harli @ Moharli, and on the basis of that document (GPA), the accused had succeeded in executing the sale deed in question in favour of accused Jayanti Prashad, with accused Rajesh Kumar shown to be the power of attorney holder, i.e. the attorney of Moharli @ Harli.

It was also found that actually Harli was the real owner of the property in question, measuring 33 kanals and 12 marlas, but when the revenue record was translated from Urdu to Hindi, her name came to be recorded as Moharli.

9. An argument having been raised that the Tehsildar had not gone to Mubena, District Bhind (MP), to conduct an enquiry, that argument was rejected on the ground that when she was found to have died in the year 1988 (at Tijara), there was no need for any enquiry to be conducted at Mubena, qua the execution of the GPA there.

10. The execution of the sale deed on the basis of the instrument of power of attorney not having been denied by the accused, they were eventually held guilty of the aforesaid offences and sentenced to three years rigorous

imprisonment, alongwith the imposition of a fine of Rs.1000/- each in respect of each offence, as already noticed.

11. In appeal, the learned Additional Sessions Judge, Palwal, duly noticed in detail the case of the prosecution and the evidence led by both sides before the trial Court, as also the arguments raised before him, one of which was that there was, in fact, a death certificate, Ex.D3, showing that Moharli had died in the year 2006 at village Swamika (now District Palwal), and therefore, in the absence of any death certificate from Tijara, showing that Moharli had died in the year 1988, the trial Court had erred in relying upon oral evidence in the face of documentary evidence to the contrary.

12. That argument was rejected by the appellate Court on the ground that firstly, PW2 Sukh Ram, aged about 87 years, had been examined on 09.04.2010, who had testified that Moharli was his aunt and had expired about 20-22 years earlier and that he had attended her cremation. In cross-examination, this witness was found to have stated that she died at Tijara in the month of *Bhadhon*. He had specifically denied that her death took place in village Swamika.

It was further found by the learned appellate Court that in his cross-examination, this witness had also stated that Moharli was in fact residing with the family of this witness but later had gone to her maternal home.

Similarly, the testimonies of PWs 5, 1, 4 and 10, all residents of village Swamika, were to the same effect, who also deposed that Harli and Moharli was the same person, who was first married to one Hardayal, after whose death she entered into a Kareva marriage with his younger brother, Akali.

13. On the other hand, as regards the death certificate Ex.D3, showing

that Moharli had died on 25.07.2006, it was found that DW3 Naresh Kumar, Multi Purpose Health Worker, who had testified in respect of the said certificate, in his cross-examination had stated that he was not aware if any cancellation report had been sent with regard to the entry made qua the issuance of the death certificate; however, in the very next sentence he deposed that the doctor had enquired from the village in that regard and had found that the entry at sr. no.167 was found to be lodged falsely, upon which that doctor had written to the Chief Medical Officer, “to seek guidance” from the District Registrar, Mandikhera.

The learned appellate Court further found that this witness (DW3) was again re-examined by the defence counsel, who denied the suggestion that the report of the aforesaid doctor, Govind Saran, was false and that actually no enquiry was conducted after visiting the village.

From the aforesaid deposition of DW3, the learned appellate Court held that a conjunctive reading thereof showed that although the death certificate, Ex.D3, was issued, but later, upon enquiry, the entry showing the registration of the death of Moharli was found to be false.

14. To rebut the aforesaid evidence, i.e. firstly, the oral testimonies of relatives of Moharli stating that she had died in Tijara in 1988, and the cross-examination of the aforesaid defence witness, the accused could not produce any evidence that the enquiry was not conducted, or that DW3 had deposed falsely.

Yet further, it was found that no witness had been produced from village Swamika, who could depose that Moharli was residing there and had died there (in the year 2006).

Hence, relying upon the aforesaid evidence as also the deposition of the Tehsildar, PW13 Rajinder Parshad, i.e. the complainant, to the effect that he had actually conducted the enquiry and found that Harli and Moharli was the same person whose name was distorted during the course of translation of the record from Urdu to Hindi, the learned appellate Court came to the same conclusion as had the trial Court, that Moharli had actually died in 1988 and therefore, there was no question of her having executed a general power of attorney in favour of one of the petitioners (Rajesh Kumar) on 07.02.2006.

15. Consequently, it was held that the instrument of power of attorney was a forged document to benefit the accused Jayanti Prashad, nephew of the aforesaid Rajesh Kumar, and on the strengthen of that document, a sale deed had been executed by Rajesh Kumar, transferring the land of Harli @ Moharli to accused Jayanti Prashad, with accused Subhash (also a petitioner in one of the present revision petitions), being the brother of Jayanti Prashad and an attesting witness to the instrument of power of attorney.

Yet further, it was found that PW10 Kishan was also shown to be another attesting witness on the instrument of power of attorney, who wholly denied his signatures or thumb impression thereupon, further deposing that he had never gone to Mubena, District Bhind (MP), and had never met the accused.

16. The learned appellate Court also found it strange that no explanation was coming from the side of the accused as to why and how Moharli, who would have been about 80 years of age, went to Mubena, District Bhind (MP), to execute a GPA in favour of Rajesh Kumar, who in turn was to execute a sale deed of Moharlis' land in favour of Jayanti Prashad, at the office of the Sub Registrar, Hathin.

17. Consequently, the 3 petitioners herein were found guilty by the appellate Court also.

However, as already noticed earlier in this judgment, it was held that Deepak had been erroneously convicted by the trial Court, as it was nowhere proved that he was involved in the transaction of creating a false GPA in any manner and simply because he was an attesting witness to the sale deed subsequently executed on the basis of the GPA, the prosecution had failed to prove the charges against him. Hence, Deepak was acquitted, with the judgment of the trial Court convicting the other accused, i.e. the present petitioners Jayanti Prashad, Subhash and Rajesh Kumar, upheld, as was the quantum of sentence imposed, though after modifying the conviction, to hold the petitioners guilty of the commission of offences punishable under Sections 468 and 471, each read with Section 120-B of the IPC. It was held that they could not have been convicted for the commission of an offence punishable under Section 120-B IPC 'independently', the charge having been framed differently.

18. In the present revision petitions, Mr. S. K. Aggarwal, learned counsel appearing for three petitioners, first submitted that the learned Courts below have erred in convicting the petitioners without the original instrument (GPA) actually produced in Court. He submitted that, therefore, the signatures on the said document could not be proved to hold that they were actually those of Moharli.

However, as recorded in the order of this Court dated 06.04.2017, (when judgment was reserved), learned counsel had very fairly also pointed to that part of the judgment of the trial Court, wherein it was specifically recorded that the accused had admitted to the correctness of the copy of the instrument of

power of attorney.

19. Despite the said admission, learned counsel for the petitioners still relied upon a judgment of a co-ordinate Bench in **Budh Ram v. State of Haryana** 201092) RCR (Criminal) 352, to submit that once the original document which was alleged to be forged was not produced on record, the conviction could not be sustained.

20. Mr. Aggarwal next submitted that any enquiry conducted by a revenue officer, as was is in this case, would not be admissible in evidence in a criminal case. To support that proposition, he relied upon a judgment of the Supreme Court in **Alagarsamy & others v. State by Deputy Superintendent of Police** 2010 (2) RCR (Criminal) 97.

The contention thus is that the case against the petitioners being based on the enquiry report of the Tehsildar, who was also the complainant in the FIR, the prosecution actually had no legs stand on.

21. Lastly, learned counsel for the petitioners submitted that a forgery cannot be presumed and in the face of a death certificate led by way of evidence, showing that Moharli had died on 25.07.2006 at village Swamika, which was an entry entered in the register of village Mandkola, Tehsil Hathin, her death in 1988 could not be held to be proved simply on the basis of oral evidence led by the prosecution, with no death certificate obtained from Tijara.

Hence, learned counsel submitted that the judgments of the Courts below deserve to be set aside and the petitioners acquitted at least by granting them the benefit of doubt.

22. Having considered the arguments of learned counsel for the petitioners, as also the judgments of the Courts below, I find no ground to interfere with the detailed reasoning given, especially in the judgment of the

first appellate Court.

Undoubtedly, a death certificate showing that Moharli had died on 25.07.2006 in village Mandkola, Tehsil Hathin, was led by way of evidence, Ex.D3, by the petitioners, and to the contrary no death certificate showing that she had died in the year 1988 at Tijara (Rajasthan), was produced by the prosecution.

However, even that being so, I find no error in the reasoning of the learned Courts below, to the effect that the said entry of her death having been actually found to be false, even as per the testimony of DW3 Naresh Kumar, who was an official in the Primary Health Centre, Mandkola, i.e. by a witness examined by the accused themselves, very obviously, the death certificate was also obtained fraudulently, though that not being a charge against the petitioners, they could not be tried for the commission of that offence. However, with the said death certificate found to be forged and there being no explanation, as reasoned by the learned appellate Court, as to why an aged lady would go from District Palwal in Haryana, to Madhya Pradesh, to execute a power of attorney in favour of accused Rajesh Kumar, who is also shown to be a resident of village Swamika, District Palwal, thereby enabling him to sell her property, also situate in village Swamika itself, that reasoning cannot be faulted in any manner.

23. Hence, in the face of those findings, seen with the testimonies of five prosecution witnesses, to the effect that Harli @ Moharli was the same person who had died at Tijara, Rajasthan, all the witnesses being her relatives, including an 87 year old man (PW2) and PW10 Kishan also having testified that he never went to Madhya Pradesh and was therefore falsely shown to be the second attesting witness to the instrument of power of attorney, in the opinion

of this Court also, the prosecution had duly proved its case against the petitioners, that they were guilty of having prepared a forged power of attorney, shown to be executed by Harli @ Moharli, in favour of accused Rajesh Kumar.

Even if for the sake of argument it is to be presumed (which it cannot be in the face of the entire evidence seen together), that Moharli had not died in Tijara in 1988, to repeat, the allegation against the petitioners is that they had got executed a fabricated document prepared in Mubena, District Bhind (MP), in respect of a lady who was shown to be a resident of either village Swamika or possibly village Tijara in Rajasthan, and as such she would have no reason whatsoever to execute an instrument of power of attorney by going to all the way to Mubena, District Bhind (MP), especially with the property itself situated in District Palwal.

Thus, even if being an aged lady (again presuming that she was alive in 2006), she had to execute a power of attorney in favour of accused Rajesh Kumar, enabling him to dispose of her land by transferring it to anyone, including accused Jayanti Prashad, she would have executed such an instrument either in District Palwal itself, or at best in village Tijara, Rajasthan.

24. As regards the contention of learned counsel that with the original instrument of power of attorney not produced, the petitioners could not have been held guilty of having fabricated such a document, very obviously the said document was in possession of one of the petitioners, i.e. accused Rajesh Kumar, in whose favour it was purported to have been executed, and consequently, they would obviously not produce the said original instrument, to strengthen the case of the prosecution. Besides this, learned counsel for the petitioners herein admitted that the accused themselves did not deny that the photocopy of the document led by way of evidence, was actually a true

photocopy of the original of the document. Hence, I see no strength in that argument either, based on the judgment of a co-ordinate Bench in *Budh Rams'* case (supra).

25. Coming then to the argument raised by Mr. Aggarwal, on the strength of the judgment of the Supreme Court in *Alagarsamy's* case (supra), to the effect that the report of a revenue officer, could not be relied upon to convict an accused in criminal proceedings. No doubt, by itself, the said report may not have been enough to convict the petitioners for the commission of the offences that they have been held guilty of having committed, even as per the ratio of the said judgment; however, in the face of the fact that evidence having been led in the form of prosecution witnesses testifying that Harli @ Moharli had died in Rajasthan in 1988, alongwith the fact that even the death certificate relied upon by the petitioners showing Moharli to have died in July 2006, was proved to be a false entry regarding her death, I find no reason to give the petitioners the benefit of doubt.

It needs to be stated here that though Dr. Govind Saran was not examined as a witness, who is stated to have enquired into the matter of issuance of the death certificate, yet in the face of the entire evidence led before the trial Court, discussed in detail by the appellate Court, I find myself unable to interfere in the judgments of the Courts below, fully agreeing with them.

26. Consequently, these petitions are dismissed and the judgment of the learned appellate Court upholding the conviction of the petitioners, as also sentences imposed upon them, is maintained.

July 28, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |