

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 79 OF 2013

(Arising out of Special Leave Petition (Crl.) No. 5681 of 2011)

SURESH HINGORANI

...

Appellant

Versus

STATE OF HARYANA

...

Respondent

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. This appeal, by special leave, is directed against judgment and order dated 19/01/2010 passed by the High Court of Punjab and Haryana in Criminal Revision No.162 of 2010 whereby the High Court dismissed the petition filed by the appellant.

3. The appellant was tried by the Judicial Magistrate, First Class, Faridabad for offences under Sections 420, 467, 468 and 471 of the Indian Penal Code (for short, "**the IPC**"). By order dated 23/3/2007, learned Magistrate convicted the appellant under Section 419 of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for one month. The appellant was further convicted under Section 467 of the IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.3,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for one month. The substantive sentences were ordered to run concurrently. The appellant was acquitted of offences under Sections 420, 468 and 471 of the IPC.

4. The appellant challenged the said order before the Additional Sessions Judge, Faridabad. Learned Sessions Judge by his order dated 10/11/2009 confirmed the conviction and sentence and dismissed the appeal. Being

aggrieved by the said conviction and sentence, the appellant filed a criminal revision in the Punjab & Haryana High Court. By the impugned judgment, the High Court dismissed the revision. Hence, this appeal.

5. According to the prosecution, one Kewal Krishan Loomba lodged a complaint with the Police Station NIT Faridabad on 1/5/1997 stating that the appellant personated as Kewal Krishan Loomba and executed two sale deeds one dated 14/8/1996 (Ex. PW6/A) and another dated 19/9/1996 (Ex. PW5/A) in respect of land belonging to him situate at Village Anangpur, Tehsil and District Faridabad in favour of one Gurdarshan Singh. According to Kewal Krishan Loomba, he came to know about this forgery and impersonation only when Gurdarshan Singh filed written statement in the court of Civil Judge, Faridabad on 26/2/1997 setting out these facts. Kewal Krishan Loomba further alleged that the appellant along with the said Gurdarshan Singh, Advocate D.P. Singh Tomar and Advocate Rajinder Singh and others

conspired and dishonestly executed these two sale deeds in favour of Gurdarshan Singh.

6. To prove its case, the prosecution examined 10 witnesses. PW-4 S.I. Dharampal took possession of the two sale deeds and affidavits from Gurdarshan Singh. He stated that the appellant refused to participate in the identification parade. PW-5 Advocate Virender Pratap Tomar stated that on 19/9/1996, a sale deed was executed by one Kewal Krishan Loomba before the Sub-Registrar in favour of Gurdarshan Singh. He identified the appellant in the court as the same person, who executed the said sale deed by posing as Kewal Krishan Loomba. PW-6 Advocate Rajinder Singh stated that on 14/8/1996, a sale deed vide Vasika No.6265 dated 14/8/1996 was registered by one Kewal Krishan in favour of Gurdarshan Singh. He stated that he signed on the said sale deed as attesting witness. He identified the appellant in the court as the person, who posed as Kewal Krishan. PW-9 Anjit Singh s/o. Gurdarshan Singh stated that he has signed as attesting witness on both

the sale deeds. He identified his signatures on the sale deeds. He stated that the appellant posing as Kewal Krishan executed those sale deeds in favour of Gurdarshan Singh. He stated that the sale consideration was Rs.80,000/- and Rs.95,000/-. PW-8 Gurdarshan Singh confirmed that he purchased the lands in question vide sale deeds (Ex. PW-5/A and Ex. PW-6/A) from one Kewal Krishan for consideration of Rs.80,000/- and Rs.95,000/- respectively by cheques. He identified the appellant as the same person who posed as Kewal Krishan and executed the sale deeds.

7. PW-10 Om Prakash stated that he is employed at BSOI, Dhaula Kuan. He stated that the appellant and Kewal Krishan are known to him. He stated that they wanted to open a bank account and on request of the appellant, he introduced him to Indian Overseas Bank, Delhi Cantt. Branch and signed on a bank account opening form. He stated that the account opening form bears his signature and the signature and photo of the appellant. The prosecution has placed on record FSL Report (Ex-PX) which states that the

specimen signatures of Kewal Krishan marked as S1 to S6 and specimen signatures of the appellant marked as S7 to S10 were compared with signatures Q1 to Q7 on registered sale deed dated 19/9/1996, Q8 to Q15 on registered sale deed dated 14/8/1996, Q16 to Q19 on specimen signature cards of Indian Overseas Bank, Q17 and Q18 on affidavit dated 14/8/1996 and Q20 to Q24 on account opening form of Indian Overseas Bank dated 21/8/1996. The report states that after comparing Q1 to Q24 with the specimen signatures of Kewal Krishan as well as the appellant i.e. S1 to S6 and S7 to S10, it is found that the signatures S1 to S6 given by Kewal Krishan did not match with the signatures Q1 to Q24 on registered sale deeds dated 14/8/1996 and 19/9/1996, affidavit dated 14/8/1996, specimen signature cards and account opening form of Indian Overseas Bank dated 21/8/1996. The report further states that the specimen signatures S7 to S10 of the appellant are similar to Q1 to Q24 found on the documents Ex. PW-5/A and Ex. PW-6/A i.e. sale deeds dated 19/9/1996 and 14/8/1996, affidavit

dated 14/8/1996 accounting opening form dated 21/8/1996 and specimen signature cards of the Indian Overseas Bank.

8. PW-3 Khem Chand duly proved the registration of sale deeds Ex. PW-5/A and Ex. PW-6/A. PW-5 Advocate Virender Pratap Tomar and PW-9 Anjit Singh the attesting witnesses of sale deed dated 19/9/1996 stated that the appellant posed as Kewal Krishan and executed the sale deeds in question after signing them as Kewal Krishan. Similarly, the attesting witnesses PW-6 Advocate Rajinder Singh and PW-9 Anjit Singh stated that the appellant signed as Kewal Krishan and executed the sale deed dated 14/8/1996. The evidence of PW-7 U.D. Sharma and PW-10 Om Prakash establish that the appellant opened Saving Bank A/c. No.16206 in the name of Kewal Krishan and signed the account opening form and specimen signature cards as Kewal Krishan. The sale deeds (Ex. PW-5/A and Ex. PW-6/A) bearing the photographs of the appellant were signed by the appellant as Kewal Krishan. This is duly proved by the evidence of PW-5 Virender Pratap Tomar, PW-6 Advocate Rajinder Singh, PW-9 Anjit Singh and FSL Report (Ex-PX).

9. Learned counsel for the appellant laid much emphasis on the fact that the complainant was not examined by the prosecution. He submitted that therefore, the entire prosecution story is suspect. In the facts of this case, we are unable to accept this submission. It is true that the complainant ought to have been examined by the prosecution. But because the complainant is not examined, we have meticulously gone through the evidence. We find that the prosecution witnesses have established the prosecution case to the hilt. The FSL Report completely bears out the prosecution case. Learned counsel for the appellant pointed out that the prosecution ought to have tried Col. Kochar along with the appellant or it should have at least cited him as a witness because PW-8 Gurdarshan Singh has stated that Col. Kochar introduced the appellant to him. Since the evidence on record clearly brings out the involvement of the appellant, we refrain from going into the alleged involvement of Col. Kochar. From the evidence adduced by the prosecution, the inescapable conclusion

which must arise is that the appellant posed as Kewal Krishan and executed the sale deeds in favour of Gurdarshan Singh. It was further urged by learned counsel for the appellant that there is nothing on record to indicate that the appellant has received any consideration. There is no evidence on record to suggest that the cheques in the sums of Rs.80,000/- and Rs.95,000/- were, in fact, encashed. It is true that there is nothing to indicate that the complainant suffered any loss or that the appellant received any monetary benefit. But then, Section 467 of the IPC does not require the prosecution to prove that the accused, who commits forgery, has benefited thereby or any loss has occasioned to anyone thereby. This argument must, therefore, fail.

10. In our opinion the prosecution has established beyond reasonable doubt that the appellant cheated by personating as Kewal Krishan and he forged two sale deeds. The courts below have correctly appreciated the evidence and after holding the appellant guilty of offences punishable under

Sections 419 and 467 of the IPC, sentenced him as aforesaid. The concurrent findings recorded by the courts below do not call for any interference as there is no perversity attached to them.

11. Learned counsel for the appellant submitted that the appellant has undergone imprisonment for 20 months. He is about 59 years of age and is suffering from osteoarthritis. The affidavit of the appellant along with the medical report is on record. Counsel pointed out that the appellant has suffered a fracture in the distal femur while in custody and his left limb has been shortened by 1½ cm due to operation. He has also suffered a firearm injury in his left knee. The medical record shows that his condition is worsening due to advancing osteoarthritis changes. Counsel urged that in the circumstances, this court may take a kindly view of the matter. He submitted that the sentence already undergone by the appellant may be treated as sentence for the offences for which he has been convicted.

12. Though we are of the confirmed opinion that the appellant has rightly been convicted for offences under Sections 419 and 467 of the IPC, having perused the appellant's affidavit and medical papers, which are annexed to it, we are of opinion that in the peculiar facts and circumstances of the case so far as sentence is concerned, his case deserves to be dealt with sympathetically. We have also taken note of the fact that the complainant is not interested in prosecuting the case and that neither the appellant has received any monetary benefit nor PW-8 Gurdarshan Singh has suffered any loss. Though in law, these circumstances will not help the appellant, for the purposes of considering the aspect of sentence in the peculiar facts of this case, these would be mitigating circumstances. The offence, however, is grave and, therefore, while treating sentence undergone by the appellant as sentence for the offences for which he is convicted, we deem it appropriate to impose on him a fine of Rs.50,000/-. Hence, the following order:

13. The conviction of the appellant for offences under Sections 419 and 467 of the IPC is confirmed. The appellant has so far spent 20 months in jail. In the facts of the case the period already undergone by him is directed to be treated as sentence for the offences under Section 419 and 467 of the IPC. The order of sentence is modified to this extent. In addition, the appellant is directed to pay a fine of Rs.50,000/-. The appellant shall deposit the fine amount with the Registrar General of Punjab & Haryana High Court. Such deposit shall be made within a period of one month from today. The appellant is on bail. On such deposit being made, the appellant's bail bond shall stand discharged. Needless to say that if the appellant does not deposit the said amount as directed, the bail bond of the appellant shall stand cancelled and he shall be taken in custody to serve out the remaining sentence as per the impugned order.

14. The appeal is disposed of in the aforestated terms.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
JANUARY 10, 2013.

SUPREME COURT OF INDIA



JUDGMENT