

(2016) 02 GUJ CK 0059
In the Gujarat High Court
Case No : Criminal Appeal No. 1289 of 2006

State of Gujarat

APPELLANT

Vs

Rebari Mepa Amrabhai and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 197, Section 313, Section 378

Penal Code, 1860 (IPC) — Section 34, Section 420, Section 466, Section 467, Section 468, Section 471, Section 477, Section 511

Citation : (2016) 02 GUJ CK 0059

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : K.P. Raval, Addl. Public Prosecutor, for the Appellant; Manraj A. Barot, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J.—1. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the Chief Judicial Magistrate, Junagadh in Criminal Case No. 2215 of 1993, by which, the learned trial Court has acquitted the original accused for the offence under Sections 466, 468, 471, 477, 511, 420 r/w Section 34 of the Indian Penal Code, the State has preferred present Appeal under Section 378 of the Code of Criminal Procedure.

2. That on 16.2.1990 in order to get the post of driver in S.T. Corporation the respondent accused submitted standard VII passed certificate though he did not prosecuting the study. The respondent accused did not study in the Pay-Centre School of Porbandar. In spite of this fact, he submitted the forged School Leaving Certificate. The opponent accused knowing that it was a forged document and with the intention to use the same as genuine one committed the offence. That one Nagjibhai Nanjibhai - Establishment Supervisor, Gujarat State Road Transport Corporation, Junagadh filed a private complaint in the Court of learned Chief Judicial Magistrate, First Class against the original accused for the offence

under Sections 466, 468, 471, 477, 511, 420 r/w Section 34 of the Indian Penal Code. That the said complaint was sent to the concerned Police Station for investigation under Section 156(3) of the Code of Criminal Procedure, which was numbered as M Case No. 85 of 1992. After investigation, the concerned Investigating Officer having found prima facie case against the accused filed the charge sheet in the Court of learned Chief Judicial Magistrate against both the accused for the offence under Sections 466, 468, 471, 477, 511, 420 r/w Section 34 of the Indian Penal Code. It appears that during the pendency of the trial, original accused No. 2 died and therefore, the trial qua him came to be ordered to be abated. Therefore, the original accused No. 1 only came to be tried by the learned Chief Judicial Magistrate for the aforesaid offence. The accused pleaded not guilty and therefore, he came to be tried by the learned Chief Judicial Magistrate for the aforesaid offences.

2.1. To prove the case against the accused, the prosecution examined following witnesses:

2.2. Trough the aforesaid witnesses, the prosecution also brought on record the following documentary evidence:

2.3. After submitting the closing purshis, further statement of the accused came to be recorded under Section 313 of the Criminal Procedure Code. The accused denied having committed any offence and even denied the evidence collected against him and has stated that false case has been filed against him.

2.4. At the conclusion of the trial and though on appreciation of evidence, the learned Chief Judicial Magistrate has specifically given the findings that the prosecution/complainant has been successful in proving that the school leaving certificate produced by the accused along with his application form for the post of driver is forged one, solely on the ground that the original complainant who lodged the complaint was not having any authority and/or authorization to lodge the complaint and also on the ground that the offence occurred on 16.2.1990 and the complaint was lodged on 19.6.1992 i.e. after a period of approximately two years and the delay has not been explained, by impugned judgment and order the learned trial Court has acquitted the original accused No. 1 which has given rise to the present appeal.

3. Shri K.P. Raval, learned Additional Public Prosecutor for the appellant -State has vehemently submitted that in the facts and circumstances of the case learned trial Court has materially erred in acquitting the original accused No. 1. It is vehemently submitted that while acquitting the original accused No. 1 the learned trial Court has not properly appreciated the fact that as such the original accused No. 1 forged the school leaving certificate and produced and used as genuine along with his application form and thereby committed the offence under Sections 466, 468, 471, 477, 511, 420 and 34 of the Indian Penal Code. It is submitted that the learned trial Court has as such given the specific finding that in the present case the prosecution/complainant has successful in proving that

the accused produced the forged school leaving certificate and used it as genuine. It is submitted that the ground on which the learned trial Court has acquitted the accused No. 1 are not tenable in law and as such the reasoning which are given by the learned trial Court while acquitting the original accused No. 1 are perverse.

3.1. It is further submitted that while acquitting the original accused the learned trial Court has not properly appreciated the fact that distinction between approval/sanction required under Section 197 of the Code of Criminal Procedure. It is submitted that in the present case admittedly at the time when the original accused No. 1 committed the offence, he was not public servant.

3.2. It is further submitted that even the learned trial Court has not properly appreciated the fact that the only person who had knowledge of having committed the offence by some one can lodge the complaint. It is submitted that the learned trial Court has not properly appreciated the fact that the criminal law can be moved in motion by anybody who had knowledge about the commission of offence by some one. It is submitted that in the present case the complainant who was Establishment Supervisor, Gujarat State Road Transport Corporation, Junagadh while scrutinizing the application and the documents annexed/attached with the application form came to know that school leaving certificate produced containing the fact that the accused had passed 7th Standard was not issued by the authority who signed the said certificate, therefore, it was found to be forged and therefore, when the original complainant lodged the complaint, the learned trial Court ought not to have acquitted the original accused No. 1 on the ground that he was not authorized by the ST Corporation to file/lodge the complaint.

3.3. It is further submitted that even the learned trial Court has materially erred in acquitting the accused No. 1 on the ground that there was a delay in lodging the complaint. It is submitted that unless and until the delay if any, had caused any prejudice to the accused, solely on the ground of delay in lodging the complaint and when it has been established and proved that the certificate produced by the original accused No. 1 was forged and/or not genuine and he used as genuine one, the learned trial Court is not justified in acquitting the original accused No. 1 on the aforesaid ground.

Making above submissions, it is requested to quash and set aside the impugned judgment and order of acquittal and consequently convict the original accused for the offence for which he was tried and to impose maximum punishment provided under the Indian Penal Code for the aforesaid offence.

4. Present appeal is vehemently opposed of by Manraj Barot, learned advocate for the original accused No. 1.

4.1. It is vehemently submitted that as such by giving cogent reasons the learned trial Court has acquitted the original accused No. 1 and therefore, the same is not required to be interfered with by this Court in exercise of appellate jurisdiction.

4.2. It is further submitted that in the present case the learned trial Court has rightly acquitted the original accused on the ground that complainant who lodged the complaint was not having any authority to lodge the complaint. It is submitted that though in the cross examination the PW No. 1 - original complainant stated that he was having authority from higher authority to lodge the complaint, the same is not forthcoming and not produced on record. It is submitted that therefore, when it was found that the original complainant who lodged the complaint had no authorization to lodge the complaint and consequently when the learned trial Court has acquitted the original accused No. 1, the same is not required to be interfered with in exercise of appellate jurisdiction.

4.3. It is further submitted by Shri Barot, learned advocate for the original accused No. 1 that in the present case even the learned trial Court has found that there is unexplained delay of approximately more than two years in lodging the complaint. It is submitted that therefore, when the delay of more than two years in lodging the complaint has not been explained and consequently when the learned trial Court has acquitted the original accused No. 1, the same is not required to be interfered with by this Court in exercise of appellate jurisdiction.

4.4. Shri Barot, learned advocate for the original accused has further submitted that even on the allegation alleged to have been proved against the accused No. 1 and even considering the case of the prosecution as it is, it cannot be said that the accused has committed any offence under Sections 466 and 477 of the IPC. It is submitted that none of the ingredients of Section 467 and 477 of the IPC are satisfied. It is submitted that therefore, it cannot be said that the original accused No. 1 had committed any offence under Section 467 and 477 of the IPC.

4.5. In the alternative, it is submitted that if this Court comes to the conclusion that the learned trial Court has committed any error in acquitting the original accused No. 1 and this Court comes to the conclusion that the original accused No. 1 has committed any of the offence, for which, he was tried under Sections 468, 471, 511, 420 r/w Section 34 of the Indian Penal Code, in that case, he has requested to impose lessor punishment and has requested not to impose maximum punishment. He has also requested to pass an order for all or any of the sentence which may be imposed to run concurrently.

Making above submissions, it is requested to dismiss the present Criminal Appeal and/or to consider the alternative submissions made by the learned advocate for the original accused No. 1.

5. Heard the learned advocates for the respective parties at length. We have perused the impugned judgment and order of acquittal passed by the learned trial Court. We have considered the reasoning given by the learned trial Court while acquitting the original accused No. 1. We have re-appreciated the entire evidence on record.

5.1. At the outset, it is required to be noted that the original accused No. 1 was

tried for the offence under Sections 467, 468, 471, 477, 511 r/w Section 34 of the IPC. It was alleged against the original accused No. 1 that while submitting the application to the S.T. Corporation for the job of driver, he produced the school leaving certificate (Exh. 40) purportedly to have been issued by the Taluka School No. 1, Porbandar and which was alleged to have been signed by the Principal of Taluka School No. 1, Porbandar. In the school leaving certificate produced at Exh. 40, it was submitted by the original accused No. 1 it is so stated that he has passed the 7th Standard examination. At this stage, it is required to be noted that one of the requirement of the qualification required for the post was that a candidate must have passed the 7th Standard Examination. When the application and the certificates annexed with the application which were produced by the original accused No. 1 was scrutinized by the original complainant and the competent authority of ST Corporation, on inquiry from the school authority it was found that the certificate which has been produced by the original accused No. 1 is not issued by the said authority. Therefore, the said school leaving certificate was found to be not genuine and the forged, which the original accused No. 1 has produced and used as a genuine. It is required to be noted that even in the impugned judgment and order there is specific finding recorded by the learned trial Court that the complainant/prosecution has been successful in proving that the school leaving certificate produced by the accused for the post of driver was not genuine and was forged one. Therefore, as such a clear case of forgery and cheating has been made out. At this stage, it is required to be noted that statement under Section 313 of the Code of Criminal Procedure, the original accused No. 1 even had gone to the extent denying that he had submitted that any application with the ST Corporation for the post of driver. However, the same has not been believed by the learned trial Court and there is specific finding recorded by the learned trial Court that the defence of the accused that he has not submitted form cannot be believed. Even otherwise, it is required to be noted that the application form submitted by the original accused No. 1 was with his photograph and it was signed by him. He has not explained how his photograph came on the application form. Be that as it may, the aforesaid defence has not been believed by the learned trial Court.

5.2. However, the learned Chief Judicial Magistrate/learned trial Court has acquitted the original accused No. 1 solely on the ground that the original complainant has not produced the authorization from the higher authority permitting him/authorizing him to lodge the complaint and also on the ground there was delay of two years in lodging the complaint.

5.3. However, it is required to be noted that the original complainant who lodged the complaint who as such has been examined as PW No. 31, was as such serving as Establishment Supervisor in the ST Corporation at Junagadh. He has specifically stated in his deposition that as the school leaving certificate produced by the accused No. 1 was found to be doubtful, inquiry was conducted and on inquiry it was found that school leaving certificate which was produced by the original accused No. 1, produced along with his application form was not

genuine and was found to be forged one and not issued by the concerned school. It is cardinal principal of law that anybody having knowledge that some one has committed any offence can put the criminal law in motion. In the present case, as such the original accused No. 1 was not in the public employment at all. The original complainant who lodged the complaint was the officer of the ST Corporation. Under the circumstances and in the facts and circumstances of the case, the learned trial Court is not justified in acquitting the original accused on the aforesaid ground. Under the circumstances, the learned trial Court has committed a gross error in acquitting the original accused No. 1 for the aforesaid offence and that has resulted into mis-carriage of justice and therefore, interference of this Court in exercise of appellate jurisdiction is called for.

5.4. Even another reason which is given by the learned trial Court while acquitting the original accused that there was a delay of two years in lodging the complaint is concerned, the same cannot be sustained. It is required to be noted that the school leaving certificate was submitted along with application and thereafter he took considerable time in holding inquiry with respect to genuineness of the certificate, before lodging any complaint. In any case, the original accused No. 1 has failed to demonstrate how the delay in lodging the complaint has caused prejudice to him. As such in the facts and circumstances of the case, it cannot be said that there was any delay in lodging the complaint. Assuming that there was any delay in that case also, as per cardinal principle of law, merely because there is delay in lodging the complaint, the prosecution case cannot be discarded and/or benefit of such delay may not be given to the accused unless it is demonstrated by the accused that such a delay has caused prejudice to him. In the present case, it cannot be said that the delay if any, has caused any prejudice to the original accused. Under the circumstances, the learned trial Court has committed gross error in acquitting original accused on the aforesaid ground.

6. In view of the above and for the reasons stated above, the impugned judgment and order of acquittal passed by the learned trial Court cannot be sustained.

7. Now, that takes us to what offence the accused has committed. As narrated herein above, the original accused No. 1 was charged and tried for the offence under Sections 467, 468, 471, 477, 511 r/w Section 34 of the Indian Penal Code.

7.1. However, considering the provision of Sections 467 and 477 of the Indian Penal Code and the allegation against the accused No. 1 and the material on record, it cannot be said that the original accused has committed the offence under Sections 466 and 477 of the Indian Penal Code. None of the ingredients of Sections 466 and 477 are satisfied and/or attracted. Under the circumstances, it cannot be said that the original accused No. 1 had committed any offence under Sections 466 and 477 of the Indian Penal Code.

8. Now, considering the evidence on record and even as per the finding recorded

by the learned trial Court and as observed herein above, the original accused No. 1 had produced the forged school leaving certificate (Exh. 40) and used it as genuine along with application form submitted by him and though he had not passed 7th Standard Examination and even he had not studying of which school leaving certificate is produced, with an intent to cheat and get job, he produced the forged certificate and used the school leaving certificate to be genuine it can be said that the original accused No. 1 has committed offence under Section 466 and 420 of the Indian Penal Code. Under the circumstances, original accused is held guilty for the offence under Section 468, 471 and 420 of the Indian Penal Code. We have heard the learned advocate for the original accused on quantum of sentence. The learned Additional Public Prosecutor for the State has requested to impose the maximum punishment under Sections 468, 471 and 420 of the Indian Penal Code. On the other hand, Shri Barot, learned advocate for the original accused requested to take lenient view and impose lessor punishment by submitting that incident is of the year 1992. Having heard the learned advocates for the respective parties at length on quantum of sentence and considering the punishment/sentenced provided for the offence under Sections 468, 471 and 420 of the Indian Penal Code, which is upto 7 years RI and shall also be liable to fine, we deem it fit to award three years RI with fine of Rs. 1000, in default to undergo further three months RI for the offence under Sections 468, 471 and 420 of the Indian Penal Code. The submission on behalf of the accused that as considerable time has passed and the offence is of the year 1992 and therefore, took the lenient view is concerned, the same cannot be accepted. Merely because, it has taken a long time in concluding trial as well as appeal, cannot be a ground to impose lessor punishment. In the facts and circumstances of the case, we are of the opinion that if the aforesaid sentence is imposed, it can be said to be adequate and sufficient punishment commensurate with the gravity of the offence.

9. In view of the above and for the reasons stated above, the present appeal succeed in part. The impugned judgment and order of acquittal dated 24.03.2006 passed by the learned Chief Judicial Magistrate, Junagadh in Criminal Case No. 2215 of 1993 is hereby quashed and set aside and original accused No. 1 is hereby held guilty for the offence punishable under Sections 468, 471 and 420 of the Indian Penal Code. The original accused No. 1 is hereby sentenced to undergo 3 years RI with fine of Rs. 1000/- and in default to pay of fine to undergo further three months RI for the offence under Section 468 of the Indian Penal Code, the original accused No. 1 is also sentenced to undergo 3 years RI with fine of Rs. 1000/- and in default to pay of fine to undergo further three months RI for the offence under Section 471 of the Indian Penal Code and the original accused is sentenced to undergo 3 years RI with fine of Rs. 1000/- and in default to pay of fine to undergo further three months RI for the offence under Section 420 of the Indian Penal Code. All the sentence to run currently. It goes without saying that any sentence already undergone, if any, by original accused No. 1 during the pendency of the trial shall be given set off in accordance with

law. On impugned judgment and order of acquittal being reversed and the original accused No. 1 being convicted, his bail bond shall stand canceled and time to surrender to the original accused to undergo the sentence as per the present judgment and order upto 08.03.2016. Present appeal is allowed to the aforesaid extent.