

IN THE COURT OF THE ADDL. SESSIONS JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,
Addl. Sessions Judge, Bhubaneswar.

Crl. Appeal No. 5/25 of 2003

(Arising out of judgment dtd. 27.8.03 in GR case No. 3485 of 1994 passed by
learned SDJM, Bhubaneswar)

Amulya Sethi, aged about 30 years
S/o: Dhanu Sethi, resident of Vill: Golapalli Street
PS: Baidyanathpur, Dist: Ganjam

... Appellant

Vrs.

1. State of Orissa

... Respondent

Advocate for the appellant:- Sri S.K. Pattnaik & Associates
Advocate for the Respondents- Sri N.R. Ray & Associates

Date of argument- Dt.11.09.14

Date of judgment- Dt.27.09.14

JUDGMENT

This appeal is directed against the judgment dtd. 27.8.03 in GR case No. 3485 of 1994 passed by learned SDJM, Bhubaneswar wherein the present appellant has been convicted u/s 419/468 IPC and sentenced to undergo RI for a period of two years on each count and to pay a fine of Rs.3000/- i.d. SI for a period of 3 months for his conviction u/s 468 IPC.

2. Through the appeal memo, the appellant challenged the judgment of conviction on the ground that the evidence available in the case record is not at all sufficient to hold the conviction in any manner. Furthermore, the material portions to prove the allegation have been kept away from the trial and therefore, prosecution suffers from suppressing the material witnesses. The investigation of the case is purely perfunctory and therefore, the judgment of conviction against

the appellant is an error in law and fact which is to be set aside.

3. The gist of the prosecution story as appears from the LCR that on 23.10.1994, one Recruitment test for the post of Probationary Officer in associate Banks of SBI was conducted at BJEM, School, Bhubaneswar. The present appellant while appearing in the test was suspected that he was appearing in place of one Amulya Sethi, Son of Dhanu Sethi. The photograph affixed on the admit card and the signature thereon were found to be different from that of the photograph affixed on the original application form and therefore, FIR was lodged before IIC, Badagada PS against the convict and police registered a case u/s 419 IPC and took up investigation of the case. But, after closure of investigation police found material u/s 419 and 468 IPC for which charge sheet was filed with the above offences and hence, the convict faced the trial.

4. During the course of trial, prosecution examined five witnesses and also relied on number of documents filed in the Court. On the other hand, the appellant examined himself from the side of defence and filed his educational certificates alongwith voter identity card for his identification. The finding of the learned lower Court is based upon mostly on the evidence of P.Ws.2 and 3. P.W.2 was a Asst. teacher in the school who was doing invigilation duty in the recruitment test in Room No.24 where the convict was appearing for the test. In his evidence, he said that from comparison of the photograph affixed on the original application form and the admit card, he found both the photographs differ from each other. The signature on the photograph also did not tally with each other. Accordingly, he reported the matter to the bank authorities and the Chief Comptroller of Examination (P.W.4). P.W.3 also corroborated the evidence of P.W.2 that as the photographs did not tally with each other, they reported the matter to the authorities. P.W.5 also said that different photographs affixed on the application form and admit card coupled with the signature are the reason of suspicion for which he reported the matter to the police.

5. The convict while examined himself as defence witness said that he is a law graduate and passed his degree in the year 2000. He had applied earlier for the post of messenger and also received the call letter by post at his house.

Without knowing that it was test for bank probationary officer on good faith he entered into examination hall and with baseless, suspicion of the prosecution witnesses he was arrested by the police and faced the trial.

6. During the course of argument in the appeal, learned counsel for the appellant submitted that the present appellant is Amulya Sethi, son of Dhanu Sethi. The admit card marked as Ext.1/3 was issued in the name and address of the present appellant which he received and accordingly, he went to appear in the examination. The original application form has been produced in the Court marked as Ext.1/5. It appears that the original applicant was one namely, Amulya Sethi son of Dhanu Sethi with address C/o Prasanna Pattnaik, JE, PHD, Pin Code No. 760004. It is the case of the appellant that he is also staying in the same address and therefore, the admit card having been supplied to him by the postal authorities, he appeared in the test. The only dispute arises that the photographs affixed on the original application form and the admit card differs from each other and the signature thereon. It is the case of the appellant that the photo was affixed on the admit card by the bank authorities. It may be a fact that the photo supplied by the applicant might have been lost and in its place another photograph might have been affixed on the admit card by the bank authorities for which the appellant is no way responsible. If at all the appellant misrepresented himself as Amulya Sethi, son of Dhanu Sethi, then prosecution should have produced the original applicant in the Court to prove the offence against him, which has not been complied by the prosecution. The IO has not taken any steps to procure the attendance of original applicant in order to believe that the present appellant is a different person who was appearing in the test impersonating himself as the original applicant. I have also considered the prosecution allegation from their side. It is admitted fact that Amulya Sethi son of Dhanu Sethi was the original applicant and the present appellant by producing all his educational certificates have successfully proved that he is Amulya Sethi son of Dhanu Sethi. The address on the original application and on the admit card which was received by the appellant is the same. Therefore, it is not believable that two persons with the same name and same father's name with the same address are available out of

which one is the original applicant and another is the appellant. Difference in handwriting in signature cannot be considered as a sole ground for which the accused will be convicted. The appellant took the plea that the photograph affixed on the admit card was the work of the bank. The signature on such photograph can only be explained by the bank people who affixed the photograph on the admit card. It is admitted by the defence that two photographs are required to be sent with the application form out of which one is to be pasted on the application form and another to be pasted on the admit card. The bank officers instead of affixing the photograph submitted by the applicant have pasted another photograph with the alleged signature of the appellant. On comparison of logical reasoning from both the sides, I believe that the case from the side of defence appears to be more probable than that of the prosecution. The Investigating Officer of the case could not be examined due to his death which is another blow to the prosecution. That apart, non production of original applicant in the Court is the most material factor for which the case against the present appellant cannot be proved on the allegation of impersonation.

7. As regards offence u/s 468 IPC, it is the case of the prosecution that the appellant forged the admit card by pasting his photograph by removing the original photograph which is also not possible. When it is established that only one Amulya Sethi son of Dhanu Sethi is available in the given address, what will prompt the appellant to forge admit card to appear in the test. The signature are also not compared by any handwriting expert to give a positive finding in favour of the prosecution. As I have already observed above that it is not humanly possible to get two persons with the same name, same father's name and same address. I am not inclined to believe that the appellant committed any forgery on the body of the admit card and therefore, he will be liable u/s 468 IPC.

8. In the result, the appeal is allowed on contest. The judgment of conviction u/s 419/468 IPC and sentence passed thereunder by the lower Court against the appellant is set aside. The documents filed by the parties be returned to the person who filed the same.

Pronounced in the open Court today this the 27th day of September, 2014.
Dictated and Corrected by me.

Addl. Sessions Judge, Bhubaneswar

Addl. Sessions Judge, Bhubaneswar