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2026:AHC:130254-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1978 of 1990

Ram Kishore and others

…..Appellant(s)

Versus

State

…..Respondent(s)

Counsel for Appellant(s)	:	Ajendra Kumar, Akhilesh Singh, Shivam Yadav
Counsel for Respondent(s)	:	Ravi Prakash Srivastava, Shivajee Srivastava

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed by accused-appellants, Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh against the judgment and order of conviction dated 09.10.1990 passed by learned Vth Additional Sessions Judge, Etah in Session Trial No.393 of 1987 (State Vs. Ram Kishore and others) arising out of Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah.

2. Brief facts of the case, according to Exhibit Ka-1, which was lodged by Phoolshri (PW-2), are *inter alia* that "informant, Phoolshri, daughter of Lakhan Singh, is a resident of Village

Halaiya. Ram Kishore, Dinesh Singh, Ram Bharose, and Bhudeo allegedly lured her brother, Ram Dulare, and took him away on 08.03.1986. This incident was witnessed by Kirpal Singh, Virendra Singh, and Mahaveer Singh of the village. By impersonating another person in place of her brother, the accused got a sale deed of Ram Dulare's land executed on 12.03.1986 at Tehsil Aliganj. Thereafter, they caused the disappearance of Ram Dulare. When the accused returned, Phoolshri asked them about her brother. They replied that they had left him at Dumri and did not know his present whereabouts. Becoming suspicious, she went to the tehsil and discovered that the accused had fraudulently got executed the sale deed in the name of Dinesh and other persons were witnesses, and had subsequently made her brother disappear. She further stated that her mother is helpless and blind by both eyes, with no one to look after her. The written report (Exhibit Ka-1) was scribed by Ranveer Singh and lodged at Police Station Jaithra."

3. On the basis of the written report, Exhibit Ka-1, chik F.I.R., paper no. 4A was registered against the accused-appellants at Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah.

4. Investigating Officer investigated the case and inquired about the incident. The Investigating Officer also recorded the statement of the prosecution witnesses under Section 161 Cr.P.C. After completing all the formalities, the Investigating Officer submitted charge-sheet, Exhibit Ka-2, against the accused-appellants in the court of concerned Magistrate under Sections 364, 420, 468, 471 IPC.

5. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

6. Learned Trial Court has framed charges against the accused-appellants on 06.09.1989 under Sections 364, 420, 468 IPC. The accused-appellants denied from the charges and claimed trial.

7. Prosecution in support of its case adduced Kirpal Singh (PW-1), Phoolshri (PW-2), Mahaveer (PW-3) and D.K. Sisodiya (PW-4). The prosecution also relied on Exhibits Ka-1 and Ka-2 in support of its case.

8. After completing the proceedings of the evidence, Trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants denied from the alleged charges against them. They were also stated that they did not know about Ram Dulare. They had been falsely implicated in this case due to enmity. They refused to give any evidence in their defence.

9. After hearing the arguments of the prosecution and defence, learned Trial Court found the accused-appellants guilty and they were convicted and sentenced under Section 364 IPC to life imprisonment and a fine of Rs. 2000 each and in case of default in payment of fine, they were directed to undergo three months' additional imprisonment. All accused-appellants were also convicted and sentenced under Section 420 IPC for five years' imprisonment. They all were also convicted and sentenced under Section 468 IPC for seven years' rigorous imprisonment. All the sentences were directed to run concurrently.

10. Aggrieved by the judgment and order of conviction and sentence dated 09.10.1990, the accused-appellants have preferred this criminal appeal before this Court.

11. We have heard the arguments of learned counsel for the appellants and learned A.G.A. for the respondent-State. We have

also gone through the evidence available on record and the judgment and order of the learned trial Court dated 09.10.1990.

12. Learned counsel for the appellants has submitted that the written report, Exhibit Ka-1, was lodged by Phoolshri (PW-2) at Police Station Jaithra after a delay of about one month. This fact indicates that, after due consideration, deliberation, and concoction and with a view to falsely implicate the accused-appellants, Phoolshri (PW-2) lodged the said report solely on the basis of suspicion. It is also submitted that only on the ground of evidence of so called last seen witnesses of the prosecution, no accused can be convicted without any other corroborating evidence. The prosecution has no corroborative evidence from which so called last seen evidence of the prosecution witnesses can be corroborated and find any support. However, learned Trial Court, without considering this legal aspect in the matter, has wrongly appreciated and misread the evidence against the accused-appellants and has delivered a judgment and order against the accused-appellants without any evidence available on the record and also against the settled principles of law. Thus, learned counsel has submitted that judgment and order of the learned Trial Court dated 09.10.1990 has been passed without any evidence against the accused-appellants and is based on conjectures and surmises and also not supported by any legal principles of law. Hence, judgment and order of learned Trial Court dated 09.10.1990 is perverse and illegal according to the rules of evidence and law, therefore, is liable to be set aside. In view of the above, criminal appeal of the accused-appellants is liable to be allowed.

13. Per contra, learned A.G.A. for the State has submitted that prosecution witnesses had seen Ram Dulare being taken away from his house on 08.03.1986. After 08.03.1986, the whereabouts

of Ram Dulare were not known to anyone. The accused-appellants impersonated another person in place of Ram Dulare and got a forged sale deed of all his land executed in the name of Dinesh. These facts were found to be verified from the sale deed as the same was executed in the name of Dinesh at Tehsil Aliganj. The so-called forged sale deed executed by Ram Dulare has proved this fact that after taking away Ram Dulare at Tehsil Aliganj, the accused-appellants have got executed a sale deed of all land of Ram Dulare impersonating other person in the name of Dinesh. Thereafter the accused-appellants made Ram Dulare, brother of the informant Phoolshri (PW-2), disappear. A lot of search was made by Phoolshri (PW-2) and other relatives of Ram Dulare but whereabouts of Ram Dulare were not known at any place. Neither Ram Dulare was found nor his dead body was recovered. Thereafter learned Trial Court keeping in mind and considering this fact and evidence in this respect found the accused-appellants guilty and rightly convicted them for the alleged crime. The finding and reasoning of the learned Trial Court are based on evidence which found support from the settled principles of law. There is no illegality or perversity in the judgment and order of the learned Trial Court. For this reason, the criminal appeal filed by the accused-appellants has no merit, hence is liable to be rejected.

14. In the light of rival submissions of both the parties, we have perused the whole evidence as available on the record.

15. From the perusal of the examination-in-chief of Kirpal Singh (PW-1), we find that this witness has stated that informant Phoolshri is daughter of his elder uncle. Abductee Ram Dulare was brother of Phoolshri. Ram Dulare was issueless. The wife of Ram Dulare had died about twenty-three and a half years ago. The father of Ram Dulare, Lakhan, had died about eleven and a

half years ago. The mother of Ram Dulare, Naiksi, is alive. She often stays at her maternal house in Village Mochi, which falls under Police Station Raja Ka Rampur. Ram Dulare had six bigha of land in his share. It is about three and half years when Ram Dulare and Phoolshri were at their house. It was 04:00 PM in the evening. I, my brother Virendra Singh and Mahaveer Singh of the village were sitting on their platform *(chabutra)*. This platform is out of our *Bakhri* near exit. My house is also located in this Bakhri. Houses of Ram Dulare and Mahaveer are also situated in this Bakhri. The accused-appellants Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh called Ram Dulare from his home and took him away towards Nagla Vijayi. We know all the four accused persons beforehand. These people often used to come and go to Ram Dulare's house. With their company, Ram Dulare also became addicted to drinking alcohol and gambling. Since the time the accused took away Ram Dulare, he has neither been seen nor returned. I have seen that the sale deed was got executed in the name of accused Dinesh, in which Jaisar had been written by Ram Dulare and Ram Kishore and Ram Bharosey were the witnesses. The accused persons caused the disappearance of Ram Dulare.

16. From the perusal of the cross-examination of this witness, we found that when Ram Dulare was going with accused persons then this witness has not interacted and questioned him. This witness has also not seen accused persons and Ram Dulare in Tehsil executing the sale deed. According to this witness, accused persons had not taken away Ram Dulare by catching hold. They had went together. After that day, I have not seen accused and Ram Dulare together. This witness has also submitted in his cross-examination that "I have not told these things to anyone till today that I had asked Ram Dulare that in which *panchayat* and

where he is going but he has not replied. Before this incident, I have not seen accused persons threatening or alluring Ram Dulare. Ram Dulare had also not told me that accused have threatened or gave any kind of allurement. When accused returned on 17.03.1986 then I had asked accused about Ram Dulare. Before this, I have not lodged any missing report with this respect.

17. Thus, from the perusal of the whole evidence of Kirpal Singh (PW-1), it is clear that this witness has not seen threatening or alluring Ram Dulare by the accused-appellants. According to this witness, Ram Dulare has not forcibly been taken away by the accused persons with them. According to this witness, he has only seen going of Ram Dulare with accused-appellants on 08.03.1986. However, this witness only inquired on 17.03.1986 from the accused-appellants about whereabouts of Ram Dulare. However, despite this, this witness has not lodged any missing report about Ram Dulare. Thus, from the evidence of this witness, this fact emerged that this witness has been projected and produced by the prosecution with a view to support its case but from the evidence of this witness, it is clearly revealed that this witness has not lodged any missing report even after one month of the disappearing of Ram Dulare. Due to this reason, we found no truthfulness, credence and reliability in the evidence of this witness. Therefore, evidence of this witness is doubtful and unbelievable. Due to this reason, the evidence of this witness is not reliable and believable against the accused-appellants.

18. From the perusal of evidence of informant, Phoolshri (PW-2), it is revealed that this witness is sister of missing person Ram Dulare. This witness has also submitted in her evidence in the same way as has been submitted by Kirpal Singh (PW-1) in his

evidence. According to this witness, when Ram Dulare was being taken away from his house by the accused, Kirpal, Mahaveer, and Virendra had also seen the incident. According to this witness, she has also asked from the accused that where have you sent and kept my brother. Then these persons replied that he halted at *ghumri*, and we did not know about him. After that, this witness along with her relatives have made a search at every place at her relatives. Thereafter, according to this witness, family members and relatives went at Tehsil Aliganj and then it was came to know that by impersonating any other person in place of her brother Ram Dulare, Dinesh got executed sale deed of six bigha of land in his favour. Then this witness becomes suspicious that land worth rupees fifty thousand has been executed only for a sale consideration of rupees fourteen thousand only. This witness also stated that either they have killed my brother or made him disappeared. From the perusal of the cross-examination of this witness, it appears that this witness permanently resides at her matrimonial home and 2-4 times used to come to her paternal home. From the evidence of this witness, it also appears that this witness had seen going of Ram Dulare with accused then this witness had not asked anything from her brother because these people often used to come and go at the house of Ram Dulare and also used to sit with him. According to this witness, it is revealed that brother of this witness was drinking alcohol but was not gambling. Whenever the brother of this witness sat with the accused, they drank alcohol. Thus, from the perusal of the evidence of this witness, Phoolshri (PW-2), it is clear that this witness became suspicious when a piece of land worth fifty thousand rupees was sold for only fourteen thousand rupees. From the evidence of this witness, it also emerged that this witness is sister of missing person Ram Dulare. This witness lived at her matrimonial home with her family away from her paternal

home, therefore, on the date of incident, i.e., 08.03.1986, she was present at her matrimonial home. In other words, presence of this witness at the house of missing brother Ram Dulare appears to be doubtful and suspicious. It is also revealed that this witness Phoolshri (PW-2) came to know about the so called missing of his brother from other so called prosecution witnesses and only on the basis of known fact and information received, this witness after one month of delay from the date of incident has lodged the written report naming the accused-appellants for making her brother Ram Dulare disappear. Thus, presence of this witness on 08.03.1986 at the house of Ram Dulare is doubtful and suspicious. Meaning thereby, this witness has not seen Ram Dulare was being taken away by the accused-appellants, therefore, prosecution has not found any support from the evidence of this witness.

19. From the perusal of evidence of Mahaveer (PW-3), we find that this witness has stated that on the date of incident, this witness has seen taking away of Ram Dulare from his home by the accused-appellants. According to this witness, at that time, Phoolshri was also present at her home. She came out of the room. Thereafter, Ram Dulare has not returned till today. This witness expressed that either accused or any other person had killed Ram Dulare. We found that this witness has also stated that accused persons have not taken Ram Dulare by force, but Ram Dulare has gone with them on his own will. Accused persons usually come and go at the house of Ram Dulare. Ram Dulare had no prior enmity with the accused persons. The witness stated that, at that time, he had not seen any interaction between Ram Dulare and the accused persons. He also stated that Virendra and Kirpal, who were also sitting with him, had also not interacted with Ram Dulare or the accused persons. Thus, from the perusal

of the evidence of this witness, we find that this witness in clear-cut words has stated that this witness and other prosecution witnesses, Virendra and Kirpal, had also not interacted or made any conversation with Ram Dulare or accused persons. However, Kirpal Singh (PW-1) has stated in his cross-examination that "I had asked Ram Dulare that in which *panchayat* and where he is going, then he has not given any answer." Thus, on the same point, prosecution witness Kirpal Singh (PW-1) is stating one thing, whereas prosecution witness Mahaveer (PW-3) has stated other things. In view of the contradictory statements of these two prosecution witnesses, Kirpal Singh (PW-1) and Mahaveer (PW-3), it clearly emerges that they are stating different facts on the same point.

20. In view of the above fact and situation, it is revealed that evidence of this witness is suspicious and doubtful since Kirpal Singh (PW-1) has clearly stated in his cross-examination that "I had not told these things to anyone till today that I had asked Ram Dulare that in which *panchayat* and where he is going." From this fact, it is revealed that these prosecution witnesses have been projected and produced by the prosecution with consideration and afterthought for projecting and concocting the prosecution story which could find support from the evidence of these witnesses. However, from the above perusal and discussion of the evidence of these three prosecution witnesses of so called last seen theory, we find that evidence of the above prosecution witnesses does not inspire any confidence. The evidence of so called last seen prosecution witnesses appears to be highly doubtful, suspicious, concocted and afterthought.

21. In this way, the prosecution unsuccessfully attempted to support its case on the last seen together theory on the basis of the evidence of the above-mentioned prosecution witnesses.

However, the prosecution miserably failed in its attempt to prove the case against the accused-appellants beyond reasonable doubt. It is also a settled principle of law that only on the ground of last seen together, no accused can be convicted without any other corroborating evidence.

22. The Supreme Court in the case of **Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715** has held in para 12 that;

> *"**12.** The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."*

23. The Supreme Court in the case of **Ashok v. State of Maharashtra, (2015) 4 SCC 393** in para 12 held that;

> *"Initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."*

24. Thus, in light of the legal principles as laid down by the Supreme Court in the aforementioned case laws, we find that, in the present case, the prosecution has been wholly unable to discharge its initial burden of proof that the missing person, Ram Dulare, was called, or that on the date of the incident, i.e., 08.03.1986, the accused-appellants came to his house and took him away with them. When the prosecution has failed to discharge its initial burden, the onus of proof cannot be shifted on the accused-appellants under Section 106 of the Evidence Act.

25. The prosecution has no evidence and has not adduced any material evidence from which the accused-appellants could be connected with the disappearance of Ram Dulare after the execution of the sale deed dated 12.03.1986.

26. We have also gone through the findings and reasoning given by the trial Court. We have found that the trial Court has not considered this legal aspect in its judgment and order of conviction. Trial Court has completely neglected this legal point and has not given any finding and reasoning on this aspect.

27. From the perusal of the judgment and order of the trial court, it is evident that the trial court, relying on the so-called executed sale deed by Ram Dulare in favour of Dinesh, held that the sale deed dated 12.03.1986 was a forged document.

28. We have also gone through all the documentary evidence available on record and find that there is no document showing that any Civil Court of competent jurisdiction has given a finding, based on evidence, that the so-called execution of the sale deed by Ram Dulare in favour of Dinesh was forged or fabricated sale deed. Thus, without any conclusive proof from a Civil Court of competent jurisdiction, the learned trial Court itself held the so-called executed sale deed dated 12.03.1986 to be a forged document, which is wholly contrary to settled principles of law. In

this way, the trial Court has travelled beyond jurisdiction in respect of civil matters and wrongly held that so called sale deed which was executed on 12.03.1986 by Ram Dulare in favour of Dinesh was a forged sale deed. Not only this, learned Trial Court also on the ground of sale deed dated 12.03.1986 held the accused-appellants guilty for the offence of cheating and dishonestly inducing delivery of property and committing forgery for the purpose of cheating. In this way, the trial Court without any evidence only on the ground of sale deed executed on 12.03.1986 has given a totally wrong finding and conclusion against the accused-appellants. A criminal court cannot, in this manner, hold any accused person guilty of cheating and forgery under Sections 420 and 468 of the IPC without conclusive findings and order from a Civil Court. Thus, from the finding and reasoning given by learned Trial Court, we find that the trial Court only on the ground of so called last seen theory and document of sale deed which was executed by missing person Ram Dulare in favour of Dinesh held the accused-appellants guilty and convicted them for the commission of the alleged crime. It is a settled principle of law that in cases where allegations are made that a sale deed was executed by cheating or forgery, only a Civil Court of competent jurisdiction, after recording evidence and examining the documentary evidence of both parties, is empowered to determine whether the deed, a sale deed or a gift deed, is genuine or executed by means of cheating or forgery.

29. However, we find that there is no documentary evidence on the record of the case from which it could be verified that any Civil Court of competent jurisdiction had given a finding and judgment that the so-called sale deed dated 12.03.1986 was forged or it was executed by Ram Dulare under cheating and forgery by the accused-appellants. Thus, we find that the finding

and reasoning given by the learned trial Court in this respect is without any evidence and against the legal principles of law. Hence, due to this reason, the finding and reasoning of the learned trial Court in this respect is not sustainable in the eyes of the law.

30. It is also notable that so called date of incident is 08.03.1986 at unknown time. The written report has been lodged by Phoolshri (PW-2) on 06.04.1986 after about one month from the date of incident. No plausible explanation for one month delay in lodging the written report has been stated by the prosecution. This one month delay in lodging the written report also makes the prosecution story doubtful and suspicious. This fact also goes against the prosecution and casts doubt on the prosecution's version itself.

31. Thus, from the above discussions, we find that the judgment and order of conviction and sentence passed by learned Trial Court dated 09.10.1990 is not sustainable in the eyes of law because the finding and reasoning of the learned Trial Court is against the settled principles of law and without any cogent and reliable evidence, therefore, we find that the judgment and order of conviction and sentence dated 09.10.1990 of the learned Trial Court is liable to be set aside. In this way, we find that the criminal appeal filed by the accused-appellants has merit and is liable to be allowed.

32. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 09.10.1990 of conviction and sentence passed against the accused-appellants by learned Trial Court in Session Trial No. 393 of 1987 (State Vs. Ram Kishore and others) arising out of Case Crime No. 98 of 1986, under Sections 364, 420, 468, 471 IPC, Police Station Jaithra, District Etah. The appellants are acquitted of the charge under

Sections 364, 420, 468 IPC. The appellants, Ram Kishore, Ram Bharosey, Bhudeo and Dinesh Singh, are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged. However, they shall comply with the provisions of Section 437-A Cr.P.C.

33. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 01, 2026
SHUBHAM

Digitally signed by :-
SHUBHAM KUMAR AGRAHARI
High Court of Judicature at Allahabad