

Emperor Vs. Keshav Narayan Manolkar

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Court : Mumbai

Decided On : Jun-05-1913

Reported in : (1923)25BOMLR248

Judge : Basil Scott, Kt., C.J. and ;Shah, J.

Appeal No. : Criminal Appeal No. 77 of 1913

Appellant : Emperor

Respondent : Keshav Narayan Manolkar

Judgement :

Basil Scott, Kt., C.J.

1. There are three other documents which the learned Sessions Judge has admitted as evidence against accused No. 1 but we are of opinion that they have all been wrongly admitted. Two of them are letters written by Gore to third persons which indicate his ignorance of the existence of the will, and one of which contains a statement that Manolkar, accused No. 1, had said that there was a will, thereby showing that Manolkar had guilty knowledge of this forged will soon after the death of Parvatibai. The statements in these letters are, as far as the Court is concerned, purely hearsay evidence, because Gore was not called. They were admitted apparently under Section 10 of the Indian Evidence Act as evidence of a conspiracy. But as far as Gore is concerned there is no evidence that he was a conspirator, because if he had been a conspirator at the time of the fabrication of

the will he would presumably have been present or had some hand in the fabrication. But it is not alleged that he had a hand in the fabrication. His interests, as has already been pointed out, or his inclinations, were adverse to those of accused No. 1 from the commencement, and if he was a member of a conspiracy he can only have been a member of a conspiracy of silence and not a conspiracy for forgery. Therefore, we are of opinion that these letters should not have been admitted under Section 10 of the Indian Evidence Act.

2. The further document which was admitted was a statement made by Sidhbhat, one of the alleged forgers, who was dead, and that was admitted by the learned Judge under Section 32, Sub-section (3) on the ground that it was a statement which was made so much against his interest that it would have rendered him liable to criminal prosecution at the time it was made. But the answer to that is that the liability to the criminal prosecution had already been incurred. He had already been brought up under a non-bailable warrant for the offence which this statement is said to have been an admission of, and we do not think that Section 32(3) can be extended and stretched in such a way as to admit a statement by an accused person after the charge has been preferred against him. [The remaining portion of the judgment is not material to this report.]