

Babu Ram Kulshreshta Vs. State

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Court : Allahabad

Decided On : Oct-25-1960

Reported in : 1961CriLJ55

Judge : S.K. Verma, J.

Appellant : Babu Ram Kulshreshta

Respondent : State

Judgement :

S.K. Verma, J.

1. Babu Ram Kulshreshta has been convicted by the learned Civil and Sessions Judge of Etah under Sections 467, 471, 477 and 201 I.P.C. He has been sentenced to three years' R. I, and to pay a fine of Rs. 1000/- with six months' rigorous imprisonment in default of payment of fine under Section 467 of the Code, to three years' R. I. under Section 471 of the Code and to three years' R. I, under Section 477 of the Code, but no separate sentence has been awarded to him under Section 201 of the Code. The sentences under Sections 467, 471 and 477 of the Code have been ordered by the learned trial Judge to run concurrently.

2. The charge against the appellant was that he forged a will dated the 15th of May 1957, purporting to have been executed by a widow, Kalawati, in favour of his grand-daughter, Kumari Basanti.

3. The following facts are not in dispute, Kalawati was the widow of one Din Dayal who died in 11908 without leaving any issue. Kalawati inherited her husband's property, She was a resident of village Narharpur, Police Station Akrabad, district Aligarh. In the years 1931, 1932 and 1933 her Phupha, Babu Sarup Narain, was posted at Etah as Sessions-Judge. The appellant was Government Pleader of Etah in those years. Srimati Kalawati visited her Phupha and, as she had property in connection with which she frequently stood in need of legal help, the appellant was introduced to her by Babu Sarup Narain.

In 1933 Babu Sarup Narain was transferred. In 1947 she left her village Narharpur and came and took up her residence with the appellant. In 1951 she left the appellant's house and went to live with another relation of hers, Ramesh Chandra P.W, 3, also a resident of Etah, She lived with Ramesh Chandra for three months and then took a house on rent from Ganga Narain and lived there for some time. She, subsequently, fell ill and was admitted into a hospital where she died on the 29th of June 1957.

4. Upon her death Raghubir Singh, claiming to be a cousin of her husband, filed an application for mutation over her property. The appellant filed objections to the mutation application on the 24th of August 1957 on the ground that his granddaughter had been adopted by Srimati Kalawati.

5. On the 2nd of August 1957 the appellant presented the will in question for registration. The will was registered and the appellant obtained it back from the Sub-Registrar's office on the 30th of August 1957. On the 24th of December 1957 a complaint was filed by Shanti Prakash, son of Raghubir Singh, against the appellant alleging there' in that the will set up by him was a forgery. On the 2nd of January 1958 Shanti Prakash filed an application Ex. Ka-25 in the court of Sri Chiranjilal, Judicial Officer, in which he prayed that the will in question be summoned from the appellant under Section 94 Cri. P.C., or a warrant for search and seizure of the will be issued under Section 96 Cri. P.C. The learned Judicial Officer passed an order summoning the appellant with the document. The appellant appeared before the court and stated that the will was not in his possession.

6. According to the prosecution case, the will was a forgery and the relations between Srimati Kalawati and the appellant had become strained in the year 1951 when she left his house and thereafter she lived only at the houses of Ramesh Chandra and Ganga Narain until she was admitted in hospital where she died.

7. According to the defence version, the relations of the appellant with Srimati Kalawati remained quite cordial, even though she had left his house. The case of the defence, further, was that the appellant used to look after her, provided her with food and clothes and she, in fact, lived in the appellant's house for fifteen days prior to her admission in hospital. It was, further, pleaded in defence that, though Srimati Kalawati had nearer relations, she had no faith in them, that she had complete faith in the appellant and that she had taken the appellant's granddaughter in adoption and had executed a will under favour of her own free will. The will that the appellant got registered was, thus, according to the defence, a genuine will.

8. There is no direct evidence of forgery, for the simple reason that the original will is alleged to have been lost.

9. The prosecution relied on the statements of Shanti Prakash P. W. 1, Mukat Behari Lal P. W. 2, Ramesh Chandra P. W. 3, Ganga Narain P. W. 4, Bishan Sarup P. W. 5, Kumari Florence Ulrik P. W. 6 and Raghubir Singh P. W. 7 for the purpose of proving certain circumstances from which the guilt of the appellant was sought to be proved. These circumstances have been categorised by the learned trial Judge as follows:

1. that Srimati Kalawati was not related to the accused and having nearer relations she had no reason to execute the will in favour of the granddaughter of the accused;

2. that she was dissatisfied with the accused on account of a certain case, as a result of which she left his home;

3. that the will was registered after her death and was taken back by the accused from the Sub-Registrar's office before the complainant could file a suit in the court

challenging the same.

4. that the accused did not produce the will when called upon to do so; and

5. that the property, left by her, is a valuable property.

10. The learned trial Judge came to the conclusion that the circumstances set out above had been established by the prosecution and that they were sufficient to prove the appellant's guilt. The greatest importance appears to have been attached to circumstance No. 4 above, namely that the appellant had in his possession the will and he failed to produce the same when he was called upon to do so.

11. On behalf of the appellant, reliance was placed upon Article 20(3) of the Constitution of India and it was contended that the appellant could not be compelled to be a witness against himself and that, by being required to produce the document, that is precisely what he was being asked to do.

12. It has been held in *M. P. Sharma v. Satish Chandra* : 1978(2)ELT287(SC) that the guarantee in Article 20(2) against 'testimonial compulsion' is not only confined to the oral evidence of a person standing his trial for an offence when called to the witness stand, but that protection extends also to the compulsory process for the production of evidentiary documents which are reasonably likely to support the prosecution against him.

There can, thus, be no doubt that when the appellant was required to produce the will in question the provisions of Article 20(3) were violated, as the document, that the appellant was asked to produce, was the foundation of the charge against him. The learned trial Judge relied upon a Division Bench decision of this Court in *Ram Swamp v. State* : AIR1958 All119 In this case the question that arose was whether an accused person could be compelled to give a specimen of his handwriting for the purpose of examination by an Expert in a case under Section 409 I.P.C. against him.

It was held that the obtaining of a writing from an accused person did not amount to his being asked to give evidence. It was held, further, that, once the accused

person submits to the order given to him, he must be deemed to have waived the constitutional privilege conferred upon him by Article 20(3) of the Constitution. The learned trial Judge relied upon this case and held that the appellant in this case also must be deemed to have waived the constitutional privilege in his favour.

13. There are two objections to the view taken by the learned trial Judge. Firstly, there are decisions of their Lordships of the Supreme Court, both prior and subsequent to the Division Bench decision of this Court wherein it has been laid down that a constitutional privilege or a fundamental right cannot be waived. These decisions are : Behram Khurshid Pesikaka v. State 0065/1954 : 1955 CriLJ215 ; Basheshar Nath v. Commr. of Income-tax of Delhi and Rajasthan : [1959]35ITR190(SC) and Waman Shrinivas Kini v. Ratilal Bhagwandas and Co. : AIR 1959 SC689 .

It appears to me, therefore, that the view expressed by the Division Bench of this Court with regard to the waiver of a constitutional privilege is not correct. It is, however, not necessary to decide this point in this case, because, in my opinion - and this is the second objection to the view taken by the learned trial Judge - the conduct of the appellant in the present case cannot be said to constitute a waiver of his right. In : [1959]35ITR190(SC) S. K. Das J., who expressed a dissenting view, nevertheless, observed as follows:

I appreciate that waiver is not to be light-heartedly applied, and I agree that it must be applied with the fullest rigour of all necessary safeguards and cautions.

He defined 'waiver' as follows:

The generally accepted connotation is that to constitute 'waiver', there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege', 'Waiver' has, again, been defined in a later decision of the Supreme Court in : AIR 1959 SC689 as follows: Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing

more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied.

In the present case the appellant obviously did not expressly waive his right under Article 20(3) of the Constitution. The question is whether waiver can be deduced either from the appellant's acquiescence or it can be implied from his conduct. What then is the conduct of the appellant? He said that the document was not in his possession. This statement was either true or false.

If it was true, no liability could be fastened upon him, as he could not produce it. If the Statement was false, it is clear that he did not want to produce it in court. He could do so by clearly saying that he could not be forced to produce it or he could evade its production by saying that he did not have it in his possession. Whichever alternative we may choose, his conduct cannot reasonably be said to amount to a waiver of the right conferred upon him under Article 20(3) of the Constitution.

14. The learned trial Judge, having held that the appellant had waived his right, proceeded to draw an adverse inference against him under Section 114 of the Indian Evidence Act. In my opinion no adverse inference can be drawn against him, because the order requiring him to produce the document was contrary to the provisions of Article 20(3) of the Constitution, and, if that order was wrong, non-compliance with it cannot justify an adverse inference against the appellant. The non-production of the document by the appellant, therefore, is not a circumstance against him. I now proceed to examine the other circumstances alleged against the appellant. (After discussing those circumstances in paras 15-18, the judgment proceeded):

19. From the above discussion it is clear that the circumstances upon which the appellant's conviction is based are either not established or are wholly insufficient to warrant his conviction. In fact, there are a number of circumstances in his favour which have been brushed aside by the learned trial Judge, for instance, there is evidence to show that Srimati Kalawati wanted to take some girl in adoption and that she had consulted Ganga Narain P. W, 4, another practising lawyer of about 'forty years' standing, about the legality of the adoption of a girl. She had consulted Ganga Narain about this about five or six months before her death. This is quite

consistent with the defence case to the effect that Srimati Kalawati had developed affection for the appellant's grand-daughter and that she wanted to adopt her and give to her all her property. Both Ganga Narain and Ramesh Chandra are prosecution witnesses and because of the admissions made by them, which to some extent favour the defence, the learned trial Judge has accused them of bias. There is no justification for this inference, A party who produces witnesses in court produces them as witnesses of truth and, simply because portions of their statements are not favourable to the party producing them, they cannot be condemned as biased witnesses, His Lordship then discussed the other circumstances in favour of the accused in paras 20 and 21 and concluded:

22. In my view, the entire approach of the learned trial Judge to the case was wrong and that the appellant's conviction is quite unjustified.

23. For the reasons given above, I allow this appeal, set aside the conviction and sentences of the appellant under the various sections and acquit him. He is on bail. He need not surrender. His foaf bonds are discharged. The fine, if paid, shall be refunded to him.