

Emperor Vs. Bansi Sheikh

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Court : Kolkata

Decided On : Dec-07-1923

Reported in : (1924)ILR51Cal469

Judge : Newbould and ;B.B. Ghose, JJ.

Appellant : Emperor

Respondent : Bansi Sheikh

Judgement :

Newbould and Ghose, JJ.

1. This is a reference by the Assistant Sessions Judge of 24-Parganas under Section 307 of the Code of Criminal Procedure. The accused was charged with an offence under Section 471 read with Section 467, Indian Penal Code, the offence of fraudulently and dishonestly using a forged document, namely, a kobala, purporting to have been executed by one Thakurdasi Devi in his favour. The jury by a majority of four to one gave the accused the benefit of doubt. The other juror gave his opinion as guilty, and the learned Judge having disagreed with the verdict of the majority of the jury has referred this case to this Court.

2. The story as told by the prosecution may be shortly stated in order to understand the circumstances under which this prosecution was started. One Thakurdasi Devi was the owner of a certain plot of land which she had purchased

from one Gobinda Tewari. She was living as the mistress of one Swarup Das who had died in the year 1899. After his death she was living in the house of his son Srimanta for some time. Then there was a quarrel between them apparently and she went to live elsewhere. It seems that Srimanta wanted to have a benefit out of this fact and to take possession of the property as his own. First, there appears to have been a mortgage executed by him in favour of the accused Bansi Sheikh in the year 1912 in which it was alleged that the possession of the land had been made over to Bansi Sheikh. Then in the year 1915, Srimanta sold the land to one Romanath P.W. No. 7 and Romanath under that deed purported to have purchased the equity of redemption. After this purchase Romanath is alleged to have offered the mortgage money to the accused in order to redeem the property. The accused refused to accept the money and thereafter Romanath deposited the mortgage money in Court and then in July, 1918, brought a suit against Bansi, the accused, for redemption of the property and Srimanta was also impleaded as a defendant in the case. Bansi Sheikh appeared in that suit on the 12th December, 1918, and took time to file the written statement. This was done on the 2nd January, 1919, and the written statement is on the record of this case. In that written statement he alleged that he was in possession of the land originally as a tenant of Thakurdasi Debi and that he had subsequently purchased Thakurdasi's interest from her by a kobala, and this kobala is the subject-matter of the present prosecution. The kobala was alleged to have been executed on the 20th December, 1918, and registered in the Presidency Registration Office at Alipore on the same date. But this document was not filed by the accused, who was defendant in the suit, in the Munsif's Court. The suit of Romanath was decreed by the trial Court on the 31st March, 1919. On the 6th May, 1919, the accused presented an appeal before the District Judge of Alipore and with the memorandum of appeal, he filed the kobala dated the 20th December, 1918, purporting to have been executed by Thakurdasi Debi in his favour in Court. This appeal of the accused was decreed on the 28th August, 1920. Then what happened was that Thakurdasi Debi sold the land to one Jogendra Mandal by a registered kobala dated the 1st October, 1920. The story then is that Thakurdasi Debi endeavoured to put Jogendra Mandal in possession of the property but they were turned out by the accused on the allegation that he had purchased the

property by a kobala from Thakurdasi Debi and was therefore the owner of it. Then Thakurdasi Debi applied to the Court of appeal, which decreed the appeal of Banshi Sheikh as against Romanath, for retaining on the record the kobala which had been filed by Banshi Sheikh purporting to have been executed by herself in his favour and also for sanction for prosecution of Banshi Sheikh for using the kobala, which she alleged to have been a forged document. Sanction was granted by the Subordinate Judge who had decided the appeal on the 26th May, 1921. Certain other proceedings appear to have been taken with regard to the sanction but we are not at present concerned with them, because what appears from the record is that the sanction of the 26th May, 1921, was acted upon as sanctioning the prosecution of the accused.

3. From the evidence that was produced before the lower Court, there cannot be any doubt that the kobala purported to have been executed by Thakurdasi Debi on the 20th December, 1918, in favour of Banshi Sheikh, had not been executed by the real Thakurdasi Debi. She was examined as a witness in the Court of the Committing Magistrate and was cross-examined on behalf of the accused, but unfortunately she had died before the trial in the Sessions Court. Her evidence distinctly shows that she had never executed the kobala which was said to have been executed by her in favour of Banshi Sheikh. That kobala was signed on her behalf by one Daliluddi. This man did not know Thakurdasi at all. He is witness No. 4 for the prosecution, and he is unable to say whether it was the real Thakurdasi Debi who had executed the document or who the persons were who asked him to execute the document on behalf of Thakurdasi Debi. The document was registered and a person named Uma Charan Das, alleged to be an inhabitant of Chitraganja, that is the place where Thakurdasi Debi was alleged to have been living at the time, identified Thakurdasi Debi. One Uma Charan Das has been examined in this case before the Sessions Court. He says that he is an inhabitant of that village but he never identified Thakurdasi Debi before the Registration Officer and he was not the son of Swarup Das whose name was given as the father of the identifier, nor was he a napit by caste which was the caste given of the identifier. There is no evidence however on the record that there was any other Uma Charan Das of that village who answered the description of the identifier as given in the endorsement of the registering officer on the kobala. The fact however

remains that Thakurdasi Debi denied the execution of the kobala. No suggestion has been made that the woman who was the owner of the property was not the woman who gave her evidence before the Sub-divisional Magistrate in this case, and there is nothing to show that what she stated as regards the fact that she had never executed the kobala has any element of doubt in it. In addition to her statement there is the fact that the thumb impression which was taken on the back of the document does not tally with the thumb impressions which were taken of Thakurdasi Debi either in the Court of the Sub-divisional Magistrate or in the Court of the Subordinate Judge when he made the enquiry with reference to the grant of sanction for prosecution in this case. On the other hand, there does not appear to have been any suggestion made in the cross-examination of any of the witnesses that the real Thakurdasi Debi had really executed a kobala.

4. The first question, therefore, which is necessary to decide in this case as to whether Thakurdasi Debi had really executed the kobala, Ex. 1, must be answered in the negative, and we are of opinion that there cannot be any doubt having regard to the evidence that Thakurdasi Debi had never executed this document. The questions that must be decided first in order to sustain a charge under Section 471, Indian Penal Code, is whether the document is a forged document and we have no doubt in our minds that it was a forged document. The next thing necessary is to decide whether this document was used by the accused within the meaning of Section 471, Indian Penal Code.

5. An elaborate and ingenious argument has been addressed to us by Babu Bir Bhusan Dutt on behalf of the accused. He first contends that as the document was not accepted by the Court it cannot be held that it was used by the accused. He points out that under Order XIII, Rules 1, 2 and 3 of the Code of Civil Procedure, the rules about the production of documents by parties has been laid down and he contends that because the accused in this case has not been proved to have produced the document in Court in accordance with the provisions of those rules the document could not have been accepted by the Court and it cannot be said to have been produced by him in Court and therefore he had not used it. He further refers to Order XLI, Rule 27, Civil Procedure Code, as to the procedure in accordance with which the Appellate Court is entitled to receive fresh evidence

and contends that as none of the grounds which would entitle the Appellate Court to accept the document was in existence, the document has not been as a matter of fact accepted by the Court and therefore it was not used by the accused. The obvious fallacy of this argument, as it seems to us, is that to constitute use of a document it is not necessary that the Court should accept the document produced before it or filed in Court, The argument was based on the case of Ambica Prasad Singh v. Emperor (1908) I.L.R. 35 Calc. 820, but it has been pointed out before this, that the head note of the report is wrong in the case of Rati Jha v. Emperor (1911) I.L.R. 39 Calc. 463. It has been held that if a document is filed by the plaintiff in support of his pleading this is sufficient use within the meaning of Section 471, Indian Penal Code. We may also refer to the case of Mobarak Ali v. King Emperor (1912) 17 C.W.N. 94. With regard to this point we are of opinion that if a person puts forward a document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence is immaterial for the purpose of constituting use of the document by the party within the meaning of Section 471, Indian Penal Code. In this case the accused pleaded in defence that he had purchased the land by a kobala from Thakurdasi Debi and he also gave evidence in Court in support of that plea. In the memorandum of appeal he took as one of his grounds of appeal that the Munsif ought to have accepted his documents which he had tendered in his Court and on that allegation he filed the two documents, the document now in question being one of them, with his memorandum of appeal. Then there is the evidence of the pleader Saroda Prosad Banerjee who filed the appeal on behalf of the accused that the documents had been made over to him by the accused for filing in Court and the grounds of appeal had been drafted by him on instructions received from the accused himself. On these facts there cannot be any possible doubt that the document in question was used by the accused.

6. The next question that arises is whether at the time when this document was used, the accused knew or had reason to believe it to be a forged document. It has been contended by the learned Vakil for the accused that there is no evidence given by the prosecution as regards such knowledge. But this knowledge must be inferred from other facts proved. We consider that it has been proved that the document is a forged one. Secondly it has been proved from the statement of the

accused himself in his sworn testimony before the Munsif given on the 28th March, 1919, that he it was who had purchased the land from Thakurdasi Debi by a kobala and he speaks of the identification of Thakurdasi Debi before the registering officer by a man of Chitraganj at the time of the registering of the kobala, or in other words, that this document was executed in his presence and he took it himself. There cannot again be any possible doubt that he knew that this document was a forged document. At any rate sufficient evidence has been given to bring home the knowledge of the fact to the accused and the only statement which he makes is that his son, who is dead, did everything and he did not know anything about it. The accused, if he wanted to substantiate that statement, ought to have given evidence in support of it. But that was not done.

7. The last thing which it is necessary to find is that the use of the document was made fraudulently or dishonestly in order to find that the accused had committed an offence under Section 471, Indian Penal Code. It has again been ingeniously argued that this document was not used fraudulently or dishonestly, first, because there could not be any intention to defraud any of the parties to the litigation in the course of which this document was filed in Court. It is argued that the plaintiff Romanath had no title to the property and the use of the document could not have defrauded him. Then it is said that as Thakurdasi Debi was no party to the litigation her title was not affected in any way by this document and she has not been in any way defrauded by the use made. The answer to this argument is to be found in the observations made in the case of *Empress v. Dhunum Kazee* (1882) I.L.R. 9 Calc. 53, 60, where it has been pointed out that a man may be said to use a document fraudulently even if it is used for the purpose of supporting a good title. In the present case the document was used for the purpose of establishing the title of the accused with regard to the property and the object was no doubt wrongful gain to himself.

8. In our opinion, therefore, it has been established in this case that all the elements necessary for the purpose of proving the offence under Section 471, Indian Penal Code, have been proved without any doubt.

9. An appeal was made to us with reference to Section 307, Criminal Procedure Code, that the verdict of the jury on a question of fact should not be set aside in this case. But we have considered the whole evidence. We have given due weight to the verdict of the jury which was a divided verdict, the majority giving the accused the benefit of the doubt, and we have also considered the opinion of the Sessions Judge and we accept the reference and consider that the accused has been guilty of the offence charged under Section 471 read with Section 467, Indian Penal Code.

10. With regard to the question of sentence we have been asked to consider the age of the accused. It is a very serious offence, in our opinion, that the accused has committed. We, however, take into consideration the fact that he is an old man and also that these proceedings are going on from 1920, and considering all these things we sentence the accused Bansi Sheikh to rigorous imprisonment for three years.