

**Emperor Vs. Sagarmal Agarwalla**

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**Court :** Kolkata

**Decided On :** May-29-1924

**Reported in :** 82Ind.Cas.145

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

**Appellant :** Emperor

**Respondent :** Sagarmal Agarwalla

**Judgement :**

1. The accused Sagarmal was tried before the Sessions Judge of the Assam Valley Districts on two charges, firstly, with having forged an ekrarnama, Exhibit 2, a valuable security purporting to have been executed by Kanai Lal on 21st January, 1905, and secondly, with having fraudulently and dishonestly used as genuine by filing in the Court of the Extra-Assistant Commissioner, Mr. S. Goswami, in a Section 145, Criminal Procedure Code; proceeding in 1922 the ekrarnama Exhibit 2 purporting to have been executed by Kanai Lal on 21st January 1905, which he knew or had reason to believe at the time of filing to be a forged document. The Jury returned a unanimous verdict of not guilty. The learned Sessions Judge disagreeing with the Jury's verdict on the second charge has thought it necessary to refer this case to this Court under the provisions of Section 307 of the Code of Criminal Procedure.

2. The main facts of the case are as follows: On the 21st November, 1904, Kanai Lal purchased a piece of land from Ram Chandra Brahmin for Rs. 1,000. On the 9th March, 1905, Kanai Lal died leaving a widow Musammat Gigi. Kanai Lal left several debts and Gigi executed a deed of sale in respect of this land to one Joy Narain. It appears that though the document executed was a valid deed of sale there was some contemporaneous verbal arrangement between the widow and Joy Narain that Joy Narain should hold the property as trustee for Kanai Lal's creditors and after paying off Kanai Lal's debts out of the profits from the property should restore it to the widow. Effect was given to this arrangement and on the 24th April, 1917, Joy Narain re-transferred the land to her. The land was in three plots occupied by different tenants. On one of those plots the tenant Ghanesyam had erected a mill. On the 18th August, 1920, the accused Sagarmal purchased the mill and Ghanesyam's interest in this plot. On the 1st March, 1921, Sagarmal sold to Nagarmal, the complainant, the property purchased from Ghanesyam. Nagarmal was given possession of the mill and it was arranged that possession of some other buildings in the property should not be delivered for three months. Sagarmal failed to keep his promise and on the 10th June, 1921, Nagarmal instituted a suit against Sagarmal for possession; On the 30th July, 1921, Sagarmal dispossessed Nagarmal from the mill by locking it up. Nagarmal then instituted proceedings under Section 145, Criminal Procedure Code, and got possession of the mill and the other houses in this plot of land through the Court. Then on the 6th July 1922, Sagarmal instituted fresh proceedings under Section 145, Criminal Procedure Code, in respect of the land on which the mill stood and in the course of these proceedings on the 18th October, 1922, he filed a document, Exhibit 2, which is the document alleged to be forged on which the present prosecution is based.

3. This document is an ekrarnama which purports to be executed by Kanai Lal on the 21st January, 1905. In it Kanai Lal acknowledges that Sagarmal had bought the land benami in his name and that it would be returned to Sagarmal after 20 years and during that period Kanai Lal would enjoy the land but would have no right to transfer the same by sale or otherwise. It also provides for re-entry by Sagarmal in the case of transfer. In the meantime Nagarmal had brought two civil suits against Sagarmal, one on the 10th June, 1921, which was decreed in

Nagarmal's favour on the 10th May, 1922, after reference to arbitration. Then on the 15th November, 1922, he brought a second suit on the basis of a lease which he had obtained from the widow Gigi and that suit was decreed ex parte on the 4th January, 1923. When the document, Exhibit 2, was filed in the Section 145 case, a few days later on the 24th October, 1922, a petition was filed on behalf of Sagarmal stating that there were good grounds for believing the ekrarnama to be a forgery and asking the Court to put its signature on both its sheets and to note the letters appearing in the water-mark of the cartridge paper of the second sheet.

4. The case for the prosecution rests on evidence which can be classified under three heads. The first is the direct evidence that the signatures on the document purporting to be those of Kanai Lal are not Kanai Lal's signatures. The second class of evidence relates to circumstances which make it improbable that the document was executed by Kanai Lal. The third class of evidence is evidence that from the water-mark on the second sheet of Exhibit 2, it appears that that piece of paper could not have been in existence in 1905.

5. As regards the first class of evidence we think that the learned Sessions Judge did not direct the Jury properly. Three witnesses have definitely deposed that they were acquainted with the signature of Kanai Lal and that the two signatures on Exhibit 2 which purported to be his are not in his handwriting. The first of these is Nagarmal, the complainant, who deposed that Kanai Lal was his uncle and that he often received letters from him and knows his signature and that the two signatures marked '2 (1) and 2 (2)' are neither of them his signatures. The second of these witnesses is Bholaram who deposed that Kanai Lal was his sister's husband and that he was his gomastha for 17 or 18 years. He has also deposed that neither of these signatures 2 (1) and 2 (2) were Kanai Lal's signatures. The third of the witnesses is Ram Protap who had business dealings with Kanai Lal and has deposed that he knows the signature of Kanai Lal and that Exhibits 2(1) and 2(2) are not his signatures. In dealing with this evidence the learned Sessions Judge has only referred to that of Bholaram's and has said to the Jury: 'In any case I do not suppose that you will regard this part of the evidence as conclusive.' It has been argued before us that this means that both the learned Sessions Judge and the Jury have rejected the evidence entirely. This is certainly not the

correct interpretation of the learned Sessions Judge's remarks giving them their ordinary meaning. We think, it would have been better if he had told the Jury that they should consider this evidence and attach such weight to it as they thought fit and not suggested to them that it was not of much importance. In our opinion it is of considerable importance, though we agree to this extent with the Sessions Judge that a conviction of forgery could seldom be based solely on non-resemblance of handwriting. But when this evidence is considered with the other evidence in the case it strongly supports the case for the prosecution. In connection with this evidence there is also the evidence to prove the only specimen of Kanai Lal's handwriting which has been produced on either side, Exhibit 15(1), that is an entry in the khata produced by Ram Protap, and although on behalf of the defence it has been attacked as a spurious entry, we see no sufficient ground for doubting its genuineness. Our attention has been drawn to certain facts which are said to be suspicious, such as the fact that Kanai Lal did not add his caste Agarwalla to his signature, that the ink of the entry of which the signature is part is different to that of the entry of the account in the khata, that the stamp appears to have been regummed and that other persons had signed acknowledgments in the khata by signing right across the page. In our opinion, none of these are sufficient reasons for rejecting this evidence, when there appears no other sufficient reason for doubting the genuineness of the account book in which the entry is made. Explanations have been given as regards the form of the signature and the difference of the inks which to us appear satisfactory and the other objections seem to us trivial. We hold, therefore, that there is very strong evidence on the record that the signatures on this document are not those of Kanai Lal.

6. As regards the circumstances of the case the document in itself is one which it seems highly improbable that Kanai Lal should have executed. We have never in our experience known a case of benami sale in which the benamidar was allowed to be in possession of the land to which he had no right for a period of 20 years. The property was of considerable value being situated in the town of Gauhati and no satisfactory reason has been given why Kanai Lal should have been allowed the benefit of this land for 20 years. It is suggested that the consideration was that he was to improve the land and induct tenants. But this, having regard to the

nature of the land, would not be a sufficient consideration for the benefit to be enjoyed. Further it was not proved that the accused at that time was in such pecuniary difficulty that it was necessary for him to resort to benami transactions, The facts show that Kanai Lal himself was in difficulties and this makes it extremely improbable that the accused should have chosen him as his benamidar at that time. It is further urged on behalf of the prosecution that had this document been genuine the accused could have asserted his right to possession at the time of the transfer to Joy Narain. We think there is some force in the contention on behalf of the accused that if this document were genuine it is possible that the accused might have been a consenting party to the arrangement with Joy Narain and, therefore, took no action in the matter. But this does not remove the initial improbability that such a document would have been executed. Another suspicious point is the conduct of the accused in allowing the second case instituted by Nagarmal to be decreed against him ex parte after he had taken adjournments for the purpose of filing a written statement. Had he really believed this document to be genuine, he would surely have defended that suit.

7. We now come to the evidence as to the water-mark in the second page of the document. This sheet of paper is what is known as cartridge paper which is sold by Government to the public. There is evidence that the water-mark letters A, Z were not in existence at the time in 1905 when the document is alleged to have been executed. The case for the prosecution is that since 1907 secret marks have been introduced in the water-marks on this paper and they have been varied from time to time so that the officers of the Controller of Stationery can say from an examination of the document the period when the paper of the document was issued. It has been proved by Mr. Coster, Deputy Controller of Stationery, that mark Z was first used in 1920. In support of this statement also the letter of the Controller, dated 19th December 1919, to the paper manufacturers directing the use of this letter on water- marked papers manufactured during the year 1920 has been proved. The evidence of Mr. Coster has been attacked on two grounds, firstly, on the ground that he has made contradictory statements, and secondly that a good deal of his evidence is irrelevant as he is not speaking from personal knowledge. We have been taken through the whole of Mr. Coster's evidence and we think that the attitude he adopted in the witness-box was unfortunate. He

seems at first to have insisted on claiming privilege of not replying to questions and was not willing to give the assistance to the Court which he should have done. But his attitude Was certainly not one which was unfavourable to the defence and we can see nothing that would justify us in thinking that he was not telling the truth in the definite statement which he did make.

8. As regards the second point it would appear that it is difficult to bring within the provisions of the Evidence Act certain portions of his evidence. But so far as the introduction of the letter Z from the commencement of 1920 is concerned the letter of the Controller to which we have referred is sufficient to establish the fact. Then Mr. Coster has definitely stated that secret marks were first introduced in 1907. That statement, he says, is based on a presumption from the letter, Exhibit 33, which was produced in original. In that letter the Controller asked the manufacturers of the paper to make arrangement that each sheet of paper Shall bear a secret mark that the mark for preference should be a letter and the letter should be changed at intervals of six months and his office informed confidentially. It is urged that as this letter is one accepting tender of the manufacturers it does not necessarily follow that secret marks had not been in use beforehand. But the inference drawn by Mr. Coster is supported by other evidence on the record. The cartridge papers that were used for other documents in 1906 and 1907 were proved Exhibits 18 and 17 and on these no letter was found in water-marks. These were taken out at random from a large number of records produced from the Sessions Judge's record room and it has not been shown that on any cartridge paper used before 1907 was there any letter or other secret mark in the water-mark whereas in papers filed in 1908 a letter water-mark appears, it having been the letter B in that year. It would have been easy for the accused to have shown that a letter-mark if it had been in existence previously was to be found in some of these documents But no attempt was made to do this. We hold on the evidence of Mr. Coster which is admissible that there can be no reasonable doubt that the second sheet of Exhibit 2 was not in existence in 1905.

9. We think the Jury were probably confused and did not properly appreciate the cumulative effect of the different classes of evidence. After taking their verdict the learned Sessions Judge asked them a further question as he intended to refer this

case. He asked them to give their reasons for their doubt and their reply was: 'To our mind the only part of the evidence that seems to bear on the question is the circumstantial part of it and that does not seem conclusive.' It would appear, therefore, that the Jury entirely overlooked the direct evidence to which we have already referred.

10. On behalf of the accused considerable reliance was placed on the fact that the endorsement on the back of the stamp which constitutes the first sheet of Exhibit 2 indicates that the stamp was sold to Kanai Lal. It seems very doubtful whether this entry is any evidence of that fact. But it is unnecessary to discuss this point as it appears at the trial not to have been disputed that this stamp may have been actually sold to Kanai Lal. What is pointed out by the prosecution is that the stamp of five rupees is not the proper stamp for the ekrarnama written on it. It is further suggested that such a stamp might have been among Kanai Lal's papers unused and that the accused had access to those papers. This appears to have been so having regard to the contention that the accused was a party to the arrangement with Joy Narain and there is direct evidence that the accused's brother actually took some interest in the widow's, affairs. We think that it is extremely probable that this stamp was found by the accused and the finding of this stamp had suggested to him the idea of forging this document.

11. It is further contended that there is no evidence that the accused used the document knowing it to be forged. It was not to be expected that the prosecution should give direct evidence on this point. But it is impossible to conceive that the accused could have received this document acknowledging a benami transaction in his favour believing it to be genuine if in fact there never had been such a benami transaction. It is also contended that if we hold that the accused used the document we should hold that he is liable for the offence punishable under Section 471 read with Section 465 and not for an offence punishable under Section 471 read with Section 467. It is said that he did not use the documents relying on it as a valuable security. Whether he did so or not the nature of the offence does not depend on the use to which the document was put. If it was used fraudulently or dishonestly and if it purported to be a valuable security the punishment provided by Section 467 and not that provided by Section 465 would be that to which the

accused would be liable under Section 471.

12. It is further contended that having regard to the unanimous verdict of the Jury and to the fact that we have held that there has been some mis-direction by the learned Sessions Judge, we should put ourselves in the place of the Jury and find as to what their verdict would have been if they had been rightly directed. This argument is based on a mis-conception of the provisions of Section 307, Criminal Procedure Code. That section requires us to give due weight to the opinion of the Sessions Judge and of the Jury after considering the entire evidence and then to acquit or convict the accused. It does not require us to attempt to reconstruct the verdict of the Jury. In giving due weight to the opinion of the Jury we should always hesitate to reverse a unanimous verdict unless we hold it to be unreasonable. In the present case we hold that that verdict having regard to the cumulative effect of the evidence is not a reasonable one and that there cannot be any doubt as to the accused's guilt.

13. We accordingly accept this reference, The accused Sagarmal is acquitted of the first charge that of having committed the offence of forging the ekrarnama, Exhibit 2, punishable under Section 467, Indian Penal Code. We convict him of the offence of fraudulently and dishonestly using as genuine the ekrarnama, Exhibit 2, knowing, or having reason to believe it to be a forged document, and under Section 471 read with Section 467, Indian Penal Code, we sentence him to four years' rigorous imprisonment,

14. The accused must surrender to his bail and serve out this sentence.