

(1880) 07 CAL CK 0014

Calcutta High Court

Case No: None

Gogun Chunder
Ghose

APPELLANT

Vs

The Empress

RESPONDENT

Date of Decision: July 16, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 471

Citation: (1881) ILR (Cal) 247

Hon'ble Judges: White, J; Field, J

Bench: Division Bench

Judgement

White, J.

This was an appeal by the prisoner Gogun Chunder Ghose against a conviction u/s 471 of the Code and a sentence of five years" rigorous imprisonment.

2. The circumstances out of which the prosecution arose are these: The prisoner had brought a suit against Basheeram Mundle and his two brothers, Babooram Mundle and Dharani Dhur Mundle, for the recovery of 726 rupees, being the amount of principal and interest due upon a kistibandi, or bond, alleged to have been executed in favour of the prisoner by the three brothers.

3. The Munsif found that the bond had been executed by one of the three, Dharani Dhur, but dismissed the suit, because he was of opinion that the signature of the other two defendants, Basheeram and Babooram, were forged; and he entertained so strong an opinion upon the point that he directed this prosecution, which we are now considering, to be instituted against the prisoner for forging the kistibandi, and using it as genuine knowing it to be forged. The case has been tried by a jury, and they have come to a unanimous verdict that the prisoner is guilty of using this bond knowing it to be forged, and in answer to a question they said, that they found the signatures of Basheeram and Babooram to be forged, but the signature of Dharani

Dhur to be genuine. At the trial, the judgment of the Munsif in the civil suit, although objected to on the part of the prisoner, was put in evidence by the prosecution, and read out to the jury, and the substance of the judgment was also referred to by the Sessions Judge in his charge to the jury.

4. The ground of the appeal is, that this judgment was improperly admitted as evidence, and that eliminating the judgment there is not sufficient evidence to justify the verdict. There can be no doubt the judgment was improperly received. Technically it was inadmissible, because it was not between the same parties, the present parties technically being the Queen-Empress on the one hand, and the prisoner on the other, and the respective parties in the civil suit being the prisoner and the three defendants; and furthermore, it was not admissible on the substantial ground that the issues in the civil and criminal suits were not identical, and that the burden of proof rested in each case on different shoulders. It was not necessary for the Munsif in the civil suit to find more than that the execution of the bond by the three defendants was not proved. When the Munsif went further and pronounced the bond a forgery, and directed a prosecution, it was not a decision on the question of forgery, but merely an opinion which, although he was entitled to give expression to, ought no more to have been put in evidence on the present charge than the opinion of a Magistrate who commits a prisoner to take his trial upon a criminal charge.

5. [249] The Judge, in his summing up, draws the attention of the jury to this judgment and to the Munsif's opinion contained in it, and uses the following words: "The Munsif believed that one of the brothers, Dharani, executed the document, and that the other names were added afterwards by the prisoner, or with his knowledge, and with a dishonest intent. Whether this or whether all three names are forgeries, the offence is the same." It is true that the Judge, later on, says to the jury--"You are not in any way bound by the finding of the Munsif;" and that he also, still later on, draws their attention to the fact that in the civil suit the onus probandi was on the prisoner, whereas at the trial of forgery the onus was on the prosecution. But inasmuch as neither the judgment nor the Munsif's opinion were evidence, the Judge, if he referred to them at all, ought to have told the jury not merely that they were not bound by them, but that it was their duty to dismiss them altogether from their mind. We "have next to consider whether, independently of the objectionable evidence, there is sufficient evidence to justify the verdict of the jury.

6. [The learned Judge then proceeded to consider the other evidence in the case, and ultimately arrived at the opinion that, independently of the Munsif's judgment, there was not sufficient evidence which, even if believed, pointed with reasonable certainty to the guilt of the accused, and therefore made an order of acquittal.]