(1915) 12 CAL CK 0033

Calcutta High Court

Case No: None

Krishna Govinda Pal		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Dec. 7, 1915

Acts Referred:

- Penal Code, 1860 (IPC) - Section 466, 471

Citation: 33 Ind. Cas. 306

Hon'ble Judges: Mullick, J; Holmwood, J

Bench: Division Bench

Judgement

Holmwood, J.
This is an appeal from the judgment and sentence of the learned Sessions Judge of Tipperah who, agreeing with the Assessors, found the appellant Krishna Gobinda Pal guilty of an offence u/s 471 read with Section 466, Indian Penal Code, and sentenced him to five years'' rigorous imprisonment.

2. It appears that a document of the year 1862 was entered in the register book of the Registration Office at Comilla, Volume I, Book 3, purporting to be a mokurari lease for 50 years in favour of the grandfather of the accused Girish Chandra Roy, who has been acquitted, coupled with an agreement to make the lease permanent on the expiry of 50 years, that is, from the year 1319. A copy of this document was obtained from the Registration Office and filed in a proceeding u/s 107, Criminal Procedure Code. We do not know what the meaning of the filing the document in such a proceeding is, but the evidence, which is very conflicting, comes from persons who were called upon to show cause in the 107 proceedings on the other side to the effect that they saw the appellant put this bit of paper on the table in front of the peshkar. The Magistrate''s record would show that the witness Ram Kanai who is now dead produced the document in the witness-box and proved it, and the Magistrate says in a note in the middle of this evidence that the document was filed and established; the accused himself, who was a witness, stated to the

Magistrate that there was such a document in the possession of his master Girish Chandra Roy, and he shortly described its contents and he said it had been filed. But he did not say that he filed it himself, although there was no possible reason why he should not have said so, as at that time there was no question as to the genuineness of the document. He also says that he first came to know of the existence of this lease for 50 years eleven years ago. He does not set up any case that the original lease was a permanent kaemi lease, and he gives a perfectly true account of the document as it appears in the register in the Registration Office.

3. The learned Judge has come to the conclusion that the transcript in the Registration Office is itself a forged interpolation made after the year 1910, and in proof of this he adduces the evidence of a number of other Registration Books in which there are what he calls obvious forgeries, and these apparently refer to documents relating to the same property. But we need hardly point out that a series of similar transactions which are not the offence charged can only be used as evidence of the intention of the person who forged the document, and not as evidence of forgery.

4. It cannot conceivably be used as evidence that the present accused in the year 1912 used the copy of a forged document knowing it to be forged. Who the people were who forged the other documents, if they were forged, and for what purpose they forged them is not necessarily known to the accused, and there is absolutely no evidence connecting the present accused with them. We have, therefore, altogether excluded this evidence.

5. The learned Judge then rightly sets himself to determine four questions, the first, was the document of which Exhibit 38 is a certified copy forged; secondly, did either of the accused know it to be forged; thirdly, did either of the accused use it as genuine; and fourthly, did they do so fraudulently or dishonestly.

6. At the outset we find ourselves in entire disagreement with the learned Judge as to the factum of forgery. The learned Judge appears to have misdirected himself by reason of his not observing that the salient clause of the document is contained in its very first paragraph. He was under the impression that the document was throughout a temporary lease and that at the very end of it a clause had been interpolated transforming it into a permanent lease. He considers that this is not only inconsistent but must have been intentionally done with intent to commit fraud. He says, "the lease, if it is what the prosecution says it originally was, is a perfectly straightforward document that any intelligent person can understand, an ordinary temporary lease terminable with the year 1318. The lease as it exists now, however, appears to contain a contradiction in terms. To the average layman it is quite meaningless. It is only a trained lawyer who could say what its legal effect would actually be. No doubt important documents are occasionally drawn up in ambiguous language but fortunately that is very rare. Other things being equal, therefore, the internal evidence is enormously in favour of the prosecution." But he

has omitted to notice that at the very beginning of the document, as we have said, it is stated that this is a temporary lease for 50 years up to the year 1318, and that from the year 1319 a permanent lease will be given, that is to say, it is a lease for a term with an agreement to give a permanent lease at the end of it. Whether that would be enforcible without a further document we are not concerned to say. But the intention of the parties is certainly perfectly clear and there is nothing meaningless about the document if it is read as a whole.

7. But the great difficulty about holding it to be a forgery is this, that on the prosecution theory it cannot have been forged till after the year 1910, and anybody looking at the book of the Registration Office which we have before us could not fail to be convinced that this transcript was engrossed many many years ago; that the ink as well as the paper on which it is written is just as old as the earlier part of the book which is admittedly genuine. It appears to us to be absurd to say that people sat down in 1912 to write on that paper over 50 years old, that they manufactured faded ink which also appears to be of equal age and succeeded in making a perfect transcript without any sign of ink running or sinking through the paper or any of the usual traces of modern forgery. Moreover it is still more difficult to believe that they got the Sub-Registrar of 1862 out of his grave and made him sign his name in the book. There is not the faintest suspicion, so far as we can see, that the Sub Registrar''s signatures on these numerous alleged forged documents are not absolutely genuine. They are certainly written by the same hand as made all the earlier entries. The writing is very characteristic. There is no attempt to make a copy of it. The signatures are not facsimiles, but they are all of the same character as that of the admitted signature, and we can have no doubt that they are genuine.

8. That being so, the whole case falls to the ground, though we may in justice to the accused say that we are equally able to hold that there is no evidence worthy of the name to show that he made use of this document or that he had any dishonest intention, or that he had any idea that the original was a forgery. It is also extremely doubtful whether the mere filing of a copy is user of a forged document. The copy itself is certainly not a forged document and the conditions in which it has been held that the user of a copy amounts to an offence in the cases of Queen v. Nujum Ali 6 W.B. 41. and Emperor v. Mulai Singh 28 A. 402 : (1906) A.W.N. 71 : 3 A.L.J. 190 : 3 Cri. L.J. 255 are clearly distinguishable from this case, inasmuch as they were cases where the offender used the copy knowing or having reason to believe that the entries in the original documents were forgeries and intending to use them for fraudulent purposes. On every point that is necessary to establish the charge we are able to find in the appellant''s favour.

9. We accordingly set aside the conviction and sentence and direct the acquittal and release of the accused.

Mullick, J.

10. I agree.