APPELLATE CRIMINAL.

Before Holmwood and Mullick JJ.

KRISHNA GOVINDA PAL

v.

EMPEROR.*

1915

Dec. 7.

Forgery—Certified copy, filing of, whether user of forged document, if original be forged—Evidence of intention—Penal Code (Act XLV of 1860) ss. 466, 471.

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.

It is extremely doubtful whether the mere filing of a copy is the user of a forged document. A certified copy thereof is certainly not a forged document.

But it is otherwise 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.

Queen v. *Nujum Ali* (1) and *Emperor* v. *Mulai Singh* (2) distinguished.

APPEAL by Krishna Govinda Pal.

According to the prosecution story there was a dispute regarding the right to Mohanpore and five other mouzas in the district of Tippera between one Badarunessa and Girish Chandra Roy, grandfather of the appellant. A lease of these properties was granted by the former's father in 1862 to one Charan Chunder Shaha, the grandfather of Girish, which the latter alleged was a permanent or *kaimi* grant. Badarunessa claimed that the lease expired in 1911 and began

* Criminal Appeal No. 783 of 1915, against the order of F. W. Ward, Sessions Judge of Tippera, dated July 22, 1915.

(1) (1866) 6 W. R. Cr. 41. (2) (1906) I. L. R. 28 All. 402.

1915

KRISHNA GOVINDA PAL v. EMPEROR.

to make direct settlements with the tenants. This led to a proceeding under section 107 of the Code of Criminal Procedure to bind both parties down to keep the peace. The appellant is said to have filed in that case a certified copy of that lease obtained from the Registration office, the register of which, Badarunessa complained, had been tampered with. Thereupon, Krishna Govinda Pal was placed on his trial and convicted by the Sessions Judge of Tippera under sections 466 and 471 of the Indian Penal Code and sentenced to 5 years' rigorous imprisonment. Being aggrieved thereby he preferred this appeal.

Mr. P. L. Roy (with him *Babu Manmatha Nath Mookerjee*, *Babu Bipin Chandra Bose*, and *Babu Upendra Kumar Roy*), for the appellant. The document is not a forgery but is said to be the copy of a forged document, viz., the registers alleged to have been tampered with. It was submitted (after going fully into the evidence), that the register of 1862, which was the subject of the present charge, was not forged and that no prosecution would lie for using a copy of a forged document.

[HOLMWOOD J. There is no forged document. How can your learned friend support this conviction?]

Nor is there any evidence of knowledge, or user by the appellant.

[HOLMWOOD J. If this was a forgery, it must have been done 40 or 50 years ago.]

Mr. E. H. Monnier (with him *Maulvi A. K. Fazlul Huq* and *Babu Manindra Nath Banerjie*), for the Crown. The registers at sight clearly show that they had been forged. (Pointed out several instances of other forgeries in that register). I submit that there is a clear erasure below in which five forged deeds have been entered.

In *Queen* v. *Nujum Ali* (1) it has been held that if the original document is forged the use of a copy of it is using a forged document; and there is evidence of dishonesty in the present case.

[HOLMWOOD J. That case is distinguishable. There the accused actually used the copy for his own purpose and tried to get the Court to affirm its contents.]

[MULLICK J. Have you seen the ruling in *Emperor* v. *Mulai Singh* (2) where it has been held that the using of a copy of a forged document in favour of accused is an offence ?]

For the purpose of setting up that document and not merely filing it on behalf of his master. If the party who puts it in is counsel or solicitor, he is equally guilty of using a forged document if he knows it to be forged.

The appellant was not called upon to reply.

HOLMWOOD AND MULLICK JJ. 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 Govinda Pal guilty of an offence under section 471 read with 466 of the Indian Penal Code, and sentenced him to five years' rigorous imprisonment.

It appears that a document of the year 1862 was entered in the Register Book of the Registration Office at Comilla, Vol. I, Book 3, purporting to be a mokarari 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

(1) (1866) 6 W. R. Cr. 41. (2) (1906) I. L. R. 28 All. 402.

1915

KRISHNA GOVINDA PAL v. EMPEROR.

obtained from the Registration Office and filed in a proceeding under section 107 of the Code of Criminal Procedure. We do not know what the meaning of 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 and is 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 exhibited; 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 *kaimi* lease, and he gives a perfectly true account of the document as it appears in the register in the Registration Office.

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.

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.

The learned Judge then rightly sets himself to determine four questions: *first*, was the document, of which Ex. 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?

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, was 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

1915

KRISHNA GOVINDA PAL v. EMPEROR.

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 enforceable 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.

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 any body 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 *fac similes*, but they are all of the same character as that of the admitted signature, and we can have no doubt that they are genuine.

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* (1) and *Emperor* v. *Mulai Singh* (2) 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. One very point that is necessary to establish the charge, we are able to find in the appellant's favour.

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

G. S. *Accused acquitted.*

(1) (1866) 6 W. R. Cr. 41. (2) (1906) I. L. R. 28 All. 402.