

## CRIMINAL REVISION.

*Before Khundkar and Edgley JJ.*

MAHESH CHANDRA DHUPI

*v.*

EMPEROR.\*

1940

Jan. 16.

**Fabricating false evidence**—*Inadmissible document, when can be subject of fabricating false evidence—Intention of the accused, how to be inferred—Indian Penal Code (Act XLV of 1860), s. 193.*

The mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of s. 193 of the Indian Penal Code.

*Baroda Kanta Sarkar v. Emperor* (1) referred to.

When persons fabricate a document purporting to be a *kabuliyat* executed by them in favour of another, containing a recital to the effect that that other had agreed to accept the document and to grant a lease of the lands in question to those persons, the question whether it was the intention of the latter to use the document in a judicial proceeding becomes a question of inference.

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This was a Rule obtained by the accused against their convictions for an offence under s. 193 of the Indian Penal Code for fabricating a document executed by themselves in favour of the complainant agreeing to grant a lease of certain lands to the accused. The landlord's case was that he had no knowledge thereof and had never agreed to grant the lease or accept the document. The other facts of the case and the arguments in the Rule appear from the judgment.

*Sudhangsu Sekhar Mukherjee* and *Nikhil Chandra Talukdar* for the petitioners.

*Mahendra Kumar Ghose* and *Binode Lal Ghose* for the opposite party.

\*Criminal Revision, No. 605 of 1939, against the order of S. C. Sen, Sessions Judge of Noakhali, dated May, 15, 1939, confirming the order of Hem Bhushan Datta, Magistrate, First Class of Noakhali, dated Mar. 28, 1939.

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KHUNDKAR J. The petitioners have been convicted of an offence under s. 193 of the Indian Penal Code, upon the allegation that they fabricated a document purporting to be a *kabuliyat* executed by them in favour of the complainant.

The ground upon which this Rule was issued is thus expressed :—

For that the prosecution case being that the *kabuliyat* was not accepted by the landlord and was not acted upon, s. 193 of the Indian Penal Code is not attracted.

The argument by which Mr. Mukherjee, who appears in support of this Rule, has endeavoured to substantiate this ground falls into the following three branches. He contends, in the first place, that the *kabuliyat* was inadmissible in evidence. Secondly, that it could not be said that it was the intention of the petitioners to use it in a judicial proceeding. Thirdly, that, in any event, the making of this document does not satisfy the definition of fabrication of false evidence contained in s. 192 of the Indian Penal Code.

With regard to the first branch of his argument, we are of opinion that it is now well-settled that the mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of s. 193 of the Indian Penal Code. If authority were needed, it is to be found in the case of *Baroda Kanta Sarkar v. Emperor* (1), in which it was held that, under s. 192 of the Indian Penal Code, it is the intention that creates the criminal offence and not the fact as to whether under the terms of the law the document is admissible in evidence. In that case, the correctness of earlier decisions, in which it was considered that a document not admissible under the Indian Evidence Act, could not come within s. 192 of the Indian Penal Code, was doubted.

(1) [1916] A. I. R. (Cal.) 553.

With regard to the second branch of the argument, we find from an examination of the document itself that it contains a recital to the effect that the landlord (the complainant) had agreed to accept this document and to grant a lease of the lands to which it related to the petitioners. This being so, the question whether it was the intention of the petitioners to use the document in a judicial proceeding becomes a question of inference. The Courts below have, upon a consideration of the facts, drawn the inference that that was the petitioners' intention and it is an inference with which, upon the circumstances established, we must entirely agree. In the case of *Ahmed Ali v. Emperor* (1), it was held that, where in a case in which the facts were exactly similar, the learned Judge had left it to the jury to draw an inference as to whether it was the intention of the appellants to use a *kabuliyat* in judicial proceedings, the direction of the learned Judge was entirely correct.

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With regard to the third branch of Mr. Mukherjee's argument, it would be sufficient to say that the document, with which we are concerned in the present case, does satisfy the definition of fabricating false evidence contained in s. 192 of the Indian Penal Code, because it might certainly lead the Court, before which it was produced, to come to the conclusion that the document was genuine and that it had the effect of creating a lease of lands in the petitioners' favour.

The Rule, accordingly, fails and must be discharged.

EDGLEY J. I agree.

*Rule discharged.*

A. C. R. C.

(1) (1925) Cr. App. No. 96 of 1925, decided on July 8.