

Bisheshwar Dial v. Ram Sarup (1), in which it was decided that when a mortgagee buys at auction the equity of redemption in a part of the mortgage property, such purchase has, in the absence of fraud, the effect of discharging and extinguishing that portion of the mortgage debt which was chargeable on the portion so purchased. In that case, however, the property which was so purchased by the mortgagee was purchased at a sale in execution of a decree obtained by a third party. The case here is entirely different. The plaintiffs respondents filed their suit to have their mortgage debt satisfied by sale of all the property subject to the mortgage. A portion only of that property was at first sold and failed to satisfy the mortgage debt. In such a case it is clear, we think, that the balance of the mortgaged property is liable to satisfy whatever balance remained due after the first sale.

We therefore, on the two points which have been raised in argument, hold that the Courts below were right and we dismiss the appeal with costs.

Appeal dismissed.

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JUGAL KISHORE
v.
HARBANS
CHAUDHRY.

APPELLATE CRIMINAL.

1906
June 1.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR v. RAM KHILAWAN AND ANOTHER.*

*Act No. XLV of 1860 (Indian Penal Code), sections 193, 201—False evidence
—Accused person or fabricating false evidence for the purpose of concealing his own guilt.*

Held that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged.

THE following are the facts:—

Ram Khilawan and Musammat Mauki were placed on their trial for the murder of Musammat Bundao. They were discharged by the Magistrate. There was some evidence to show that the accused had endeavoured to make it appear that the murder

* Criminal Appeal No. 273 of 1906.

(1) (1900) I. L. B., 22 All., 284.

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was committed at a place different from that at which it was really committed. The Sessions Judge by an order under section 436 directed the accused to be committed to the Court of Session for trial, and then added to the charge of murder further charges under sections 193 and 201 of the Indian Penal Code, and convicted the accused of the offence of murder and also under section 193, Indian Penal Code.

Babu *Durga Charan Banerji*, for the appellants.

The officiating Government Advocate (*Wallach*) for the Crown.

BANERJI and AIKMAN, JJ.—Ram Khilawan, caste Brahman, aged 25, and Musammat Manki, who is also a Brahman by caste and whose age the Sessions Judge estimates at 22, were sent up by the police charged with the murder of Musammat Bundao, the mother-in-law of Musammat Manki. The case came before Mr. Mushaffa Ahmad, Magistrate, first class, who, on the 7th of July, 1905, recorded what the Judge rightly characterises as a judgment of portentous length, and discharged both the accused. Indar Dat, the husband of the murdered woman, applied to the Judge for revision of the order of discharge. This application was granted and the learned Judge, under the provisions of section 436 of the Code of Criminal Procedure, ordered both the accused to be arrested and committed to the Court for trial. We may remark that there can be no doubt that the Deputy Magistrate was wrong on the materials before him in taking it upon himself to discharge the accused. The trial resulted in the conviction of both the accused of the offence of murder and each has been sentenced to death. The learned Judge, most unnecessarily, in our opinion, framed additional charges against the accused of offences under sections 193 and 201 of the Indian Penal Code. He has convicted both under the former section and sentenced each of them to three years' rigorous imprisonment. The ground of this conviction is that in the opinion of the learned Judge the accused endeavoured to make it appear that the murder was committed at a place different from that at which it was perpetrated, and thereby fabricated false evidence. In our opinion an accused person cannot be charged either with giving or fabricating false evidence with the sole object of

diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. We have no hesitation in quashing the conviction under section 193 of the Indian Penal Code and setting aside the sentences passed thereon.

1906

EMPEROR
v.
RAM KHILA-
WAN.

APPELLATE CIVIL.

1906
June 5.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Sir George Knox.

ISHRI PRASAD (DEFENDANT) v. BALJNATH AND OTHERS (PLAINTIFFS).
Act No. III of 1877 (Indian Registration Act), sections 32, 33 and 87—Validity of registration—Power-of-attorney—Authority of registering officer.

One Daulat Ram, after selling certain immovable property to Musammat Ram Bai, the mother of the plaintiff, on the 6th August, 1900, sold the same property again on the 12th August, 1900, to the defendant. The latter sale-deed was duly registered on the 13th August, 1900, and on the same day the sale-deed of the 6th August, 1900 was presented for registration by a pleader acting under a power-of-attorney from Musammat Ram Bai. The power-of-attorney admittedly was not executed or authenticated in accordance with the provisions of section 33 of the Registration Act. The registering officer, however, took no notice of the defect; and, after summoning Daulat Ram, who admitted execution, registered the sale-deed of the 6th August on the 17th November, 1900.

Held that the document of the 6th August had not been legally registered. The terms of sections 32 and 33 of the Registration Act are imperative and proper presentation by an authorized agent is an indispensable foundation of the registering officer's jurisdiction; nor was the error of the Sub-Registrar a mere defect in procedure that could be cured by section 87 of the Registration Act or by the fact that the executant, when summoned by the registering officer, consented to the registration of the sale-deed of the 6th August. *Mujib-un-nissa v. Abdur Rahim* (1), followed.

THE facts of this case are fully stated in the judgment of the Court.

Babu Jogindro Nath Chaudhri and the Hon'ble Pandit Sundar Lal, for the appellant.

The Hon'ble Pandit Madan Mohan Malaviya, Babu Satya Chandra Mukerji and Munshi Jang Bahadur Lal for the respondent.

* Second Appeal No. 1191 of 1904, from a decree of Manvi Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 31st of May, 1904, confirming the decree of Babu Gokul Prasad, Munsif of Hathras, dated the 25th of November, 1903.