

## APPELLATE CRIMINAL

Before Mr. Justice E. M. Nanavutty

GAURI (GAURI SHANKAR), (APPELLANT) v. KING-  
EMPEROR (COMPLAINANT-RESPONDENT)\*

1936  
February, 4

*Criminal Procedure Code (Act V of 1898), section 476—Sanction to prosecute—Offences under sections 209, 467 and 471, I. P. C.—Preliminary enquiry—Complaint not enquired into, effect of—Order to prosecute, if illegal—Indian Penal Code (Act XLV of 1860), sections 209, 467 and 471—Prosecution evidence not supporting conviction—Document alleged to be forged entirely in one handwriting—Expert evidence not taken—Conviction, if bad—Evidence Act (I of 1872), sections 118, 133—Scribe—Accomplice—Evidence—Corroboration—Evidence of accomplice, whether should be corroborated.*

A Court ought never to file a complaint under section 476, Cr. P. C., in respect of offences under sections 209, 467 and 471, I. P. C., when the matter has not been thoroughly sifted by it in the course of regular judicial enquiry. Where, therefore, there has been, in fact, no enquiry either in the Court which files a complaint under section 476, Cr. P. C., in respect of offences under sections 209, 467 and 471, I. P. C., or in other Courts in which the matter relating to the genuineness or otherwise of a *rukka* alleged to be forged remains pending, the order to prosecute is not justifiable.

Where in a complaint under sections 209, 467 and 471, I. P. C., in respect of a clause alleged to have been entered fictitiously in a *rukka*, prosecution witnesses are either partisans and, therefore, interested, or their evidence is valueless to prove the offence, and the alleged forged document is entirely written in one handwriting and no expert has been examined to prove that any forgery has been committed in respect of the document, the conviction based on such evidence on record cannot stand.

Where a scribe of a *rukka* is prosecuted for abetment of forgery but he gets off on appeal, he is naturally prepared to give evidence to save his own skin even though it may implicate somebody else. His evidence is virtually that of an accomplice in the crime, and if it is to be believed, it requires strong corroboration in material particulars.

\*Criminal Appeal No. 509 of 1935, against the order of Pandit Dwarka Prasad Shukla, Assistant Sessions Judge of Unao, dated the 29th of July, 1935.

Mr. K. P. Misra holding brief of Dr. J. N. Misra, for the appellant.

The Assistant Government Advocate (Mr. H. K. Ghose), for the Crown.

NANAVUTTY, J.:—This is an appeal against the judgment of the learned Assistant Sessions Judge of Unao convicting the appellant Gauri Mali of offences under sections 209, 467 and 471 of the Indian Penal Code and sentencing him of an offence under section 209 of the Indian Penal Code to one year's rigorous imprisonment and convicting him of an offence under section 467 of the Indian Penal Code read with section 471 of the Indian Penal Code and sentencing him to undergo five years' rigorous imprisonment and to pay a fine of Rs.200. I have heard the learned counsel for the appellant as also the learned Assistant Government Advocate and perused the evidence on the record.

The facts out of which this appeal arises are briefly as follows:

The appellant Gauri Mali and one Gauri Bania entered into partnership for selling and buying grain, and each contributed a sum of Rs.500 at the time when they started this partnership business. Subsequently a dispute arose between the two partners as to their respective shares of profits, and Gauri Mali filed a criminal complaint against Gauri Bania alleging that a sum of Rs.125 had been given by him in addition to the sum of Rs.500 and that the accused Gauri Bania would not return that amount and had in the bargain beaten the complainant also. While this complaint was pending in the Criminal Court, Gauri Bania convened a *panchayat* to get the dispute between him and Gauri Mali settled. The *panchayat* decided that neither party owed the other any money. Gauri Mali was directed to repair the cart of Gauri Bania and to withdraw his complaint in the Criminal Court. Gauri Mali further alleged that the panches decided that Rs.125 with interest should be returned to him by Gauri Bania. One Hanoman Prasad

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patwari wrote out two deeds of agreement (*rukkas*) on behalf of Gauri Bania and Gauri Mali. The *rukka* given to Gauri Mali contained a clause that Gauri Bania would pay him (Gauri Mali) Rs.222-1-6 in pursuance of the decision of the *panchayat*. The criminal complaint was withdrawn by Gauri Mali.

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Subsequently a suit was filed on the basis of his *rukka* by Gauri Mali against Gauri Bania in the Court of the Additional Subordinate Judge of Unao. The defence was that the *rukka* in suit (exhibit 1) was executed by the defendant and bore his thumb-mark, but that the clause regarding payment of Rs.222-1-6 was fictitiously entered in the *rukka* in suit. Thereupon the plaintiff Gauri Mali agreed to leave the decision of his whole suit to the solemn oath of Gauri Bania if the latter went into the temple of Sidh Nath in Unao and there swore that he owed nothing to the plaintiff. This proposal was accepted by Gauri Bania and he accordingly went to the temple of Sidh Nath and took the required oath and the suit of Gauri Mali was accordingly dismissed with costs. Thereafter Gauri Bania moved the Court of the Additional Subordinate Judge of Unao under section 476 of the Code of Criminal Procedure to file a complaint against Gauri Mali, Hanoman Prasad patwari, scribe of the *rukka*, Chandika Prasad and Ram Sanahi, the attesting witnesses to the *rukka*, in respect of offences punishable under sections 209, 467 and 471 of the Indian Penal Code, and the learned Additional Subordinate Judge granted the application of Gauri Bania and filed complaints against all four persons, in respect of the offences alleged to have been committed by these persons. Only Hanoman Prasad patwari appealed to the District Judge to have the order directing the filing of complaint against him under sections 467 and 209 of the Indian Penal Code be set aside and the learned District Judge of Unao by his order, dated the 22nd of December, 1934, accepted the appeal and directed the withdrawal of the complaint filed against

the patwari Hanoman Prasad. Subsequently a Magistrate of the first class enquired into the complaint made by the learned Additional Subordinate Judge of Unao in respect of the offences committed by Gauri Mali and Chandika Prasad and Ram Sanahi, the attesting witnesses to the alleged forged *rukka* in favour of Gauri Mali. The Magistrate after enquiry discharged Ram Sanahi and Chandika Prasad as he held that there was not sufficient evidence to prove their guilt, but he committed Gauri Mali to the Court of Session to stand his trial for offences under sections 209, 467 and 471 of the Indian Penal Code and the learned Assistant Sessions Judge has convicted Gauri Mali of the offences charged against him and sentenced him to the punishments referred to above.

On behalf of the prosecution have been examined in the Court of Session P. W. 1 Gauri Shankar Bania, P. W. 2 Sidhanu Bania, P. W. 3 Kanarsi Din Brahman, P. W. 4 Debi Ratan Brahman, P. W. 5 Chandika Prasad and P. W. 6 Hanoman Prasad. I have gone through the evidence of these 6 witnesses upon whose evidence the learned Assistant Sessions Judge has based the conviction of the appellant, and I find that the evidence of these witnesses does not support the conviction of the appellant for the offences charged against him. P. W. 1 Gauri Shankar Bania is naturally a partisan witness. His evidence only amounts to a belief on his part that the words to the effect that Rs.222-1-6 were agreed to be paid by him to Gauri Mali were fraudulently inserted in the *rukka* (exhibit 1). His mere statement to that effect in his own interest cannot carry conviction to one's mind; and moreover he had already taken a solemn oath to that effect and naturally he must give evidence in conformity with that oath. It seems to me that this alleged forged document (exhibit 1) is entirely written in one handwriting so far as the body of the document is concerned. No expert has been examined to prove that any forgery has been committed in respect of this document (exhibit 1). The mere fact that exhibit 2

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does not contain any such clause as is to be found in exhibit 1 will not by itself go to prove that forgery was committed in respect of exhibit 1.

P. W. 2 Sidhanu Bania is a relation of P. W. 1 and is therefore a partisan of Gauri Bania. He has deposed that he had written in Kaithi on this exhibit 1, but on examination of this exhibit 1, I can find nothing on it in Kaithi, and his evidence does not in any way prove the commission of the offences alleged to have been committed by the appellant. P. W. 3 Kanarsi Din is the reader of the Court of the Additional Subordinate Judge of Unao and merely gives formal evidence. P. W. 4 Debi Ratan was the Panch before whom the settlement between Gauri Bania and Gauri Mali had been arrived at. He has deposed that both exhibits 1 and 2 were scribed by Hanoman Prasad patwari. Neither exhibit 1 nor exhibit 2 shows that this witness Debi Ratan had anything to do with these documents. He has not scribed the deeds nor has he attested them. He has not deposed that there was no agreement between the parties as to the payment of Rs.222 odd by Gauri Bania to Gauri Mali. His evidence therefore is equally valueless to prove the offences of which the appellant has been convicted. P. W. 5 Chandika Prasad has deposed that exhibit 1 bears his signature in English and that Gauri Shankar Bania had not put his thumb-impression on it in his presence. He is a barber by caste. He does not know Urdu at all and obviously he has been frightened by his prosecution in respect of criminal offences alleged to have been committed by him and has given evidence partially in favour of the prosecution; and even so his evidence does not prove the commission of any offence by the appellant. P. W. 6 is Hanoman Prasad patwari. He is the only witness who has deposed that the clause in exhibit 1 to the effect that Gauri Bania agreed to pay Rs.222-1-6 to Gauri Mali was not written by him and had not been inserted at the time when he wrote exhibit 1. I am not prepared to believe his testimony in view

of the fact that the writing on exhibit I appears to be entirely in his handwriting. He was prosecuted for abetment of forgery, but he got off on appeal and naturally he was prepared to give evidence which would save his own skin even though it may implicate somebody else. His evidence is virtually that of an accomplice in the crime; and if it is to be believed, it required strong corroboration in material particulars. I therefore reject the evidence of P. W. 6 Hanoman Prasad as utterly worthless. The whole case has been looked at by the learned Assistant Sessions Judge from a wrong point of view. There has been, in fact, no enquiry either in the Criminal Court or in the Court of the learned Additional Subordinate Judge, who filed the complaint in respect of offences under sections 209, 467 and 471 of the Indian Penal Code, that any such offences were in fact committed by the accused. In the Civil Court the matter was not enquired into because the plaintiff agreed to abide by the solemn oath of the defendant, and so there remained no necessity to enquire into the genuineness of the *rukka* (exhibit 1). In fact the learned Additional Subordinate Judge ought never to have filed the complaint in respect of these offences when the matter had not been thoroughly sifted by him in the course of a regular judicial enquiry. He did not even get the suspected forged document examined by any expert in handwriting. In my opinion, upon the evidence on the record, the appellant is clearly entitled to an acquittal.

For the reasons given above I allow this appeal, set aside the convictions and sentences passed upon the appellant, acquit him of the offences charged and order his immediate release.

*Appeal allowed.*

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