

JURY REFERENCE.

Before Ross and Kulwant Sahay, J.J.

EMPEROR

v

GOBLIND SINGH.*

1926.

March, 2.

Penal Code, 1860 (Act XLV of 1860), sections 467 and 471—antedating a document, whether amounts to forgery—Code of Criminal Procedure, 1898 (Act V of 1898), section 307, reference under—interference by the High Court.

The antedating of a document is not forgery, unless it has or could have operated to the prejudice of anyone.

Reg v. Kilson(¹) and *Salway v. Wale*(²), referred to

Where, therefore, a certain handnote, dated 20th Chait, 1329, P. S., bore the genuine thumb impression of the executant, but it was found in fact to have been executed subsequently, and there was absence of evidence that the antedating by the creditor was done with the object of making any wrongful gain to himself or causing wrongful loss to the executant, *held*, that the necessary element of fraud or dishonesty was wanting in the case and that therefore the offence of forgery was not committed.

Held, further, that the High Court will not interfere in a reference under section 307, Code of Criminal Procedure, with the verdict of the jury unless it considers that the verdict cannot be supported by the evidence on the record.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

Hasan Imam, with him *R. N. Prasad*, for the accused person.

KULWANT SAHAY, J.—This is a reference made by the Sessions Judge of Patna under section 307 of the

*Jury Reference no. 2 of 1926. Reference made by J. A. Sweeney, Esq., I.C.S., Sessions Judge of Patna, by his letter no. 157/XI-1, dated the 20th of January, 1926.

(1) (1869) 1 C. C. R. 200; 39 M. J. M. C. 10.

(2) (1519-1621) Moo. K. B. 655; 72 E. R. 819.

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Code of Criminal Procedure on a disagreement with the verdict of the majority of the jury finding the accused not guilty.

The charge against the accused was of using a forged document in a civil litigation under section 471 read with section 467 of the Indian Penal Code. The document alleged to have been forged was a hand-note executed by one Umrao Singh in favour of the accused Gobind Singh for a sum of Rs. 500 bearing date the 20th of Chait, 1329, which corresponds with the 2nd of April, 1922. Gobind Singh instituted a suit on the basis of this hand-note in the court of the Munsif at Barh on the 17th of May, 1924, and the hand-note was filed along with the plaint. The defendant Umrao Singh filed a written statement wherein he denied his liability under the hand-note, and denied the execution thereof. It appears that upon an application of the defendant, Umrao Singh, the hand-note was sent to the stamp office at Calcutta for information as to whether the paper upon which the hand-note was executed had been issued on or before the 2nd of April, 1922. The stamp office gave a reply saying that the paper upon which the hand-note was written had not been issued on that date. The plaintiff, however, appears to have taken no steps in the suit, and the suit was dismissed for default on the 11th of May, 1925. The learned Munsif, on the same day, made a complaint against the plaintiff, Gobind Singh, under section 476 of the Code of Criminal Procedure. After the dismissal of the suit, Gobind Singh filed a petition for restoration of the suit on the allegation that there had been a compromise between him and Umrao Singh; and, in accordance with that compromise, Umrao Singh had executed a fresh hand-note for a sum of Rs. 696-8-0, and the agreement between the parties was that none of them would take any steps in the suit and allow it to be dismissed for default. Gobind Singh produced this second hand-note alleged to have been executed by

Umrao Singh. An expert was examined and his evidence was that the thumb impression upon the second hand-note as well as that upon the original hand-note of the 20th Chait, 1329, were both the thumb impressions of Umrao Singh. The learned Munsif, however, dismissed the application for restoration, and Gobind Singh was prosecuted for an offence under section 471 read with section 467 of the Indian Penal Code.

At the trial the only evidence given was that of the head-assistant of the stamp office, who proved that the paper upon which the hand-note had been written had not been issued in April, 1922; of the pleader, Babu Kandji Sahai, who filed the plaint and application for restoration of the suit on behalf of Gobind Singh; and of Gouri Dayal, a clerk of the pleader Kandji Sahai, who proved that he had written the plaint. The prosecution story is that the hand-note bears the genuine thumb-mark of Umrao Singh but that the paper was a blank paper upon which Umrao Singh had put his thumb impression and had made it over to Kashi Singh in order to obtain from him settlement of certain diara lands. Kashi Singh is the karpardaz of Gobind Singh; and Gobind Singh's case is that the loan was advanced to Umrao on the intervention of Kashi Singh and that the money was actually advanced on the 20th of Chait, 1329, but that the hand-note was executed on a subsequent date as Umrao Singh failed to repay the loan of Rs. 500 which had been advanced to him; and that although the hand-note was executed on a subsequent date, yet the date of the original loan was entered therein so that he might not lose the interest on his money.

Now there is absolutely no evidence to show that a blank paper bearing the thumb impression of Umrao Singh had been made over by him to Kashi Singh. There is evidence in the case to show that the hand-note in question bears the genuine thumb impression of

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Umrao Singh. The presumption must therefore be that the hand-note was a hand-note executed by Umrao Singh. The only thing that is certain upon the evidence is that the document had been antedated; but this antedating of the document would not necessarily make it a false document. There is a total want of evidence in the present case to show that the antedating was done by Gobind Singh with the object of making any wrongful gain to himself or causing wrongful loss to Umrao Singh. The element of dishonesty is wanting in the present case. Moreover the fact of the second hand-note having been given by Umrao Singh goes to show that the previous hand-note had been executed by him. In any event, upon the evidence as it stands, it cannot be said that the view taken by the majority of the jury was a view which was incompatible with the evidence in the case; and it is clear that this court will not interfere in a reference under section 307 of the Code of Criminal Procedure against the verdict of the jury, unless, this court is of opinion that the verdict of the jury could not be supported by the evidence on the record. In the present case the evidence is, as I have said, such that the view taken by the jury cannot be said to be an unreasonable view of the case.

In these circumstances, I am unable to accept the reference, which must be discharged; the verdict of the jury will be accepted, and the accused must be acquitted and released.

Ross, J.—I agree that this reference should be discharged. It is admitted that the document bears the thumb impression of Umrao Singh, the debtor, and, therefore, in the absence of evidence to explain this fact, the hand-note must be taken to have been executed by him. It bears date the 20th of Chait, 1329, that is, the 2nd of April, 1922. It is proved that the paper on which it was written was not in existence then; and it follows that the creditor antedated this hand-note. The question is, whether this

is forgery. In my opinion, it is not. The conditions under which the antedating of a document by its executant will be forgery are discussed in *Reg v. Ritson*⁽¹⁾. There the Judges referred to the definition of forgery in Bacon's Abridgment where it was said

"The notion of forgery doth not so much consist in the counterfeiting of a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity; and either to impose that upon the world as the solemn act of another, which he is in no way privy to, or, at least, to make a man's own act appear to be done at a time when it was not done, and by force of such a falsity to give it an operation which in truth and in justice it ought not to have."

That was a case where a conveyance executed subsequently to an equitable mortgage and an assignment of the same property was made to bear a date anterior to these transactions in order to give it priority over them. This was held to be forgery on the ground that by this antedating of the document a false operation was given to it. Blackburn, J., in his judgment said, "In this case the false statement is in the date which, in ordinary cases, would not be material; but here, by extrinsic evidence, the false date was shown to be very material, and the forged deed would have passed the estate to another person than the prosecutor if the deed had been executed on the day it bears date". Their Lordships relied upon an old decision, *Salway v. Wale* ⁽²⁾, which was a similar case; but in that decision it was added that antedating is not forgery if there is not a mesne interest in any third person who is prejudiced thereby. In the present case there is nothing to show that the antedating of this document had, or could have had, any operation to the prejudice of any one. The necessary element of fraud or dishonesty is therefore wanting.

I therefore think that the decision of the jury was correct and that the prisoner must be acquitted and released.

Reference discharged.

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