
(1970) 03 SC CK 0061

In the Supreme Court Of India

Case No : Criminal Appeal No. 15(N) Of 1968

Rama Shankar Lal and Others

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 26-03-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B(1), 420, 468, 471

Citation : (1971) 3 SCC 905 : (1972) SCC(Cri) 153

Hon'ble Judges : M. Hidayatullah, C.J;I. D. Dua, J;A. N. Ray, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

I.D. DUA, J.-This is an appeal by three appellants with special leave from the judgment of the Allahabad High Court dated September 5, 1967. Originally five persons Rama Shanker Lal, Sukh Bhanjan Lal, Smt Krishna Devi, Harkho and Radha Krishna were jointly tried in the Court of the Second Assistant Sessions Judge, Azamgarh. Rama Shanker Lal and Sukh Bhanjan Lal were charged under Sections 120-B(1), 420, 468 and 471 IPC; Smt Krishna Devi under Sections 420 and 471 read with Section 120-B(1) IPC and Harkho and Hadha Krishna under Sections 468 and 120-B(1) IPC. The broad allegations giving rise to this case may be stated.

2. Civil litigation had been going on for a long time between Brij Lal Mathur, father of Vishnu Pad Mathur (PW 1) and his distant collateral Bhimal Lal Mathur, father of Rama Shankar Lal and Sukh Bhanjan Lal relating to a grove and some agricultural land. On the death of Brij Lal Mathur in the year 1959 his son Vishnu Pad Mathur, who is stated to be a law graduate, desired to patch up the differences with his collateral and settle the dispute out of court. According to the prosecution version a Panchayat was called and it was settled that Vishnu Pad Mathur should transfer ten biswas of land to Smt Krishna Devi, wife of Rama Shankar Lal in consideration of which Bhimal Lal Mathur would withdraw his appeal in the Court of the District Judge, giving up his claim in respect of Plot No.

211. But on behalf of the appellant in this Court this settlement is disputed. The fact, however, remains that a sale deed was admittedly executed transferring some land in favour of Krishna Devi, wife of Rama Shankar Lal. The area purported to have been sold is the question round which the controversy centres and it is this question which is of vital importance in the present case. The said sale deed was scribed by Ramdhari, PW 7 on November 21, 1959. In this document, according to the prosecution, a plot measuring 10 biswas was first entered as the subject-matter of the sale but on Sukh Bhanjan Lal's refusal to take that plot and his demand for a different plot having the same area, the number of the previous plot in the deed was encircled and a note appended that the said plot was to be excluded from the sale deed. Two other plots bearing Nos. 288 and 303/1 measuring 252 links and 28 links respectively constituting a total area of 10 biswas were entered in the sale deed as the property which was being transferred by Vishnu Pad Mathur in favour of the vendee. Sukh Bhanjan Lal Mathur and Rama Shankar Lal purported to act for Smt Krishna Devi, vendee, and the above insertion was made in the sale deed both with their consent and with that of Vishnu Pad Mathur. Pursuant to this settlement on December 21, 1959, Bhimal Lal filed the compromise deed in the civil appeal and on the same date Vishnu Pad Mathur presented the sale deed before the Sub-Registrar, Sagari, for registration. Radha Krishna, accused, was the Sub-Registrar at that time and Harkhu was employed as peon in that office. In June, 1960, when one of the plots belonging to Vishnu Pad Mathur was being ploughed on behalf of the vendee, he made enquiries and learnt that this plot had also been got mutated in the name of Smt Krishna Devi pursuant to the above sale deed. On securing a copy of the sale deed he found that the copy purported to convey more area to Smt Krishna Devi by sale than was entered in the sale deed. This was done by omitting the circle round the number encircled portion of the plot objected to by Sukh Bhanjan Lal and by deleting the note which excluded that number from the property which was transferred thereby. Applications were, therefore, made by Vishnu Pad Mathur to the District Magistrate, the Superintendent of Police, Azamgarh and to the Inspector General of Registration complaining about the collusion between the vendee and the registration staff of Sagari to tamper with the sale deed.

3. This broadly stated is the prosecution case. The learned Assistant Sessions Judge, on a consideration of the evidence, came to the conclusion that there was no proof of forgery of the original sale deed which, it may be pointed out, was not produced in the case. On this finding all the accused were acquitted.

4. On appeal the High Court took a different view and holding the contents of the certified copy of the sale deed to be different from what was decided to be sold and what according to that court was actually incorporated in the sale deed, the acquittal of Radha Krishna, Rama Shankar Lal and Sukh Bhanjan Lal was set aside. Radha Krishna was convicted of an offence under Section 468 and Section 120-B(1) IPC and sentenced to three years¹ rigorous imprisonment on each count. Rama Shankar and Sukh Bhanjan Lal were convicted for offences under

Sections 468, 471 and 120-B(1) IPC and sentenced to three years¹ rigorous imprisonment under Section 120-B(1) and Section 468 IPC and to two years¹ rigorous imprisonment under Section 471 IPC. The sentences were, however, to run concurrently. The acquittal of all of them under Section 420 IPC and of Harkho and Smt Krishna Devi on all the charges was upheld.

5. In this Court the learned Advocate for the appellants submitted that on the record there is no evidence of the forgery of the original sale deed, the charge on which the appellants were tried. Their conviction under Section 468 IPC is, therefore, unsustainable. The charge under Section 471, according to the submission, would also fail if the original sale deed is held not to have been forged.

6. We are inclined to agree with the counsel that proof of forgery of the original sale deed beyond doubt is not forthcoming on the present record.

7. The document said to have been forged as already pointed out has not been produced in the case. According to the prosecution that document was taken back by Rama Shankar Lal; whereas according to the accused it was Vishnu Pad Mathur (PW 1) who had received back the original document from the office of the Sub-Registrar. Both sides desired this Court to draw an adverse inference against the opposite party for the non-production of the original sale deed. On the state of evidence on this point we are disinclined to express any definite opinion on the question as to who had received back the sale deed from the office of the Sub-Registrar though it seems likely that Rama Shankar Lal had taken back the sale deed because the sale deed constituted proof of the title of the vendee. In the circumstances we refrain from raising any presumption from the non-production of the sale deed. However, the fact remains that we have not had the benefit of looking at the document alleged to have been forged, a circumstance which is material and which must to a large extent go against the prosecution. We do not mean to say that in the absence of the document alleged to be forged the court can in no case hold the offence of forgery to be established, but to claim such a finding in the absence of the document said to be forged, the evidence must in our view exclude all possibility of a reasonable doubt. This is in accord with the general principle of our jurisprudence.

8. In the present case if the staff of the Sub-Registrar's office was, as is the prosecution case, in collusion with the vendee and her relations, then even without forging the original sale deed, which seems to have been done away with the desired object of the vendee to claim the sale of a larger area under the sale deed, could equally well be achieved by simply changing the contents of the certified copy alone. In other words, the possibility of mere wrong attestation of the copy as true - which was not a true copy of the original sale deed - is not ruled out.

9. Shri O.P. Rana, the counsel for the respondent, State of U.P. submitted that the copy was made from the entry in Book No. 1 maintained in the Registration

Office under Section 51 of the Indian Registration Act. According to the submission the copyist must be assumed to have correctly copied from the book and it must further be assumed that in the book also it was correctly copied from the original sale deed and from this we are asked to assume that the original sale deed must have been forged. We do not find any justification on the present record for this chain of assumptions. The missing links cannot be filled by such presumptions in a criminal case like the present. The charge of forgery of the original sale deed must, therefore, be held not to have been proved beyond the possibility of a reasonable doubt. The appellants have, therefore, to be acquitted of this charge.

10. In regard to the charge under Section 471 IPC, we find that Rama Shankar Lal and Sukh Bhanjan Lal must be held to have used the certified copy in the mutation proceedings knowing the same not to be a true copy of the sale deed as executed and presented to the office of the Sub-Registrar for registration. Whether it was a true copy of the contents of the entry in Book No. 1 or it was not in accord even with that entry would be immaterial because these two appellants can without any doubt be fixed with the knowledge of the contents of the original sale deed in which only 10 biswas of land was sold by Vishnu Pad Mathur to Smt Krishna Devi. The question, however, is if the attested copy can be held to be a forged document. Forgery has been defined in Section 463 IPC. It says:

"Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

According to Section 464 IPC a person is said to make a false document-

"first-who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

secondly-who, without, lawful authority dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

thirdly-who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration".

11. The certified copy in the case in hand seems clearly to be a false document. The forgery of a copy, in our view, falls within the terms of Section 463 IPC. Section 463 of Act 25 of 1861 which is identical with Section 463 IPC came up for consideration before a Bench of three Judges of the Calcutta High Court in 1863 in *Essan Chunder Dutt v. Baboo Prannauth Chowdry*¹. Sir Barnes Peacock, C.J., speaking for the Court, after reproducing Section 463 of Act 25 of 1861 said:

"We regard the forgery of a copy clearly to come within the purview of the section just cited. Forgery of a copy which was no true copy, would be the offence there rendered penal; and the criminal intention to make a false document serve the purpose of a true one, would be clear by such act of forgery."

12. The certified copy in the case before us being a forged document it must be held that it was used by Rama Shankar Lal and Sukh Bhanjan Lal, appellants, as genuine which they knew to be forged and this was done both fraudulently and dishonestly. On behalf of the appellants the challenge to their conviction in this Court was confined to the attempt to show that the certified copy is a true copy of the original sale deed. In other words, it was sought to be established that the original sale deed conveyed four plots of land measuring 22 biswas and not two plots measuring only 10 biswas as alleged by the prosecution. On this point the High Court disagreed with the trial court and, in our opinion, rightly. No legal infirmity had been pointed out in the reasoning and the conclusion of the High Court on this point. In any event, whether the original sale deed was first forged and then a copy made of the forged document or the copy was a false document, makes little difference. The appellants in this case knew that the document they used did not represent the original sale deed. In other words it was either forged or a forged copy was prepared. In either event they were using as genuine a forged document knowing it to be forged. The conviction of Rama Shankar Lal and Sukhbhanjan Lal under Section 471 IPC must, therefore, be upheld. The sentence of rigorous imprisonment for two years on this count on the facts of this case however seems to us to be excessive. We are informed that the excess area sought to have been taken as sold by the production of the forged copy of the sale deed has been delivered back to the vendor. In view of this fact and in view of the fact that the present criminal proceedings have been going on since 1962, we feel that the sentence of one year's rigorous imprisonment would meet the ends of justice. In the final result the appeal of all the appellants in regard to the charges under Section 120-B(1) and Section 468 IPC is allowed. The appeal of Rama Shankar Lal and Sukhbhanjan Lal against their conviction under Section 471 IPC is dismissed; but their sentence is reduced to rigorous imprisonment for one year. If they are on bail they must surrender to their bail bonds to serve out the remaining sentence.