1963

February, 8.

SEKENDAR SHEIKH AND ANOTHER

v.

STATE OF WEST BENGAL

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Criminal Law—Forgery—Presenting document for registration under assumed names—Former offence tried with jury—Trial Judge taking one view of evidence and jury another—If sufficient ground for rejecting verdict—Test—Evidence leading to acquittal of one offence, if could be used for convicting of another—Indian Penal Code, 1860 (Act 45 of 1860). ss. 467, 109—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 307—Indian Registration Act, 1908 (XVI of 1908) s. 82 (c).

The first appellant was tried for the offence of forging a valuable security punishable under s. 467 of the Indian Penal Code and for the offence of falsely personating another and presenting a document for registration punishable under s. 82 (c) of the Indian Registration Act, 1908. The second appellant was charged with abetment of these offences. The offence under the Indian Penal Code was tried with a jury and the offence under the Indian Registration Act was tried without a jury. The jury by a majority of 4 to 3 returned a verdict of guilty. The trial judge rejected the verdict on the ground that there was "absolutely no reliable evidence" and referred the case to the High Court under s. 307 Criminal Procedure Code. The trial Judge also acquitted the accused of the offence under the Registration Act. No appeal was preferred against the order of acquittal. The High Court came to the conclusion that there was sufficient evidence to establish against the appellants the offence under the Penal Code.

It was contended on behalf of the appellants that the trial court having acquitted the appellants of the offence under the Indian Registration Act and no appeal having been preferred against the order, it was not competent to the High Court to rely upon the evidence tendered to prove the offence under s. 82 of the Registration Act for the purpose of convicting the appellants of the offence under the Indian Penal Code.

Held, that an item of evidence may corroborate charges for more offences than one, and acquittal of the accused for one

such offence will not render that item of evidence inadmissible in assessing the criminality of the accused for another offence corroborated thereby.

Held, if the jury takes one view of the evidence and the Judge is of the opinion that they should have taken another view, the view taken by the jury must prevail unless the evidence is such that no reasonable body of men could have reached the conclusion arrived at by the jury. In such a case reference under s. 307 of the Code of Criminal Procedure is not justified.

Ramanugrah Singh v. *King Emperor*, (1946) L. R. 73 I. A. 174, *Malak Khan* v. *King Emperor*, (1945) L. R. 72 I. A. 305.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 110 of 1961.

Appeal from the judgment and order dated January 25, 1961, of the Calcutta High Court in Reference No. 10 of 1960.

D. N. Mukherjee, for the appellants.

K. B. Bagchi, S. N. Mukherjee for *P. K. Bose*, for the respondent.

1963. February 8. The Judgment of the Court was delivered by

Shah, J.

SHAH, J.—The first appellant—Sekander Sheikh—was charged in a trial held before the Additional Sessions Judge, Murshidabad, in the State of West Bengal, for the offences of forging a valuable security punishable under s. 467 I. P. Code and of falsely personating another in such assumed character and presenting a document for registration punishable under s. 82 (c) of Indian Registration Act. The second appellant—Hasibuddin Sheikh—was charged with abetment of these offences. The trial for the offences of forging a valuable security

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and abetment thereof was held by the Sessions Judge sitting with a jury and for the offences under the Registration Act without a Jury. The jury brought in a verdict of guilty by a majority of 4 to 3 against the appellants for the offences of forging a valuable security and abetment thereof, but the Judge did not accept the verdict and made a reference under s. 307 of the Code of Criminal Procedure to the High Court of Calcutta, because in his view there was 'absolutely no reliable evidence' against the two appellants in respect of the offence of forging a valuable security and that it was in the interests of justice to refer the case to the High Court. The Sessions Judge acquitted the two appellants of offences under the Indian Registration Act. The High Court declined to accept the reference and convicted the two appellants respectively of the offences punishable under s. 467 and s. 467 read with s. 109 of the Indian Penal Code, and sentenced each appellant to suffer rigorous imprisonment for two years. With certificate of fitness granted by the High Court under Art. 134 (1) (c) the appellants have appealed to this Court.

The charges against the first appellant were—

(i) that on or about January 15, 1958, he had in the town of Berhampore forged a *Hebanama* in respect of certain property in favour of one Ali Hossain purporting to execute the same in the name of one Kaimuddin of Debkundu and that the execution of the document was made with intent to cause the said Kaimuddin to part with his property and to commit fraud; and

(ii) that on the same day he had falsely personated Kaimuddin Sheikh and in that assumed character had presented for

registration the *Heba-nama* in the Berhampore sub-registry and had affixed his thumb impressions claiming to be Kaimuddin Sheikh.

The second appellant was charged with abetting the first appellant in the commission of the two offences by identifying the first appellant as Kaimuddin Sheikh. At the trial the prosecution examined one Swarana Kumar Dey who testified that he had engrossed the *Heba-nama* in favour of Ali Hossain which was executed by the first appellant purporting to do so as Kaimuddin Sheikh, that the first appellant had impressed his thumb mark on the document before him in token of execution of the *Heba-nama* that the first appellant had represented himself to be Kaimuddin Sheikh, and that the executant of the document was identified before him as Kaimuddin Sheikh by the second appellant Hasibuddin Sheikh. Kaimuddin Sheikh testified that he had not executed any *Heba-nama* in favour of Ali Hossain and that he had not impressed his thumb-mark on any document in the presence of Swarana Kumar Dey. A certified copy of the *Heba-nama* was shown to the witness and he denied having executed and presented the original thereof before the Sub-Registrar. Evidence was also tendered that the thumb impressions of the two appellants were taken by the investigating officer in the presence of a Magistrate and those specimen thumb impressions were compared with the thumb impressions in the register at the sub-registry at Berhampore by a hand-writing expert and that the thumb impressions of the first appellant tallied with the thumb impressions in the said register and not with the thumb impressions of Kaimuddin Sheikh. In the view of the High Court, this evidence was sufficient to establish against the two appellants the offences of forging a valuable security and abetment thereof.

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It is now well settled that in a reference under s. 307 of the Code of Criminal Procedure if the evidence is such that it can properly support a verdict of guilty or not guilty, according to the view taken of the evidence by the trial Court, and if the jury take one view of the evidence and the Judge is of the opinion that they should have taken the other, the view of the jury must prevail, for they are the judges of fact. In such a case a reference under s. 307 of the Code of Criminal Procedure is not justified. But if the High Court holds that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, the reference will be justified and the verdict of the jury will be disregarded : *Ramanugrah Singh* v. *King Emperor* (1). It appears that the Court of Session was not impressed by the testimony of Swarana Kumar Dey but it was for the jury to assess the value of the evidence. The jury had apparently accepted the evidence of Swarana Kumar Dey and of Kaimuddin Sheikh, and it could not be said that no reasonable body of men could have accepted that evidence.

At the trial, evidence about the specimen thumb impressions of the appellants taken during the course of the investigation were relied upon in support of the prosecution case. This court has held that there is no infringement of Art. 20(3) of the Constitution merely by tendering evidence of this character, in support of the case for the prosecution against a person accused of an offence: *The State of Bombay* v. *Kathi Kalu Oghad* (2). The Court in that case set out certain propositions of which the following are material—

> "(ii) the words 'to be a witness' in Art. 20(3) do not include the giving of thumb impression or impression of Palm, foot or fingers or specimen writing or exposing a part of the body by an accused person for identification;

(1) (1946) L.R. 73 I.A. 174. (2) [1962] 3 S C.R. 10.

(iii) 'self-incrimination' means conveying information based upon the personal knowledge of the giver and does not include the mere mechanical process of producing documents in court which do not contain any statement of the accused based on his personal knowledge;

(iv) in order to come within the prohibition of Art. 20(3) the testimony must be of such a character that by itself it should have the tendency to incriminate the accused;"

In view of this decision, counsel for the appellants fairly conceded that he could not challenge the admissibility of evidence relating to the taking of thumb impressions of the first appellant and its use for comparison with the thumb impressions in the sub-registry at Berhampore, made at the time of presentation of the document for registration

It was urged, however, that when the Trial Judge acquitted the two appellants of the offences punishable under s. 82 (c) and 82 (d) of the Indian Registration Act—the offence of false personation and in such assumed character presenting a document, and abetment thereof—and that so long as the order of acquittal was not set aside in an appeal duly presented, the High Court in a reference under s. 307 of the Code of Criminal Procedure was incompetent, relying upon the evidence which was not regarded as reliable in respect of the offences under the Registration Act, to convict the appellants of the offences of forging a valuable security and abetment thereof. It was submitted that as the offences under s. 467 I.P. Code and s. 82 (c) Indian Registration Act formed part of the same transaction and the case for the prosecution for the former offence was substantially founded on the same evidence which was not accepted by the trial Court when acquitting the appellants of the

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latter offence, the High Court could not act upon that evidence to record an order of conviction on the charge for the offence of forging a valuable security. We are unable to accept this argument. Forging a valuable security and presentation of that valuable security for registration are two distinct offences. In support of the case that the appellants were guilty of forging a valuable security the material evidence is that relating to the making dishonestly or fraudulently of a false document of the nature of a valuable security. That evidence consisted of the instructions given at the time of writing of the document, the character of the document, its execution, and the intention of the accused in fabricating the document. The offence of false personation for presenting any document consisted in the presentation of a document before the registering authority by a person claiming to be some one else. An item of evidence may corroborate charges for more offences than one : but acquittal of the accused for one such offences will not render that item of evidence inadmissible in assessing the criminality of the accused for another offence corroborated thereby. The question in such a case is not one of admissibility but of weight to be given to that evidence. The decision of the Judicial Committee of the Privy Council in *Malak Khan* v. *King Emperor* (1), negatives the submission of the appellants. In *Malak Khan's case* the accused was charged before the Court of Session for offences of murder and robbery. He was acquitted by the Trial Judge of the offence of robbery and convicted of the offence of murder. The High Court in appeal against the order of conviction relied upon the evidence which was material to both the charges of robbery and murder, as corroborative of the guilt of the accused for the offence of murder. It was held by the Judicial Committee that the High Court could properly accept the evidence as corroborative of the guilt of the accused for the offence of murder, even though that evidence was not accepted by the trial

(1) (1945) L.R. 72 I.A. 305.

Court on the charge of robbery. In considering the argument that the evidence could not be relied upon in support of the charge of murder, the Judicial Committee observed :

> "The Sessions Judge, it was said, had acquitted the appellant of robbery; he was, therefore, not guilty of that offence; no appeal had been taken against that acquittal and therefore no Court was entitled to take into consideration the allegation upon which the accusation of robbery was founded even as corroborative "evidence" in another case. Their Lordships cannot accept this contention. The learned Sessions Judge did not in fact find the accusation baseless ; he only found the crime not proven. But even if he had disbelieved the whole story of the recovery of the stolen property from the appellant, his finding would not prevent the High Court from weighing its value and if they accepted its substantial truth from taking it into consideration in determining whether another crime had been committed or no."

The High Court was therefore not debarred from founding the order of conviction for the offences under s. 467 I.P. Code and abetment thereof, of the appellants upon evidence, which corroborated the story of the prosecution in support of those charges merely because that evidence was not accepted by the Sessions Court in considering the charge against them of false personation for procuring registration of the *Heba-nama*.

The appeal therefore fails and is dismissed.

Appeal dismissed.