

## APPELLATE CRIMINAL

Before HEARNE, C.J., and RUDD, J.

MAKANJI CHHOTABHAI PATEL, (*Appellant*)

v.

REGINA, (*Respondent*)

Criminal Appeal No. 227 of 1953

Criminal Law—Penal Code—Section 345—Forgery—Section 349—Uttering—Section 353 (1) Signing a document in name of another—Intent to defraud or deceive—Lie reduced to writing not forgery.

The appellant obtained an entry permit for a certain Jivanji Ranchodji Patel to enter the Colony by sending letters to the Immigration Authorities signed "Govindji Vasanji" purporting to be written by and offering employment by a certain Govindji Vasanji. Govindji Vasanji denied writing or signing the letters and the accused was charged on various counts with forgery, uttering a false document, signing a document in the name of another and uttering the same contrary to sections 345, 349, 353 (1) and 353 (2) of the Penal Code. The accused appealed on the ground that the magistrate erred in finding Govindji Vasanji a truthful witness having held him false on one material issue of fact.

*Held* (28-5-53).—(1) On the counts relating to forgery the magistrate had held that the accused did not sign the letters in the name of Govindji Vasanji. The convictions on these counts were quashed for, although the letters contained lies, this did not amount to forgery.

(2) The appellant had clearly uttered the letters, which he knew to be false, for the express purpose of inducing by deceit the Immigration Authorities to admit an immigrant and had so acted both knowingly and fraudulently. These convictions were correct and were upheld.

(3) On the 8th and 9th counts concerning the signing of a document in the name of another and uttering it, the appellant was playing for time rather than trying to induce the Immigration Authorities to commit themselves to a course of action and, for this reason, it was difficult to hold that fraudulence in law had been established. Accordingly these counts were quashed.

(4) On the 10th and 11th counts also concerning the signing of a document in the name of another and uttering it, the letter was admittedly made and signed by the appellant; the magistrate had correctly held that it was made without authority, knowingly uttered by the appellant and that it was intended, by this deceit, to induce the Immigration Authorities to allow the immigrant to continue to work for the appellant, as the appellant had always intended. For those reasons the convictions were upheld.

Cases cited: *Omar bin Saleh v. R.*, (1950) 17 E.A.C.A. 158; *R. v. Bassey*, (1930-1) 22 Cr. App. R. 160.

*O'Brien Kelly* for appellant.

*Bechgaard, Crown Counsel, for Crown.*

JUDGMENT.—The appellant was convicted on the 2nd count of forging, and on the 3rd count of uttering, a letter (exhibit 1), on the 4th count of forging, and on the 5th count of uttering, an application for an entry permit (exhibit 3), on the 6th count of forging, and on the 7th count of uttering, a letter (exhibit 4).

Exhibit 1 is a letter applying for an entry permit for one Jivanji Ranchodji Patel, hereinafter referred to as J. R. Patel, which purports to have been signed by one Govindji Vasanji. "Telling a lie does not become a forgery because it is

reduced into writing." Even if exhibit 1 contained a false statement, it would not be forgery if it was signed by Govindji Vasanji or by the appellant with the authority of Govindji Vasanji. But the appellant would have been guilty of forgery on the 2nd count if, with intent to defraud or deceive, it was proved that he had signed exhibit 1 in the name of Govindji Vasanji without his authority. There is the strongest suspicion that he did sign the letter in the name of Govindji Vasanji, but the magistrate held that there was no evidence that he did, and the conviction on the 2nd count must, therefore, be quashed. The magistrate, however, was satisfied that Govindji Vasanji did not sign the letter, and that it was signed in his name without his authority. It was, therefore a false document. If the appellant uttered it, as the magistrate was clearly entitled on the evidence to hold that he did, he was properly convicted on the 3rd count, assuming that he knowingly and fraudulently uttered it. For reasons similar to the above, we must quash the convictions on the 4th and 6th counts and also hold that the appellant was properly convicted on the 5th and 7th counts, assuming that he knowingly and fraudulently uttered exhibits 3 and 4 respectively.

In regard to the convictions on the 3rd, 5th and 7th counts two arguments are addressed to us.

One was that the fraudulent element in the offences of uttering was not proved. It is abundantly clear, as the magistrate has found, that the appellant "desired to get J. R. Patel, whose wife was the sister of the appellant's wife out to Kenya to work for him" and that as the appellant was a hardware merchant and J. R. Patel was a tailor, the name of Govindji Vasanji, who was also a tailor, was deliberately chosen for the purpose of the application, for it was no doubt thought that by using his name it would have been more likely to succeed. If the appellant, as is clearly the case, uttered exhibits 1, 3 and 4 which were to his knowledge (this was not challenged on appeal) false and for the express purpose of inducing by deceit the Immigration Authorities to follow a certain course of action, namely to admit J. R. Patel to the Colony, he acted both knowingly and fraudulently (*R. v. Bassey*, 22 Cr. App. R. 160); followed by the Court of Appeal for Eastern Africa in *Omar Bin Saleh*, (1950) 17 E.A.C.A. 158.

The other argument was that the magistrate disbelieved Govindji Vasanji when he said he did not know the appellant, that he nevertheless believed him, as he said, because "his evidence is corroborated by the various exhibits in this case" and that in fact the evidence of Govindji Vasanji was not corroborated by the exhibits in the case. The magistrate could, of course, as he did, have believed Govindji Vasanji that he had not authorized the appellant to write exhibits 1, 2 and 3 in his name even if the exhibits themselves did not corroborate his evidence. It is obvious from the events which transpired after J. R. Patel arrived in Kenya that the appellant alone, and not Govindji Vasanji, had a motive for bringing J. R. Patel from India. But exhibit 3 at least lends corroboration to Govindji Vasanji in that if it had been intended by him to arrange for J. R. Patel to work for him at Kisumu, he would not have asked the appellant to give the intended place of residence where the appellant wished to employ him and did in fact employ him and not that of Govindji Vasanji.

The 8th and 9th counts are concerned with exhibit 9. In the letter: exhibit 9, the appellant was playing for time in order to think out a course of action for himself, rather than to induce the Immigration Authorities to commit themselves to a course of action beyond sending a copy of a letter they had already sent. For this reason it would be difficult to hold that fraudulence in law has been established.

It is a different matter, however, in regard to counts 10 and 11 which are concerned with exhibit 11. That letter was admitted "made and signed . . . for another person" by the appellant. The magistrate has properly found that it was without that person's authority and that it was "knowingly uttered" by the appellant. It was designed to perpetuate the pretence that Govindji Vasanji was the original applicant for the admission to Kenya of J. R. Patel and it was intended by this deceit to induce the Immigration Authorities to allow J. R. Patel to continue to work for the appellant as the appellant always intended, whereas the alleged purpose of his admission as stated in exhibit 3 was for his employment by Govindji Vasanji.

For the reasons we have given, we quash the convictions on counts 2, 4, 6, 8 and 9. The convictions on counts 3, 5, 7, 10 and 11 and sentences passed under them are upheld. The result of the appeal, as was the result in the magistrate's court, is that the appellant will serve one year's imprisonment with hard labour.

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