

# ALLAHABAD HIGH COURT

Emperor

Vs

Nawal Behari Lal

(Boys, J.)

26.03.1930

## JUDGMENT

### **Boys, J.**

1. Nawal Behari Lal was put on trial upon charges under Sections 193, 471 and 467/109, I.P.C. The jury convicted him under Section 193, I.P. C, but acquitted him by a majority of three to two on the other two charges. The learned Judge proceeded to accept the finding of guilty as regards Section 193, and to convict and sentence him to five years' rigorous imprisonment and a fine of Rs. 100. Disagreeing with the jury's verdict on the other two charges he has referred the matter to this Court under Section 307. In the first place we must point out an error into which the learned Judge has fallen. When he refers a case by virtue of the powers given by Section 307, Criminal P. C, he must refer the whole of the case against the particular accused, and not merely those charges on which there happens to be a finding with which he disagrees. In this particular case he should have referred the whole of the case against Nawal Behari Lal instead of merely referring the case so far as the charges under Sections 471 and 467/109 are concerned, and he should not have proceeded to a conviction and sentence upon the charge under Section 193, I.P.C. Holding as we do this view we shall have, after dealing with the rest of the case, to set aside the conviction and sentence under Section 193 and pass an appropriate order ourselves. The facts against Nawal Behari Lal are very clear. There are four persons concerned in this case Raghunath Lal and Johri Lal, who are uncle and nephew. One Sham Behari Lal was working in partnership with Raghunath Lal and Johri Lal, and it is the case for the accused, and is also admitted by the Crown, that the accused Nawal Behari Lal was acting in certain matters relating to the sale and purchase of coal as an agent on behalf of the firm. Raghunath Lal appears to have taken little or no part in the conduct of the business. Similarly Johri Lal was also practically a sleeping partner, the main conduct of the business being left to Sham Behari Lal. As Johri Lal was leaving Allahabad to arrange for a wedding and there was litigation in contemplation or proceedings, it was desirable to give Sham Behari Lal full authority to act. As Johri Lal was busy and had not time to see to the writing out of a complete mukhtarnamah, he therefore bought a stamp and signed it at the end on behalf of himself and on behalf of his uncle Raghunath, adding, in order to

guard against the document being improperly used, the words "mukhtarnamah likha so sahi." The stamp was bought on 23rd February 1925, and according to Johri Lal, was handed over to Sham Behari Lal. Later this stamp appears as the document upon which a suit was filed by Nawal Behari Lal against Johri Lal, In that suit a claim was made for commission on certain coal sales, and the document as filed purported to be an agreement by Johri Lal to pay such commission. The document was manifestly a forgery and it is not now and cannot be denied on behalf of Nawal Behari Lal that it is a forgery. In the civil suit Johri Lal asked that the document might be photographed, and the suit was promptly withdrawn. The" criminal proceedings followed.

2. We have heard Mr.K.D. Malaviya on behalf of the accused. It is quite unnecessary to enter into detailed argument about the case or the charges that were framed in the criminal proceedings. We entirely agree with the order referring the case to this Court which we might amplify, but which it is not necessary to amplify, that the verdict of the jury in reference to the charges under Sections 467/109 and 471 was ludicrous, if not actually perverse. We have not the shadow of a doubt that Nawal Behari deliberately got the document fabricated and that he used it knowing of course, that it was fabricated.

3. We set aside the conviction and sentence under Section 193 arrived at and passed by the Sessions Judge, and for it we substitute a conviction by this Court under Section 193, I.P. C, and further convict Nawal Behari Lal under Section 467/109 and Section 471, I.P.C. In the matter of sentence we have been asked to deal leniently. But arriving at the finding at which we have, there is no shadow of an excuse for dealing with him leniently. The fraud was as deliberate and gross as it could be. We sentence Nawal Behari Lal to five (5) years' rigorous imprisonment under each of the Sections 193, 471 and 467/109, the sentences to run concurrently; and we further sentence him to a fine of Rs. 100 under Section 467/ 109. In default of payment of the fine a further three months' rigorous imprisonment will be undergone. The sentence will run as from the date of his conviction by the learned Sessions Judge as the accused has been in jail since that date. A copy of this order will be sent to the learned Sessions Judge in answer to his reference.