

Emperor Vs. Krishtappa Khandappa

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Court : Mumbai

Decided On : Jan-28-1925

Reported in : AIR1925Bom327; (1925)27BOMLR599; 87Ind.Cas.838

Judge : Norman Macleod, Kt., C.J. and ;Coyajee, J.

Appeal No. : Criminal Appeal No. 369 of 1924

Appellant : Emperor

Respondent : Krishtappa Khandappa

Judgement :

Norman Macleod, Kt., C.J.

1. Six persons were charged before the Sessions Judge of Dharwar with having conspired and abetted each other in the felling and removal of twenty sandalwood trees from a Government reserved forest, and further with intending to commit forgery in respect of the trees by impressing thereon certain marks. Accused No. 4 was charged with possession of a counterfeit stamp for the purpose of impressing those marks, All the accused were acquitted. The Government have appealed with regard to the order of acquittal in favour of accused Nos. 1 to 4. We think that the record shows conclusively that accused Nos. 1 to 3 were concerned in the removal of sandalwood trees from Coupes Nos. 2 to 4 of Block No. 15 in the reserved forest of Shirgod, and removing them to the adjoining Malki No. 41. We do not understand on what material the Assistant Sessions Judge came to the

conclusion that the evidence against those accused failed to prove their guilt. Admittedly accused Nos. 1 to 8 having cut down the trees without permission, we fail to see who else would go to remove the logs except these accused. On the night of September 12, from the noise that was heard, Ismail, the Beat Guard, and his party, who were lying in ambush to catch the thieves, felt sure that logs were being removed from the reserved forest, and when the removal was complete they came out from their ambush and discovered accused Nos. 1 to 3. The Judge says : 'I cannot believe that part of the prosecution story which relates to the rounding up of accused Nos. 1 to 8. The story is grotesque in its details, very improbable and the witnesses contradict each other in material particulars.' There can be no doubt that these three persons were caught in the forest coupe, from which the logs were removed, and there can be no justification for suggesting that the logs had been carried off' by some other persons. These three accused, however, were only poor persons who had been employed by others who had purchased the right to cut trees from Government. Accused Nos. 5 and 6 who had purchased the trees in the Malki No. 41, on September 9, reported to the Forest Officer that they had sold their right to accused No. 4. Accused Nos. 1-3 told the Forest Officer that they had instructions from accused Nos. 5 and 6 to cut down trees and remove them and they expected accused Nos. 5 and 6 to arrive on the scene shortly. Accused Nos. 1 and 2 volunteered to go and fetch them with the stamp. About 2 p. M. on September 13, accused No. 1 came back with accused No. 4, The Forest party was again lying in ambush. Accused No. 1 pointed the logs to accused No. 4 saying that they were ready for stamping. Accused No. 4 replied that the stamp belonged to accused No. 5 who , was soon coming and he would then stamp the logs. Accused No. 4 then, as he was walking about, saw Ismail and Ram-chandra (also called Havaladar), and cried out their names. The hiding party then emerged and caught accused No. 4. He was questioned by the Havaladar, told that he must have the stamp, and threatened with a search of his person. Accused No. 4 then of his own accord produced the stamp from a cloth round his waist. The Judge has believed that accused No. 4 produced the stamp but considered that he was not guilty of any offence under the Indian Penal Code. We are fully satisfied that accused Nos. 5 and 6 had originally employed accused Nos. 1 to 3 to cut down trees from the Government portion of the forest, and that the intention was to carry

the wood into Malki No. 41, where accused Nos. 5 and 6 had got the right to cut, Application would then have been made to remove these trees, as if they had been cut in Malki No. 41.

2. The only question is whether possession of the counterfeit seal, plate or other instrument for making an impression, renders accused No. 4, liable as having committed an offence under Section 473, Indian Penal Code, in that he had made or counterfeited a seal, plate or other instrument for making an impression intending that the same should be used for the purpose of committing any forgery, which would be punishable under any section of Chapter X VIII other than Section 467, or with such intent had in his possession any seal, plate or other instrument, knowing the same to be counterfeit. It has been contended that as forgery implies the making of a false document, a person counterfeiting marks on a tree would not be making a false document within the meaning of Section 464, and this contention found favour with the Assistant Sessions Judge who relied upon the decision in *Empress v. Riasat Ali* I.L.R (1881) . Cal. 352. It seems to us that the learned Chief Justice for the purposes of that particular decision did not consider the provisions of Section 29, Indian Penal Code. The question here is whether a document must necessarily be something which is signed, sealed or executed. Section 29 says ' the word ' document' denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means, intended to be used as evidence of that matter.' Explanation 2 says: ' Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.'

3. Now these letters when imprinted on the trees were intended to be evidence that the trees had been passed by the Ranger, and so could be removed from the place where they were lying in the forest. The letters, therefore, imprinted on the trees would be a document within the meaning of Section 29 of the Indian Penal Code.

4. Then it is suggested that accused No. 4 could not have had the intention of making the imprint intending to use the same for the purpose of forgery. But on the evidence it seems perfectly clear to us that when accused No. 4 came where the trees were lying with this particular counterfeit mark in his possession, he must be taken to have had the intention of using it for the purpose of imprinting the trees with false marks.

5. It seems to us, therefore, that the order of acquittal in respect of accused Nos. 1 to 4 was wrong. Accused Nos. 1 to 3 must be convicted under Section 379 and accused No 4 under Section 473, Indian Penal Code, We do not think that any exemplary punishment is called for against accused Nos. 1 to 3. They were only persons who were employed as labourers to cut and remove the wood. We, therefore, discharge them under Section 562, Criminal Procedure Code. The case against accused No. 4 is more serious. We think that a sentence of six months' rigorous imprisonment should be passed on accused No. 4.

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