

Emperor Vs. Malgowda Basgowda

Emperor Vs. Malgowda Basgowda

SooperKanoon Citation : sooperkanoon.com/330456

Court : Mumbai

Decided On : Sep-04-1902

Reported in : (1904)ILR27Bom420

Judge : L.H. Jenkins, Kt., C.J. and; Batty, J.

Appellant : Emperor

Respondent : Malgowda Basgowda

Judgement :

1. The accused in this case has been found guilty of having forged a valuable security and of using the same as genuine, knowing or having reason to believe that it was forged. There were other charges preferred against the accused on which the jurors sitting as assessors expressed an opinion favourable to the accused. But we are now concerned only with the charges under Sections 467 and 471, Indian Penal Code. Mr. Branson has pointed out that there was inconsistency between the verdict of the jury as such and the opinion expressed by the same individuals as assessors. If we were to limit ourselves to an examination of the words used, and to read them in their strictest sense, there would be great force in Mr. Branson's argument. We think the explanation of this apparent inconsistency is to be found in the meaning which the assessors must have attributed to the question proposed to them in the light of the Sessions Judge's direction to them on the second charge. But it is unnecessary to elaborate on this point, because there are other and more substantial grounds on which we

cannot allow the present verdict to stand.

2. Mr. Branson has said, and we agree with him, that the charge of the Judge in many respects leaves nothing to be desired. On most points the charge is admirable, but at the same time there are one or two vital points on which the Judge did not appreciate the real importance of certain portions of the evidence, so that his direction in regard to them has been defective. We accept the view that a judge in summing up is entitled to have regard to the elaboration and skill with which the rival contentions have been placed before the jury by the advocates on both sides, but he should not in doing so omit pointedly to call the attention of the jury to matters of prime importance, especially if they favour the accused, merely because they have been discussed by the advocate. For instance, the evidence of Ningappa, who practically gives the lie direct to the sale set up by the complainant, deserved especial comment, for it was a matter on which he must have been competent to speak; there could have been no mistake on his part, and he must therefore have intentionally spoken either falsely or truly. The Judge ought therefore to have expressly contrasted the evidence of Ningappa on the one side, the evidence of the prosecution on the other. Another matter which demanded special comment was document A: the date of that stamp paper, the endorsement of the stamp vendor, the signature of the attesting witness who is dead, all ought to have been especially commented on. We are quite conscious that even if it were made clear that the stamp was of the year it purports to be, that would not necessarily show that the document was not subsequently fabricated, still the matter should have been brought to the notice of the jury. More important is the fact that the prosecution has failed (for what reasons we confess we cannot understand) to lead any evidence to show whether the stamp vendor whose name appears under the endorsement of that document carried on that business in 1877 or not, for that was relevant to the question of the genuineness of the document. Then again it is nowhere suggested in the evidence that the signature of the attesting witness Parappa (who is said to have been dead several years, not less than 10 years), was a fabrication. This we think to be a matter of great importance, because manifestly if that was a genuine signature, the document could not have been of recent fabrication. The attention of the jury should have been specifically invited to a consideration of this matter. Then; there is a point in which, we think,

the jury may have failed to understand; the value attributable to the proceeding in which the Sessions Judge described Chanappa as having been worsted, because all that this worsting consisted of was that the application to have the attachment removed failed on the ground that it was not properly stamped. We do not think that can be said to be a worsting which ought to have a material bearing on the question whether a few years after, with knowledge of the fact, a man would be likely to purchase the property from the person so worsted. The last point, but in a sense the most important, is that we think the learned Judge's charge must have induced the jury to attribute to the question of possession and title a subsidiary importance. Now it is curious commentary on this that when we asked the learned Government Pleader when whom no one is more competent to deal with cases of this kind), what really was the direct evidence on which he would suggest that the forgery was made out, he answered that he relied on the evidence which proved that Godu's title had been made out. This appears to us to have been an answer he could not have failed to give, but manifestly if that be so, the title and the possession accompanying it were not of subsidiary but of prime importance. These grounds, therefore, without discussing the others urged before us, justify us in saying that this case, with all its doubts, has not been satisfactorily dealt with. Mr. Branson has further, pointed out that certain evidence was improperly excluded. We should have been glad if we were in a position to deal with this point. But we do not know with precision what the excluded documents were and what they contained. All we know is that it is alleged that these documents contained valuable materials for the purpose of determining with whom title and possession to the property in question was in 1877 and prior to that date. If that be so, these documents did deserve a place in the records of this trial; and when the case comes for rehearing we have no doubt the learned Judge will consider how far the documents are of the description attributed to them before us. We refrain from expressing any opinion about them.

3. With these remarks we set aside the verdict and sentence and send back the case for a fresh trial.