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Court : Allahabad

Decided On : Aug-22-1929

Reported in : AIR1930All24

Appellant : Emperor

Respondent : Mohammad Israil

Judgement :

1. Mohammad Israil was committed to the Court of Sessions to take his trial under Sections 380 and 467, I.P.C. The trial was held with the aid of a jury. The verdict of the jury was that Mohammad Israil was not guilty of theft under Section 380, I.P. C, but that he was guilty of forgery under Section 467, I.P. C, The Sessions Judge accepted the verdict of the jury in its entirety. In the result, he acquitted Mohammad Israil of the offence of theft but convicted him under Section 467, I.P. C, and sentenced him to one year's rigorous imprisonment and a fine of Rs. 1,000 or in default to undergo six months' rigorous imprisonment.

2. The order of the Sessions Judge has been challenged by the Local Government, which has preferred an appeal to this Court against the acquittal of Mohammad Israil on the charge of theft and by Mohammad Israil against his conviction under Section 467, 1.P.C.

3. There is a firm of the name of Mohammad Sami Abdul Hakim at Allahabad, which held two hundis in due course one of which was for Rs. 500 and the other

for Rs. 365. These hundies were endorsed in favour of Jawaharmal Lachmi Narain, their Bombay agents for collection; but the hundis never reached the latter firm.

4. The case set up by the Crown was that the hundis were put inside an envelope with a view to being posted to Bombay, that the envelope mysteriously disappeared, either from the office of Mohammad Sami Abdul Hakim or somewhere in the course of transit and that it never reached the firm of Jawaharmal Lachmi Narain. It was a later discovery that the hundies had come into the possession of Mohammad Israil, who negotiated them and collected the money.

5. The case for the prosecution was that the accused had obtained possession of the hundis by dishonest means and that he was guilty of theft.

6. The charge of forgery was founded upon the fact that the accused had obliterated or effaced the original endorsement in favour of Jawaharmal Lachmi Narain and had entered the name of Abdul Hamid Mohammad Sami there being no firm of that name.

7. The charge framed by Mr. A.B. Hardie, the committing Magistrate was not happily worded. It embraced two distinct offences under the second count:

(l) Forging the signature of Abdul Hamid on the hundi Ex.2, and (2) selling the said hundi to one Lala Parsotam Das.

8. The accused admits that he was in possession of the hundis and that he negotiated them but he contended that Abdul Hakim son of Mohammad Sami was indebted to him for Rs. 900 and that in satisfaction of this debt, he had transferred the two hundis to him.

9. The charge to the jury by the Sessions and Subordinate Judge, Mr. Rup Kishun Agha has been adversely criticized by the counsel, appearing for the Crown and also by the counsel for Mohammad Israil. The common ground is that the charge is vitiated by misdirections and non-directions, which misled the jury and resulted in a miscarriage of justice.

10. The heads of the criticism need not be noticed in detail. The learned Judge has not only travelled outside the record but has confounded the identity of one of the witnesses Shamsuddin examined in Court with another of the same name, who was not before the Court and was never examined. But this is not all. The learned Judge has not explained to the jury the necessary ingredients of the offences under Sections 380 and 467, I.P.C. The constituent elements of the two offences were essentially different. The learned Judge was bound to explain the law with clearness and distinctness and his failure to do so has seriously prejudiced the trial. The result of the omission has produced a hopeless confusion in the minds of the jury. The charges of theft and of forgery, in view of the peculiar features of the case, were interdependent in certain respects and inextricably mixed up in other respects. The learned Judge failed in his duties by withholding from the jury the legal assistance, the assistance in points of law, which the case demanded. The consequence of this omission was almost inevitable. We are faced with an astonishing verdict that Mohammad Israil is not guilty of theft, as Abdul Hakim had delivered the hundis to him and with the further verdict that he is guilty of the offence under Section 467, I.P.C. It is another astonishing feature that the learned Judge did not apply his mind to the nature and effect of the findings by the jury and accepted them without any discrimination or hesitation.

11. The Sessions Judge ought not to have omitted to state in his charge that if the jury entertained a reasonable doubt as to the guilt of the accused, they were bound to return a verdict that the accused was not guilty. This principle ought to have been clearly placed before the jury and, in fact, emphasised.

12. This appears to be the second case, in the course of the week in which, to our extreme regret, this omission has been conspicuously noticed in Mr. Rup Kishun Agha's charge to the jury. We hope that our observation will be kept in view and this defect from the charge avoided in future.

13. We do not think that this is a proper case in which the guilt or innocence of the accused should be determined by this Court on the merits. Under Section 418, Criminal P. C:

An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury in which case the appeal shall lie on a matter of law only.

14. Where there has been a trial by jury; the appeal has to be confined within the restricted limits, prescribed by the legislature. Misdirection or non-direction is a matter of law. If the verdict of the jury has been influenced by evidence, which was inadmissible or proceeds upon no evidence at all, this is a matter of law. If this defect has affected the Crown or the accused prejudicially, the order passed by the Court below ought to be set aside.

15. We are convinced that in the present case, there has been no proper trial and we are of opinion that this case should go back for a fresh trial before a Judge other than Mr. Rup Kishun Agha and that the case should be tried with the aid of a fresh jury. We direct accordingly.

16. The learned Sessions Judge of Allahabad may either try the case himself or send the case to a competent tribunal for trial.

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