

Abdul Aziz Vs. Emperor

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Court : Allahabad

Decided On : Dec-07-1915

Reported in : AIR1916All63; 32Ind.Cas.151

Judge : Piggott, J.

Appellant : Abdul Aziz

Respondent : Emperor

Judgement :

Piggott, J.

1. The appellant Abdul Aziz has been convicted on charges framed under Sections 409 and 467, Indian Penal Code, in connection with a fraud perpetrated at the City Post Office of Barreilly where the appellant was at the time serving as Head Clerk. That a fraud was committed and committed by the aid of forgery is proved beyond doubt and I need not recapitulate the details given in the careful and well considered judgment of the learned Sessions Judge. The fraud was rendered, practicable by a practice which had been permitted to grow up in contravention of departmental rules. The Sub-Postmaster is ordinarily in charge of the Savings Bank rack in an office of this class, but he has been permitted to delegate his responsibility to the Head Clerk for three hours every day during his absence from duty. Assuming that the Post Office can secure the right class of men for the post of Head Clerk there would be no particular objection to this,

provided the matter were so arranged that the person actually responsible for the proper conduct of the business should also make himself formally responsible by signing the payment Order and the necessary entries in the journal. If, however, the department does not feel itself able to trust officials of the standing of Head Clerks in a Sub-Post Office to conduct business of this sort and requires the Sub Postmaster on his return to duty to assume responsibility for work done in his absence by signing the payment orders and attesting the entries in the journal, then care should be taken to make his responsibility a real one by insisting on his exercising an effective check on the work done during his absence. In the case of withdrawals from Savings Bank accounts, this could only be secured by insisting on his personally comparing the signature on the withdrawal application with the specimen signature in the custody of the office. I am satisfied, how ever, on the evidence that in practice a perilous division of responsibility had been permitted to grow up During the three hours of the day in which he held charge of the Savings Bank work, the Head Clerk made all the necessary entries and disbursements and was supposed to satisfy himself before making any payment on an application for withdrawal as to the identity of the signature on the application with the specimen signature deposited in the office, but when the Sub-Postmaster returned it was the practice for him to sign the payment order and to attest the entry in the journal as a mere formality, reliance being placed on the Head Clerk for having taken all necessary precautions. I am confident that the fraud which has been brought to light in the present case would never have been attempted if the accused had known that he could not perpetrate it without taking on himself the responsibility of signing the payment order and attesting by his signature the entries in the journal. I am satisfied that the fraud is brought home to the appellant by the evidence on the record. The evidence is mostly circumstantial, but there are many converging lines of testimony which point to the appellant Abdul Aziz as the criminal. The evidence given by the Sub-Postmaster Debi Pershad is strongly corroborated by the documentary evidence, such as the handwriting of Abdul Aziz in the journal, and puts it beyond doubt that the transaction by which a sum of Rs. 180 purported to be withdrawn on behalf of the depositor Narain Debi from her Savings Bank account was effected at a time when Abdul Aziz was in charge of the Savings Bank work. I consider it very much against him that he has denied this fact and

endeavoured to make out that the entire transaction was conducted by the Sub-Postmaster although he himself had written up the entries in the journal. The circumstantial evidence points irresistibly to a fraud committed by some Post Office official and consequently all the evidence on the record which tends to exonerate the Sub-Postmaster and other officials who might conceivably have been concerned is evidence against the appellant. Finally there is the evidence given by the handwriting expert as to the identity of the handwriting in the admittedly forged entries on the application for withdrawal with the specimens of the handwriting of Abdul-Aziz submitted for his consideration. On this point I feel bound to note that the prosecution was not well managed. The proper course would have been to submit specimens of the handwriting of all the officials in the City Post Office or in the Head Office who could conceivably have been parties to this fraud to the handwriting expert along with the forged document. If upon the materials thus submitted to him the expert had given a clear opinion that the forged entries corresponded with the admitted handwriting of that one amongst all the officials to whom the circumstantial evidence independently pointed, the case would have been a much stronger one. It so happens, however, that the appellant himself has gone out of his way to nullify the effect of the mistake made by the prosecution in submitting to the handwriting expert specimens of his handwriting only and not of all the officials in the two offices. He has made it a part of his defence that the specimens of his handwriting submitted to the expert were in fact elaborate imitations of the writing on the forged document perpetrated by him at the instance of the investigating Police Officer and the Inspector of Post Offices. I have no doubt whatever that this plea is false in fact. It is a circumstance very much against the accused that it should have been put forward by him. I have no desire to derogate from the general principle that it is for the prosecution to prove their case and that an accused person should not be convicted merely because he has told lies in his defence. At the same time in cases of circumstantial evidence, where facts are put forward on behalf of the prosecution which unless explained justify an inference of guilt being drawn against the accused, then it is both lawful and proper for the Court to consider the explanation of those facts which the accused puts forward in his defence. This principle is clearly recognised in the explanations to Section 114 of the Indian Evidence Act. The statement of Abdul

Aziz on this question of hand-writing amounts to an admission that there is in fact a marked resemblance between the writings on the forged application for withdrawal and the specimens of the accused's own writing in English, Hindi and Urdu characters which were submitted to the expert for consideration. As to the existence of this resemblance and his offering an explanation which is false in fact, his position is strictly analogous to that of a person found in the possession of stolen property shortly after the theft who puts forward an explanation of his possession which is inquired into and found to be false.

2. On the evidence as a whole I am satisfied that the offences put forward in the charges were brought home to the appellant Abdul Aziz. The sentence, in my opinion, is not unduly severe. I dismiss this appeal.

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