Chunku and ors. Vs. Emperor

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Court : Allahabad

Decided On : Aug-15-1930

Reported in : AIR1931All258

Appellant : Chunku and ors.

Respondent : Emperor

Judgement :

Bennet, J.

1. This is an application in revision on behalf of 13 persons, who have been convicted under Sections 465 and 471, I. P.C., and sentenced by a Magistrate to one year's rigorous imprisonment. The facts of the case as set forth in the judgment of the learned Sessions Judge are as follows. There was a partition case of the village of Kairi in Banda District begun in the year 1909. These proceedings went on until 1918 when the Board of Revenue rejected the application for partition on the ground that the village was 'khetwat.' Some years later in 1923 some of the cosharers applied to the Collector and suggested that the partition proposed in 1909, which had apparently proceeded as far as the preparation of khurras, should be recorded as it stood in the papers by treating it as an application for partition made on agreement. On 17th March 1924 the cosharers of the village were summoned to Court and asked to file an agreement to the effect that they had made a partition of this village into the khurras prepared by the

revenue Court and that they had agreed to this partition.

2. Various delays occurred and in 1925 the papers were filed Some years later on 19th April 1926 an application Exs. 10 and 10-A, was made to the revenue Court purporting to be under Section 107, Land Revenue Act and purporting to be by 24 cosharers. In this application there are no cosharers named as opposite parties. The application was accompanied by an agreement Exs. 11 and 11-A. The application states that the cosharers had agreed to the 'khurras among themselves dividing the village into 18 mahals and asking that mutation should be made according to this partition in the revenue papers. The agreement set forth that the parties to that agreement had agreed to the partition into the 18 mahals already effected. Then there was an application made on 29th July 1926 by Jagannath and Sheo Pershan and two others, Ex. 40, to the effect that they do not want the partition of 1909 to be carried into effect. An enquiry was started by the order of the District Magistrate of 7th August 1926, and it was ascertained that the signatures of Sheo Pershan and Jagannath appeared on the application Exs. 11 and 11-A and on the agreement Exs. 10 and 10-A. These persons denied that these signatures were genuine, and the 13 accused were prosecuted under Sections 465 and 471 in regard to these two documents. The evidence for the prosecution consisted of the statements of Sheo Pershan and Jagannath that they did not make these signatures, and their evidence was confirmed by the' fact that they had all along been objecting to this partition into these khurras. There was also the evidence of the Government Examiner of Questioned Documents, and he stated that the signatures on the application and agreement were not by the same persons as the signatures of Sheo Pershan and Jagannath submitted to him. The defence on the other hand, called a witness D. W. 2 Raggu, who stated that all the accused were present when the documents in question were executed by Sheo Pershan and Jagannath, in their written statement the accused also pleaded that the signatures of Sheo Pershan and Jagannath were made in their presence. On the evidence before them the two lower Courts have come to the conclusion that it is proved that the signatures are not made by Sheo Pershan and Jagannath. The Courts have also held that as the accused pleaded that those signatures were made in their presence therefore the accused must have had knowledge of the fact; that the signatures were not genuine. The 13 accused are persons who admit

that they signed the agreement and the application, Exs. 10 and 11, and they also made an appeal No. 89 of 1929 on the strength of that application and that agreement having been jointly executed by Sheo Pershan and Jagannath.

3. Some point was taken for the defence that the Government Examiner of Questioned Documents was first questioned about the signatures of Sheo Parshan and Jagannath on the verification on the back of the agreement. Subsequently he was recalled as a witness of the Court under Section 540, Criminal P.C., and also asked in regard to the signatures on the front of the agreement and on the application which purported to be. those of Sheo Parshan and Jagannath. It was argued that the accused should have had a further opportunity to adduce additional evidence in regard to those signatures on the front of the agreement and on the application. But it appears to me that the defence evidence would be the same for the signatures on different portions of each document and that the defence could not have been in any way prejudiced by the procedure. It was also not shown to me that the Court was acting in any way outside its powers in recalling the Government Examiner of Questioned Documents as a witness under Section 540, Criminal P. C, in order to rectify an obvious omission in his evidence recorded as a prosecution witness. Section 540 provides that the Court may recall a person under that section who has been already examined as a witness and the section provides that the Court shall recall such person if his evidence appears to it essential to the just decision of the case. In the present case it is clear that the evidence of the Examiner of Questioned Documents was essential to the just decision of the case in regard to all the signatures and not merely in regard to the two signatures about which he was asked in his examination as a prosecution witness. The procedure of the Court therefore was perfectly correct. No application was made after the examination of this witness to the effect that the defence desired to call additional evidence on the point.

4. The main argument addressed in revision to this Court was to the effect that even on the finding that the signatures of Sheo Pershan and Jagannath were not genuine, still the offence of forgery or using these documents knowing them to be forged documents would not be complete because the intention required for the

crime of forgery would not exist. It has been stated in para. 2 of one of the applications of revision by Mr. O'Neill that these signatures do not amount to forgeries as the documents were not drawn up with intent to cause injury to any person or to cause any person to part with property nor did these documents have the potentiality of causing wrongful loss or wrongful gain or to defraud any person.

5. Reference was made by the learned Counsel to Reg. v. Bhavani Shankar [1874] 11 B.H.C.R. 3.

6. In that case A signed B's name to petitions presented by C to the Mamlatdar, requesting his summary assistance under Regulation 17 of 1827 for the recovery of rents from K's tenants. In this case A was the manager of B and B declared that he had given A authority to sign his name and B had no objection to his name being used by A. The High Court found in the first place that the lower Courts were wrong in convicting A of forgery because the prosecution had failed to prove that A was acting without authority from B. The High Court went on to state that even if it were proved that A had no authority to sign B's name it would also be necessary to prove that A had signed the petitions dishonestly or fraudulently and that it was not sufficient for the Courts to hold that the intention was to deceive the Mamlatdar because the Mamlatdar could not be injured by such deception nor could wrongful loss or gain have been caused to him. The act was done for the benefit of the master and the master was legally entitled to the rent for which the assistance of the Mamlatdar was asked. Now if we apply the principle of this ruling to the present case we find that so far from Jagannath and Sheo Parshan stating that the accused had authority to sign for them they denied it. Further it is not suggested that the fraud was on the Court, but is suggested that the fraud was on Jagannath and Sheo Parshan the persons whose names were signed.

7. As regards the question of wrongful gain or wrongful loss we most look at the nature of the agreement Ex. 10, and the application, Ex. 11 The learned Counsel, argued merely on the wording of Section 107, Land Revenue Act (3 of 1901), but this was not an ordinary application under that section asking the Court to make a partition of the village. If it had been an ordinary application, the question of wrongful loss to the complainants would have arisen from the fact that they would

have been deprived of notice of these proceedings issuing on the application and they would have been deprived of making the objection that the Board of Revenue had held that this village should not be partitioned, because the property in it was not held jointly by cosharers, but was held khetwat, which I understand means that the different fields were held in separate ownership. However the application was not an ordinary application, but the application asks that a partition already agreed to by the parties should be entered in the revenue papers instead of the existing khewat. That partition was the division into 18 mahals which had been made in the partition begun in 1909. The complainants Jagannath and Sheo Pershan did not agree to this division of the village, as they considered that they would suffer loss by the exchange of their existing rights for the rights proposed in the new partition. Accordingly the document of agreement would inflict on them wrongful loss, and would give to the other cosharers,, the accused, wrongful gain. It was argued by the learned Counsel for the accused that the proceeding could not go through without Jagannath and Sheo Pershan becoming aware of them and making objection as they did make on 29th July 1926, but that objection was only made after the period of three months and ten days, and it is possible that the accused may have hoped that the Court would reject that application of 29th July 1926 by Jagannath and Sheo Pershan on the ground that the agreement Ex. 10 showed that they had already consented to the partition already made. It is sufficient for the purposes of forgery to show that there was a criminal intention to cause wrongful gain to one or wrongful loss to another person as that constitutes the definition of 'dishonestly' in Section 21, I. P.C. It is not necessary that the wrongful gain or wrongful loss should be actually caused. It is sufficient that there should be the intention of causing it. Section 464 states that a person makes a false document when he does certain acts in regard to a document dishonestly. Accordingly I consider that the present case differs fundamentally from that recorded in 11 Bombay High Court Reporter at p. 3.

8. The next case mentioned was Empress v. Fateh [1882] 5 All. 217. In this case the vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration they used the dead of sale as evidence in a suit. It was held that the alteration of the deed did not amount to forgery within the

meaning of Section 463, I. P. C, because there was no intention to cause wrongful loss or wrongful gain or to defraud. In this case the vendees merely altered the number of the plot to correspond with the boundaries which had actually been given in the sale deed, a wrong number having been accidentally inserted in the deed. There was no fraud or wrongful loss to the vendor, and the alteration in the document merely made the document agree with the intention of the vendor in making the transfer. That would therefore be no wrongful loss caused to the vendor. The present case is essentially different, because the addition of the names of Jagannath and Sheo Parshan to the deed of agreement would cause a transfer of their existing property to which they did not agree.

9. The next ruling to which reference was made was Queen-Empress v. Sheo Dayal[1885] 7 All. 459. In this case it was found that four payments of rent had actually been made and receipts had been issued but had been lost. Other receipts had been manufactured identical with the receipts which had been lost. There could therefore have been no wrongful gain or wrongful loss caused as the result of the existence of these fabricated receipts as they wore only intended to support a legal claim. For the reasons already stated this case differs essentially from the one at present before me. Dr. Malaviya advanced an argument based on a ruling dealing with the mere filing in the Court of the document which had not been used in evidence. But the case is different here as the plaint on being filed in Court had fulfilled its function and the agreement on which the plaint was based was also filed in Court as the basis of the plaint.

10. I consider that the offence of forgery was committed in regard to the two documents, the application and the agreement. But I do not think that the evidence is sufficient to legally prove that the 13 accused persons committed the offence of forgery. Accordingly I consider that the conviction under Section 465 I. P. C, is bad, and I set it aside. But I consider that all the 13 accused had committed the offence of Section 471 I. P. C, fraudulently or dishonestly using as genuine a document which they knew or had reason to believe to be a forged document.

11. Argument has been made that the sentence is excessive, but for an offence of this nature the three months rigorous imprisonment to which the Sessions Judge

has reduced the sentence is not excessive.

12. Accordingly I set aside the conviction under Section 465, I P.C., and I maintain the' conviction under Section 471, I. P. C, of all the accused and sentences of three months rigorous imprisonment on each of them They must all surrender to their bail.