

Ranchhod Mula Vs. State

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Court : Gujarat

Decided On : Sep-16-1960

Reported in : 1961CriLJ472

Judge : Miabhoy and; Raju, JJ.

Appellant : Ranchhod Mula

Respondent : State

Judgement :

Raju, J.

1. The appellant Ranchhod Mula, who was accused No. 1 at the Sessions trial in Sessions Case No. 87 of 1959, was convicted by the learned Extra Assistant Sessions Judge at Ahmedabad under Sections 232, 235 and 243 of the Indian Penal Code.

2. The prosecution case was that on receiving, information P. S. I. Bhanushariker of Elis Bridge Police Station, Ahmedabad, secured a search warrant from the Sub-Divisional Magistrate, and searched the house of the appellant in the presence of the Panchas. In the search 34 one rupee coins, with the mark of King George the 6th on One side and with the mark of lion on the other side, one piece of metal, metal powder, three half anna coins with sharp edges, one die and two one rupee genuine coins of the year 1947 were found. At that time, the wife and daughters-

in-law of the appellant were present. The appellant and the three women, who were in the house of the appellant, were prosecuted, but the three women were acquitted and the appellant was convicted by the learned Extra Assistant Sessions Judge, At the Sessions trial, the prosecution relied on the evidence of P. S. I. Bhanushanker, Panch Pethabhai and the report (Ex. 9) purporting to be signed by some one on behalf of the Master of the Mint at Bombay.

3. The defence of the appellant was that although the house searched belonged to him, the Panch witness had not come to his house; the warrant was not shown to him; and nothing was found in the house. According to him, the bundle containing the articles was lying outside his house. The appellant was kept outside and the Panchanama was made in another house, The learned Assistant Sessions Judge accepted the prosecution case, rejected the defence case and found that the articles in question were in the possession of the appellant, that the appellant knowingly counterfeited or performed a part of process of counterfeiting coins, that he was in possession of instruments or materials for using the same for counterfeiting the coins or knowing or having reason to believe that they were intended to be used for the purpose and that the appellant was in possession of counterfeit coins with intent to defraud or with intent that fraud might be committed. Thereupon, the learned Judge convicted the appellant under Sections 232, 235 and 243, Indian Penal Code.

4. In appeal, the learned counsel for the appellant, has contended that the articles were not in the possession of the appellant because the appellant was staying with his sons and daughters-in-law. He also contended that the report signed by somebody for the Master of the Mint is inadmissible in evidence. He also relies on the evidence of the P. S. I. that the coins could not be passed off as genuine coins and on the evidence of the Panch that he would not have accepted the coins as genuine. It is therefore contended that the coins found were not counterfeit coins as there was no resemblance between the counterfeit coins and the genuine coins. He also contends that no moulds or dies or instruments for counterfeiting the coins were found in the possession of the appellant. In reply, the learned Government Pleader contends that in view of Section 537, Criminal Procedure Code, the trial is not vitiated notwithstanding the fact that the report does not purport to be signed

by an officer of the Mint.

5. Section 510, Cri. P.C. provides that a document purporting to be a report under the hand of an officer of the Mint upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in an inquiry, trial or other proceeding under the Code. It is therefore necessary that the document must purport to be a report under the hand of an officer of the Mint. In the instant case, the document produced by the prosecution is signed by somebody for the Master of the Mint, It is conceded that there is nothing to show that the person who signed the document 'is an officer of the Mint. It is conceded that the document in question does not purport to be under the hand of. an officer of the Mint. The document is, therefore, inadmissible in evidence and should not have: been relied on by the learned Judge. It is further contended by the learned Government Pleader that in such a case the provisions of Section 537. Cri. P.C. would come into play. In our opinion, this section has no application to cases of improper admission or rejection of evidence. In the case of improper admission or rejection of evidence provisions of Section 167 of the Evidence Act would apply. That section reads as under:

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

We therefore propose to exclude this document from consideration and to decide this appeal on the rest of the evidence.

6. The fact that the articles were found in the house of the appellant is proved by the evidence of P. S. I, Bhanushanker and the Panch Pethabhai. The appellant admits that the house is his, but, according to him, the Panch witness did not come to his house, the warrant was not shown to him, and nothing was found in the house. We see no reason to reject the evidence of P. S. I. and Panch, as nothing has been elicited in the cross-examination of the P. S. I. or the Panch to justify the rejection of their evidence. We therefore accept the evidence that the

articles in question were found in the house of the appellant and that when the house was searched he was present along with his-wife and daughters-in-law. There is nothing in the evidence to show that the sons of the appellant were also living in the same house. But, the learned counsel for the appellant relies on the statement in the Panohnama that on the northern wall of the house of Ranchhod Mula there is a small roofed house, which is used by Hema Mulu and his wife. This would mean that Hema was living separately. There is nothing to show that in the house of Ran-chhod his sons were staying. We therefore hold; that the appellant is responsible for the possession of the articles in question.

7. The P. S. I. and the Panch have deposed that in the coins found, were two one rupee genuine coins of the year 1947, and 34 counterfeit one rupee coins of the same year 1947; the glazing of these 34 coins was not complete and their edges were-irregular. Therefore, the Panch has deposed that he would not have accepted these coins as genuine. The P. S. I. has also deposed that the coins could: not have passed off as genuine.

8. Section 28 of the Indian Penal Code defines 'counterfeit' as follows:

A person is said to 'counterfeit' who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

As the edges were irregular, none would have been deceived by these coins, and, therefore, these 34 coins would not be counterfeit coins. The ap-pellant has been convicted under Sections 232, 235 and 243, I. P. Code.

These sections read 8s follows:

232. Whoever counterfeits, or knowingly par-forms any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that

the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten-years, and shall also be liable to fine.

243. Whoever fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

As regards Section 243, I. P. Code, in view of our finding that the coins were not counterfeit coins-but were in the process of being made counterfeit coins, Section 243 has no application, and the appellant was wrongly convicted under Section 243, I. P. Code. This is conceded by the learned Government Pleader. We therefore set aside the conviction and sentence passed on the appellant under Section 243. I. P. Code.

9. As regards the conviction under Section 232, I, P. Code, it is contended by the learned counsel for the appellant that there was nothing to show that the appellant himself had counterfeited the coins or had knowingly performed any part of the process of counterfeiting Indian coins. It is true 'that there is no evidence on this point. In any case, direct evidence on such a point is difficult and ' some times it is a matter of inference in the circumstances. But it may be that another person had performed the process of counterfeiting the coins. No circumstances have been pointed out to infer that the appellant himself had performed any part of the process of counterfeiting coins. The appellant is therefore entitled to the benefit of reasonable doubt, and we set aside the conviction and sentence passed upon him under Section 232, I. P. Code, But as regards the offence under Section 235, I. P. Code, we have already found that the appellant was in possession of the articles in question, which included 34 one rupee coins, on one side of each of which was the mark of King George the 6th and on the other side there was the mark of Lion and the year 1947. It is true that these coins have been held not to be counterfeit

coins, but they would still be materials for making counterfeit coins. They are clearly materials which are in the process of being made into counterfeit coins, and a person in possession of such materials would come under the mischief of Section 235, I. P. Code, provided that he is in possession of such materials for the purpose of using the same for counterfeiting coin or knowing or having reason to believe that the same were intended to be used for the purpose of using them for counterfeiting coin. If the coin happens to be Indian Coin, the second part of Section 235, I. P. Code would apply. 'Indian coin' is defined in Section 230, I. P. Code as follows;

Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

It is clear from this section that Indian coin would continue to be Indian coin for the purpose of Chap. 12 of the Indian Penal Code notwithstanding that it may have ceased to be used as money. In this case, however, there is no evidence to show that one rupee coin issued by the Government of India in 1947 has ceased to be used as money. But in view of the definition of 'Indian coin' in Section 230, I. P. Code, it is immaterial whether the coins are still current or they have ceased to be used as money. The appellant is therefore rightly convicted under Section 235, I. P. Code. We think that the ends of justice will be met if the sentence of five years' rigorous imprisonment passed on him is maintained under Section 235, I. P. Code.

10. We, therefore, set aside the convictions and sentences passed upon the appellant under Secs: 243 and 232, I, P. Code and confirm the sentence of rigorous imprisonment for five years under Section 235 I.P. Code.