

In Re: Abdul Rahiman

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Court : Chennai

Decided On : May-10-1911

Reported in : (1911)21MLJ766

Appellant : In Re: Abdul Rahiman

Judgement :

Sundara Aiyar, J.

1. The appellant, a young man of 19, has been convicted of an offence under Section 489(d), Indian Penal Code, that is, having in his possession instruments and materials for the purpose of being used, or knowing or having reason to believe that they were intended to be used, for forging or counterfeiting currency notes. This section has been introduced into the Penal Code by Act XII of 1899 and was drafted apparently on the lines of Section 235, Indian Penal Code (which relates to coins) though the draftsman has made certain variations in the language--I mean, using the words 'for the purpose of being used' in the place of 'for the purpose of using the same' - which cannot be said to be an improvement. But so far as the questions which we have to decide in this case are concerned, there seems to be no substantial difference between the two enactments.

2. That the accused, when arrested in the train on a charge of embezzlement which had been laid against him by his employer, was found in possession of the articles exhibited as material objects, I find no sufficient reason for disbelieving.

3. The question then arises whether the possession of these articles coupled with the suspicious conduct of the accused when seized, namely, an attempt on his part to snatch the articles from the constable, makes him guilty of an offence under Section 489(d) of the Penal Code. No evidence was adduced before the Sessions Judge to prove that the things found or any of them are capable of being used or would be used for forging or counterfeiting a currency note or bank note, and although we adjourned the hearing of the appeal for the purpose, of such evidence being adduced before us, no such evidence has been given.

4. In order to establish a charge under this section, what the prosecution has to prove in the first place is that the machinery, instrument or material found in the possession of the accused person is such as would be used in the production of a counterfeit note, and if that is proved, the next element which is to be proved is that the accused knew or intended that such article would be used for the purpose of counterfeiting currency notes. It may be that in some cases a mere inspection of the articles would satisfy the court that they are capable of being used in the making of counterfeit notes. But where that is not the case, it is the duty of the Crown to adduce evidence of a competent and qualified witness who would be able to explain to the court the process by which the instruments or materials in question could be used in making a counterfeit note. I have examined the exhibits in this case carefully and I find myself totally unable to say that any of these can be successfully used in counterfeiting a note, understanding the word 'counterfeit' in the sense that the resemblance must be such as may in circulation ordinarily impose upon the world (see RUSSELL on Crimes, Vol. I. page 211). It was suggested by the Public Prosecutor that there are many hill tribes in this Presidency who could be easily imposed upon. But the standard of resemblance must not be judged in the light of the intelligence of the most primitive people who may be found in the country. If that were so, any piece of paper with any scrawl on it could, I imagine, be passed among such people as a Government currency note. No doubt the resemblance need not be perfect, but it must be sufficient to deceive people of ordinary intelligence who are familiar with currency notes.

5. Now as regards the articles found, all that I should be prepared to say without the help of any expert's evidence is that some of the articles may be used in

reproducing portions of the designs or writings of a five rupee note on ordinary paper or similar substance either with pencil or ink, and there can be little doubt also that the accused was trying to find out how to make a currency note. But without further evidence I am unable to say that any of these articles are actually of any use in producing a counterfeit note. Instruments and materials which may be useful in making correct drawings of the outlines of the designs and figures of a currency note may be of no use whatever in manufacturing counterfeit notes. On looking into ARCHBOLD'S Criminal Pleadings, pages 764 to 766, where the English statutes dealing with similar offences are recited, it would appear that the paper is the most important material in the manufacturing of a counterfeit note, and all the papers that were found with the accused in the present case are files of ordinary foolscap or canara white note paper. It may be that the articles found form the stock-in-trade of a counterfeiter of currency notes as the learned Sessions Judge puts it, but such a finding must be based on evidence and not on conjectures. How necessary it is that a matter like this should be, as it is generally required by the court to be, proved by the evidence of experts will be apparent from a reference to some of the English cases, for instance Rex v. Moore (1826) 1 M&R; 1778 P.C. 171. I certainly do think that the Crown Prosecutor should have been able in this case to adduce proper evidence to prove that the materials found were capable of being used in making a counterfeit note, and his failure to do so necessarily raises a presumption against the case of the Crown.

6. I would, therefore, set aside the conviction and sentence and order that the prisoner be released from custody.

Ayling J.

7. Appellant has been convicted of committing an offence under Section 489(d), I.P.C., by possessing instruments and materials for the purpose of counterfeiting five-rupee currency notes.

8. From the evidence of prosecution 1st and 2nd witnesses it appears that on the evening of the 28th May, 1910, appellant was arrested in the train between Mettupalaiyam and Coimbatore by prosecution witness No. 2, an Ooty constable, on a charge of embezzlement. On being searched, a number of articles, marked

as material objects in the case, were found in his pocket, which are said to be instruments and materials used for counterfeiting Rs. 5 currency notes.

9. Four other witnesses were examined who speak to having previously seen appellant at Ooty under circumstances tending to suggest that he was actually engaged in the work of counterfeiting or preparation therefor. This evidence is in itself inconclusive on the present charge; it merely tends to strengthen the inference of guilty intention which may be drawn from possession of the articles found, as proved by prosecution witnesses Nos. 1 and 2.

10. I see no reason to doubt the substantial truth of the evidence of the last mentioned witnesses, as establishing the discovery of the incriminating articles on appellant's person. The rebutting evidence of the two defence witnesses was, in my opinion, rightly discredited by the Sessions Judge.

11. It is, however, urged by the learned vakil for the appellant that even accepting this evidence, the conviction is not warranted. He argues that the articles found are not sufficient in themselves without the addition of other materials for the preparation of the counterfeit note : and, further, that it has not been proved that, even with such addition, it would be possible to manufacture a note capable of being passed. He relies in support of his contention on the case of R. v. Tirumal Reddy (1899) Cr. Ap. No. 153 of 1899 reported in Weir's Criminal Rulings, Vol. I., 219. There is absolutely nothing in Section 489(d), I.P.C., to indicate that the possession of a complete outfit for the manufacture of counterfeit notes is necessary to constitute an offence thereunder. As I read the section, the possession of even a single implement would be sufficient, provided it were shown that such implement was intended to be utilised in the work of counterfeiting. This intention must, in almost every case, be a matter of inference dependent on the facts, particularly on the nature and the number of the articles found - their suitability for counterfeiting work and for innocent purposes. It is always open to the accused person to show (as he has not attempted to do in this case) that he possessed them for innocent purposes; and even if he does not, where the nature of the articles is consistent with innocent as well as guilty purposes, no court would draw an inference adverse to the accused. Where, on the other hand, the nature

of the articles is such as to render them peculiarly and specially suitable for counterfeiting work, and useless for any other that can be suggested, the intention to use them for counterfeiting may be fairly inferred, subject to rebutment by the accused.

12. There may, of course, be cases where, though the ultimate object of the possessor may clearly be counterfeiting, the particular articles found are of such rude or imperfect nature as to indicate unmistakably that the work was only in an experimental stage and that they could not be intended for utilisation in the preparation of the finished counterfeit. The case quoted above was such a case; it was held that no offence was disclosed by the possession of rudimentary dies indicative only of experimental work and incapable of being used to produce a passable counterfeit. The only other proposition laid down therein is that the possession of implements which, though fit for counterfeiting, have been broken or otherwise rendered incapable of further use, does not constitute an offence. Neither of these propositions is, however, of much use to the accused in the present case, or to put it differently, among the numerous articles exhibited, there are some to which neither of them can possibly be applied. Fret saws, and files (material objects 5 and 7) are no doubt susceptible of innocent use; but when, as in the present case, they are found together with articles unmistakably connected with counterfeiting work, it may be fairly inferred that they are intended to be used in conjunction with the latter. Here we have two admirable tracings on tissue paper of five-rupee notes (material objects 2a and 2b), together with an abundant supply of spare tissue paper. We also have a sheet of paper (material object No. 12) of a quality closely resembling that on which currency notes are printed with the description 'carrara white A.P. and S.' noted on it in ink. We have also numerous flat pieces of slate and zinc (material objects Nos. 5 and 8) suitable for use in producing the various impressions on a currency note, on many of which the said impressions have been reproduced. Some of these (material objects No. 8) may represent merely practice work; but among material objects No. 5 are several pieces in various stages of preparation, in which the shaping and filing have been so excellently done, that there is absolutely no reason why they should not be used in preparing a counterfeit note fully capable of deceiving the ordinary public. There is one small zinc figure 5 which could hardly be improved upon. There are

other pieces on which detailed work has not yet been commenced.

13. A consideration of the collection as a whole leaves no doubt in my mind that most, if not all, of the articles contained in it were intended to be used in one way or another in the process of counterfeiting a five rupee note, while several of them are of such a degree of excellence as to show that the work had passed the experimental stage. These as well as the unworked materials are capable of being used in conjunction with other tools and materials in the actual preparation of a counterfeit note; and I see no reason to doubt that it was appellant's intention that they should be so used.

14. The conviction in my opinion is justified and should be upheld. I see no sufficient reason for reducing the sentence.

Abdur Rahim, J.

15. As my learned brother holds a different view, the case must be placed before a third Judge for disposal.

16. This case coming on for hearing again, the Court delivered the following

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