

Muhamad SamiruddIn Vs. Emperor

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Court : Kolkata

Decided On : May-21-1934

Reported in : AIR1934Cal622,150Ind.Cas.1122

Appellant : Muhamad Samiruddin

Respondent : Emperor

Judgement :

Bartley, J.

1. Appellant was convicted in accordance with the unanimous verdict of the jury Under Section 471, I.P.C. His co-accused, Sudangshu, was unanimously acquitted on a charge of forgery. The case against both men was in brief, that Sudangshu, a clerk of the Union Board, had forged an entry in the Union Bate Books of Tilli Mouza, which purported to support a case that this appellant was assessed to chaukidari tax and therefore had a hut in Tillichur, before Phalgun 1337 B.S. The appellant filled and used this entry in a suit brought on the footing that he had dispossessed the plaintiffs in that suit from the chur lands in Phalgun 1337, The specific charge against Sudangshu was that he forged the entry at some time between 21st July and 15th September 1931. The specific charge against this appellant was that he used this entry in a title suit before the Munsiff on 8th June 1932, knowing or having reason to believe it to be a forgery. The learned Judge, in his charge to the jury, dealt with the case thus: He put it to them

that Sudangshu was charged with forgery between the two specified dates, 21st July and 15th September, and if they were not satisfied that the forgery was committed between those dates, or held that the entry was in existence before 21st July, they must acquit Sudangshu. He went on to point out that there was evidence, coming from the prosecution, to show that the entry existed in April previous. Dealing with the case of this appellant, he said that as against him the time of the forgery was not fixed or specified, so that the jury had merely to decide if it was forged at any time in 1337 B.S., and if the appellant used it knowing or having reason to believe it was a forgery. He then analysed the evidence as to the age of the entry which was conflicting to some extent, and clearly fell short of proving the original case for the prosecution, viz., that it could be no older than 21st July, and referred to a suggestion that it might have been the result of collusion between the clerk and a former Vice-president of the Union Board. The jury returned the following verdict:

Sundanghu is not guilty. The entry was not forged between 21st July and 15th September at: charged.

2. As to this appellant:

He is guilty Under Section 471, I.P.C. The entry was forged at some time before 21st July but at some time towards the latter part of 1337 B.S.

3. It is to be noted that there is no specific finding by the jury that the appellant knew or had reason to believe that the entry was a forgery, though the verdict read with the Judge's charge, must be held to imply this. Now it is clear that one most essential element in the case against the appellant was that he knew or had reason to believe that the entry was a forgery. It is also clear that his knowledge would depend to a very great extent, on the time when the forged document came into existence. The prosecution set up a substantive case as to that time, which they failed to establish. Now we cannot find throughout the charge delivered by the learned Judge any reference to this aspect of the case. All that he says is that in deciding whether appellant used the document fraudulently or dishonestly the jury will have to decide if his defence in the suit was true or not. That is undoubtedly correct so far as it goes, but it does not go sufficiently far. Even if the defence was

false, it would not necessarily follow that the appellant knew or had reason to believe that an entry in a public register used by him in support of that defence was a forgery. As we have already pointed out, the learned Judge failed to point out to the jury the effect of a finding that, as actually was found, the document was not created when the prosecution alleged it to have been created. A definite case was put forward that as the entry came into existence between certain fixed: dates and for other reasons, the appellant must have known it was a forgery. Nowhere in his charge does the learned Judge comment on the position, in reference to the question of knowledge on the part of the appellant, created, if or when it is found that the entry was in existence, previously. In that respect we think that the charge was defective and that the verdict based on it cannot be supported. We may add that in this view of the case we are to some extent supported by the wording of the verdict itself. In the result we are of opinion that this appeal must be allowed and the finding and sentence on the appellant set aside. We do not think that a retrial is either necessary or desirable in the circumstances of the case. The appellant will be discharged from bail bond and be acquitted.

Guha, J.

4. I agree.

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