

Panchanan Mukherjee Vs. the State

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Court : Kolkata

Decided On : May-14-1954

Reported in : AIR1955Cal175,1955CriLJ513

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 420, 467 and 471; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 297

Appeal No. : Criminal Appeal No. 195 of 1953

Appellant : Panchanan Mukherjee

Respondent : The State

Advocate for Def. : Harideb Chatterjee, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutt, Adv.

Disposition : Appeal allowed

Judgement :

K.C. Das Gupta, J.

1. The appellant was tried on three charges one under Section 467, I. P. C., the second under Section 471/467, and the third under Section 420, I. P.C. He was acquitted in accordance with the unanimous verdict of the jury of the first two

charges but convicted of the third charge. Briefly stated the prosecution case was that after the death of Omraton Bibi in whose favour compensation for lands acquired in Land Acquisition proceedings had been awarded the appellant. presented an application purporting to be by Omraton Bibi supported by a Muktearnama purporting to have been executed by her and thereby induced the authorities to pay out to him the money awarded. It is alleged that at the time he used the documents he knew or had reason to believe that these documents were forged and it was by using them he committed cheating.

2. The defence of the accused is that somebody on behalf of Omraton Bibi approached him with papers containing thumb impression with the certificate that it was of Omraton Bibi and under his Instructions he acted in the honest belief that the application had been signed and the Muktearnama executed by Omraton Bibi, and that he had no knowledge that it was forged.

3. It is obvious that the verdict of the Jury that he was not guilty of the offence under Section 471/467, I. P. C. is inconsistent with the verdict that he was guilty under Section 420, I. P. C. As the only deception alleged is by his alleged representation of forged documents to be genuine documents, it is impossible to me (Sic) how the Jury after holding that he did not use the forged documents knowing or having reason to know them to be forged, could still find that he had practised deception.

4. We find also that the learned Judge seriously misdirected the Jury inasmuch as he omitted to place before them the evidence as regards the existence of one Ahad Sana. It is necessary to mention that the certificate by the side of the thumb impression appearing on the documents is given in Bengali in the words:

^fVi&lgh;] ejkru chch] cax]vktkn 'kkgk] 'kax vkdwMh gh**

5. The prosecution case was that there was no Ahad Saha in Akudihi. Some evidence was adduced on the point. Two of the prosecution witnesses state in cross-examination that they knew of one Ahad Saha residing in Namapara which is contiguous to Akudihi. It was in our judgment important and necessary for the Judge to place this fact before the Jury, leaving it to the Jury to decide whether

Ahad Saha of Namapara might have described here as Ahad Saha of Akudihi, giving the name of a neighbouring village as his own. By omitting to do this he seriously misdirected the Jury.

6. In considering next whether the verdict of the Jury is erroneous we have to take into consideration, as already stated, the view of the Jury that the accused did not forge the documents. Apparently the Jury did not accept the evidence of the handwriting experts. Assuming it is possible for us now to record a finding on the evidence that the above certificate is in the handwriting of the appellant, I am of opinion that the evidence of the handwriting expert standing by itself is not sufficient basis for such a finding. Nor am I satisfied that there was no real Ahad Saha who could have made the certificate alleged,

It is important to remember that sometime people of smaller villages give the address of bigger villages as their own. Another circumstance which is worthy of notice in this connection is that one of the two parties who remained entitled to the award money at the relevant date was Ashima Bibi, P. W. 19. She stated that she had received her share of the awarded money and that she informed her brother about this. This is a circumstance which strongly supports the defence case that somebody on behalf of Omraton Bibi's heirs approached the appellant for getting the award money paid out of the Treasury. It is not improbable that he went with papers purporting to contain the thumb impression of Omraton Bibi and that the appellant honestly believed them to be genuine documents.

7. I have therefore come to the conclusion that the evidence on the record does not justify the verdict of the Jury that the accused committed an offence under Section 420, I. P. C. As I have already stated, this verdict is inconsistent with the Jurors' view as indicated in their verdict on the charge under Section 471/467, I. P. C. that the accused has not been proved to have used the forged documents with knowledge or reason to believe that it was forged. My conclusion therefore is that the misdirections in the learned Judge's charge to the Jury have led to an erroneous verdict.

8. I would therefore allow the appeal, set aside the order of conviction and sentence and acquit the accused. The appellant is discharged from his bail bond.

Debabrata Mookerjee, J.

9. I agree.

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