

Rati Jha Vs. Emperor

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Court : Kolkata

Decided On : Nov-22-1911

Reported in : (1912)ILR39Cal463,14Ind.Cas.201

Judge : Harington and ;Brett, JJ.

Appellant : Rati Jha

Respondent : Emperor

Judgement :

1. The appellant in this case was convicted of an offence under Section 471 of the Indian Penal Code and sentenced to five years' rigorous imprisonment. The document, on which the charge of using a forged document was founded, was a receipt for rent and the occasion on which the appellant used it was at a trial in which he was one of the defendants on a charge of rioting. The land in respect of which the riot took place was a piece of land of which he wished to take possession and, in the course of the hearing of the criminal case against him, the receipt for rent in question was produced by him and handed to his Muhktear who then handed it to a witness who was asked whether it was a receipt for rent granted by the landlord in favour of the present appellant, who was then one of the prisoners at the trial. The witness said it was not genuine; but, notwithstanding that, the document was initialled by the Magistrate who was trying the case and was filed as one of the documents produced on behalf of the defendant. On these facts, the appellant was convicted, as has been stated, under Section 471 of the

Indian Penal Code.

2. The learned Vakil who appeared on behalf of the appellant in this Court took four points on behalf of his client: first, that the trial was bad because the sanction on which it was held was invalid; secondly, that there was nothing to show that the receipt was a forgery; thirdly, that the receipt was not used within the meaning of the Code and, lastly, that the sentence was too severe.

3. With regard to the first point, the sanction was granted to the agent of the landlord whose seal was alleged to have been counterfeited on the rent receipt. The learned Vakil argued that the sanction ought to have been granted to a person who was one of the parties to the case in which the receipt was produced, namely, the rioting case. That contention finds no support from any of the provisions of the Code of Criminal Procedure and we do not agree with it. It appears to us that the landlord whose seal had been counterfeited was perfectly entitled to authorize his agent to obtain sanction to prosecute, and to prosecute in respect of the wrong which was done to him in counterfeiting his seal.

4. Then, it is said that the sanction was invalid on another ground because it was not granted by Mr. Davidson who heard the rioting case, but by his successor. But it has been decided by the Courts that a sanction is valid if granted by the successor-in-office of the Judge or Magistrate before whom the offence was committed. The first point taken, therefore, fails.

5. The second point taken is that there is nothing to show that the receipt was forged. The evidence as to that is that of the zemindar himself who comes into the box and pledges his oath that the seal which appears on the rent receipt is not the seal used in his office. A specimen of his own seal has been produced and a comparison shows that the seal on the rent receipt produced by the appellant, though it resembles that used by the landlord, differs from it in some small but material points. Further, the landlord says that the genuine receipts granted in his zemindari were on printed forms and this one was a receipt on plain paper. It is argued by the learned Vakil that there was another seal which was in use before 1905 and that that seal was affixed on the rent-receipt in question by a deceased karpardaz of the landlord for the purpose of cheating the appellant. Not only is

there no evidence that any such seal ever existed but it is in evidence that there was no seal at all in the zemindari at that time because the landlord deposes that there was no seal before 1905 when the present seal was procured and, further, the contention of the learned Vakil is open to this observation that, if any other seal was ever used previous to 1905, it was quite easy, for the appellant, who was before 1905 a tenant of the land, to produce receipts bearing the seal which he alleged was in existence then. But no such receipt was produced and the evidence shows that no such seal ever existed. The karpardaz who is alleged to have granted the receipt is dead and so could not be called to deny the aspersion made on his character.

6. The third contention is that the receipt was not used. What happened was, that the receipt was produced by the Mukhtear and handed to a witness and, though that witness did not prove it, it nevertheless went to the file after being initialled by the trying Magistrate. It appears to us that this constituted user. The learned Vakil cited the case of *Ambika Prasad Singh v. Emperor* 35 C. 820 : 8 Cr. L.J. 398 as an authority for the proposition that the filing of a document is not a user within the meaning of the Act. But the case he cited, when the judgment comes to be looked at, does not support that proposition. That case was one in which the receipts which were alleged to be forged were entered into a list and it appears from the report that what was filed was this list of the documents which was filed with a statement made on behalf of a third party. The filing of a list of documents is not the same thing as the filing of the documents themselves. There was no filing of the forged document in that case which would bring the accused within the Act. In the present case the document was tendered to the witness, and then it was initialled by the trying Magistrate and placed on the file by him after having been handed to the Mukhtear by the appellant himself for the purpose of being used in the case. In our view, that is a sufficient user and the conviction under Section 471, Indian Penal Code, is right and cannot be disturbed.

7. As to the further question, we think that the sentence may properly be reduced. The offence is, no doubt, a serious one because it is an offence which must have been committed after preparation and not an offence committed under pressure or sudden impulse. But, on the other hand, it is to be observed that the document

was produced in the course of a criminal trial in which the appellant was one of the defendants and the primary intention which he had was to get out of the difficulty which he had got into in consequence of the riot and, after all, the circumstance that the document was not supported by the production of perjured evidence of its genuineness may be taken into account in mitigation of punishment. On these grounds, we think, the sentence may with propriety be reduced and we reduce it from five years' rigorous imprisonment to three years' rigorous imprisonment. Subject to this modification in the sentence, the appeal will be dismissed.

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