

Eusuf Ali Vs. Emperor

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Court : Kolkata

Decided On : Feb-01-1932

Reported in : AIR1933Cal190

Appellant : Eusuf Ali

Respondent : Emperor

Judgement :

Panckridge, J.

1. In this case the appellant has been convicted of offences punishable under Sections 193 and 471, I.P.C. In respect of the offence under Section 193 he has been sentenced to, rigorous imprisonment for a period of 18 months. No separate sentence has been passed under Section 471.

2. It appears that the appellant was a defendant in a money suit before the third Additional Subordinate Judge of Noakhali. His defence was an allegation that the money in respect of which the suit was brought had been paid. He filed a written statement to that effect and he also filed in Court a certain document purporting to be a receipt granted by the plaintiff for the sum which, he alleged, had been paid by him. In due course the suit came on for hearing and the appellant gave oral evidence in which he reiterated that the money had been paid to the plaintiff in the plaintiff's shop. The learned Subordinate Judge disbelieved the defendant's story and decreed the suit. Thereafter a complaint was made under Section 476,

Criminal P.C., and these proceedings were started. The accused was charged with user of a forged document, the user being the filing by him of the receipt in the circumstances we have mentioned and also with giving false evidence, the false evidence being a statement made orally by him in Court that he had paid the sum mentioned in the receipt to the plaintiff. In the Sessions Court the defence of the accused was that the document was a genuine document and that the evidence he gave as to the payment of the money was true. The jury unanimously found him guilty on both the charges. Various points have been raised before us.

3. It is first of all stated that there should have been an inquiry by the learned Subordinate Judge before the complaint was made and also that the complaint does not state that in the opinion of the learned Subordinate Judge it is expedient in the interest of justice that an inquiry should be held. I do not think that there is any substance in these contentions, and in any event we should be reluctant on grounds such as these to set aside the conviction seeing that the appellant had a remedy open to him under Section 476-B by way of an appeal of which he did not choose to avail himself. A more important point has been raised with regard to the admission of certain evidence. It is stated that the appellant's deposition is inadmissible. The learned advocate for the appellant has drawn our attention to Order 18, Rule 5, Civil P.C., which provides that a witness' evidence shall be taken down in writing in narrative form and when completed shall be read over in the presence of the Judge and the witness. It appears from the record that the appellant gave his evidence in chief and in cross-examination on three days and that at the conclusion of each day it was read over to him. At a subsequent stage, on another day he was recalled and some questions were put to him. It does not appear whether on the fourth day the evidence he then gave was read over to him; undoubtedly that part of his evidence in respect of which he was prosecuted was read over but it does not appear that the evidence was read over to him when completed as required by Order 18, Rule 5.

4. There is authority for saying that depositions are matters required by law to be reduced to the form of a document within the meaning of Section 91, Evidence Act, and the only way they can be proved is under the provisions of Section 80 of the same Act, and this is only when they are taken in accordance with law. It is

suggested that the result of the disregard in this case of the provisions of Rule 5, Order 18 is that the deposition in question has not been taken down according to law and therefore is not admissible in evidence. As I pointed out, there are no merits at all in these points because the appellant has never challenged the fact that he did say in the civil Court that he had paid the money to the plaintiff. On the contrary, in the criminal proceedings he has reiterated this statement and he claims to be acquitted not because he did not make the statement alleged but because it was a true statement. We think that it is sufficient to dispose of this point if we only say that in this case, at any rate, we see no reason to make any exception to the salutary rule whereby the Courts do not entertain objections on the ground of admissibility of evidence which are taken for the first time in appeal. There was no objection to the evidence when it was tendered in the Court below and we do not think that even if the objection is sound as to which we express no opinion the appellant should be allowed to take it at this stage.

5. The only other points that have been raised are certain criticisms on the language of the learned Judge in charging the jury. He certainly has expressed his opinion on more than one occasion, but that he has a perfect right to do if he makes it clear to the jury that the opinion he expresses on the facts is not binding on them; and in fact at the end of his charge to the jury we find him warning the jury in this words:

I shall once again warn you that you are not bound to accept my opinion if it does not fit in with yours.

6. In our opinion it was perfectly clear to the jury that the responsibility for the decision was theirs and that they had to make up their minds themselves and not to rely on any opinion as to facts expressed by the Judge. We do not think that the sentence is at all too severe. In the circumstances the appeal is dismissed.

7. The appellant must surrender to his bail and serve out the remainder of the sentence.

M.C. Ghose, J.

8. I agree.

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