Emperor Vs. Har Mohan Das

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Court : Kolkata

Decided On : Feb-25-1927

Reported in : AIR1927Cal848

Appellant : Emperor

Respondent : Har Mohan Das

Judgement :

Mitter, J.

1. This is a reference under Section 807, Criminal P.C., by the Assistant Sessions Judge of Assam Valley Districts, disagreeing with the verdict of the majority of the jury. The accused Har Mohan Das was charged with an offence under Section 471, I.P.C., read with Section 467, I.P.C. He was charged with having fraudulently and dishonestly used as genuine a document, namely, a receipt for Rs. 530 bearing date the 2nd Baisak 1330 B.S. (15th April 1923), purporting to have been executed by Baliram, which he knew or had reason to believe to be a forged document. The accused was originally tried before a Subdivisions! Magistrate and was convicted. That conviction was ultimately set aside by the High Court as it thought that it was a case triable by a Court of Session. The accused consequently was tried by the Assistant Sessions Judge with the aid of a jury. Pour of them are of opinion that he is not guilty while one of them says that he is guilty under Sections 476/471 I.P.C.

2. The case for the prosecution is that Baliram who was not living at the time of the trial, having died after he had deposed before the committing Magistrate, filed a civil suit against the accused. That suit was dismissed by the Munsif. The Munsif's decision was reversed on appeal and Baliram's suit was decreed and ultimately that decree was upheld by the High Court. Baliram after the final-decree applied for execution of the decree on the 21st July 1922. Notice of the execution proceeding was served on the accused but he did not appear to show cause. The execution case was struck off on the 19fch August 1922. On the 19bh September 1922 the decree-holder Baliram again applied for execution. That execution case was again stuck off on the 25th November 1922. The decree-holder Baliram again applied on the 10th February 1923, for the arrest of the judgment-debtor - that is, the accused. This case was stuck off on the 4th June 1923. On the 11th June 1923 the fourth execution case was filed. In this execution case the accused was arrested and he was produced before the Munsif on the 1st July 1923. It is to be noticed that neither at the time of the arrest nor when he was produced before the Munsif did the accused say anything about any payment having been made in satisfaction of the decree nor did he mention anything about the receipt marked as Ex. 5 in this case. But on the 2nd July the accused filed a petition before the Munsif stating that he had paid a sum of Rs. 530 to the decree-holder for which he held a receipt. Even in that petition he did not state on which date the payment was made and what date the receipt bore. The receipt (Ex. 5) which bears date, as already stated, the second Baisak, 1330 (15th April 1923), was produced in Court for the first time on the 7th July.

3. The decree-holder denied before the Munsif having received any payment as evidenced by the receipt and contended that the receipt was forged. The Munsif, after holding an enquiry, started the present prosecution. Now it appears clear that if the payment had been made as is now contended for by the accused, on the 15th April 1923 it seems somewhat singular that he did not apply to the Munsif to certify the payment. He had under the Civil Procedure Code 90 days to apply for certification by the Court and although on the 1st or 2nd July there remained only a few days for the 90 days to expire he took no steps whatever to have this payment certified. This is a circumstance which tells very strongly against the case of the accused that the payment had been made on the 15th April 1923. It is also a

singular feature of the case that he did not mention the fact of this payment when he was taken under arrest to the house of the Munsif. The Munsif has deposed in this case and he clearly stated that the accused did not mention the fact of payment to him. One would have expected that when he was taken under arrest before the Munsif the attitude of the accused should have been one of severe indignation and he would have at once stated to the Munsif that he had been unjustly brought before him under arrest, as the money had already been paid. The fact that this was not mentioned to the Munsif is also a very strong circumstance against the story of the accused that the payment had been made.

4. Baliram, whose evidence was not avilable before the Sessions Court but who was examined before the committing Magistrate, had denied the receipt of any money. He had also stated that the receipt was a forged one. Great stress is laid on behalf of the accused on the statement he had made before the Magistrate who first tried him that the signature in the receipt was his. But subsequently he said that the signature might bear some resemblance to his signature. It is also to be noticed that the receipt which is on Court paper is signed in two places one at the top and the other at the bottom of that page. The receipt stamp does not bear on it the signature of Baliram and it is likely that the accused might have in his possession the Court paper which was signed by Baliram for Court purpose and that he might have afterwards utilized that paper for the purpose of this receipt. It is a singular circumstance, if the receipt was actually signed by Baliram, that he should not sign on the stamp as is usually done by persons granting receipts when receipts are granted which tells against the story set up by the accused. In addition to the Munsif, another witness has been examined, namely, peon who arrested the accused. He also stated that he was not told anything about this payment. That also is a circumstance which goes against the accused.

5. It has been argued here on behalf of the accused that Baliram was not in affluent circumstances. He was really in debt. He had a decree against him for about Rs. 1,600, his properties were under attachment and it was likely that he should deny the payment for the purpose of getting the same money twice and that no reliance should be placed on his testimony. It is said that the accused is a person of some respectability being the chairman of the village union and that it is

not likely that he should commit this forgery. We have to judge as between the conflicting statements of these two persons. There is oath against oath. We have, therefore, to judge of the credibility of the accused and of Baliram by the light of the circumstances. We have referred to circumstances which make it extremely improbable that the accused's story is a true one. No reason has been suggested why Baliram even after the 15th April 1923 should take steps and incur expenses for starting a new execution case if the money had already been paid. Judging from the ordinary course of human events it is rather likely that after the accused had been unable to find money and after he had been put to the Indignity of the arrest, that he should forge a receipt for the purpose of showing that he had been unjustly arrested and at the same time for the purpose of evading payment. Having regard to all the circumstances to which we have referred we think that the verdict of the jury is clearly wrong. We accept the. reference made by the Assistant Sections Judge, set aside the verdict of the jury and convict the accused under Section 467/471, I.P.C., and sentence him, to rigorous imprisonment for one year.

Suhrawardy, J.

6. I agree. I wish to add a few words with reference to the argument which has been vehemently pressed before us and is often advanced from the Bar as to the power of this Court under Section 307, Criminal P.C. It is said that on the authorities of this Court we should not interfere under Section 307, Criminal P.C., with the verdict of the jury unless we hold that it was not possible for the jury to take the view that they did in the Court below. If the argument as advanced before us is accepted in its entirety this Court will cease to function as a Court of Reference under Section 307, Criminal P.C., its duty being confined only to reject references. Our attention has been drawn to the language used in the case of Emperor v. Golam Kadar : AIR1924 Cal956 and Emperor v. Nritya Gopal Roy : AIR1924 Cal317 . In the first case Greaves, J., has observed:

It is necessary to sea in the light of these suggestions whether we can say that the verdict of the jury was so unreasonable that seven reasonable men could not have arrived at the verdict, for it seams to us that that is the real test that we have got to

apply. We are not able to say that it was not possible for the jury to have arrived at the verdict at which they have arrived.

7. In the latter case the point is stated thus:

The High Court should exercise the powers vested in it by Section 307, Criminal P.C. when it can affirmatively, with certainty and safety hold that on the evidence the verdict of the jury is manifestly wrong. It will not interfere with the verdict of the jury in every case of doubt entertainable on the evidence.

8. The learned Judge further observed:

We (the High Court) have to find out for ourselves whether on the evidence such as appears on the record it was possible for the jury to take the view which they have taken in this case with reference to the ten accused persons whose case has been referred to us.

9. These observations read with the text mean that where the evidence is of such a character that the jury as reasonable men can possibly take the view they have taken, this Court should not interfere. Human opinion honestly held may differ on all questions. But the test to be applied with regard to the honesty of such opinion is whether any reasonable man on the materials before him can hold it. The test, therefore, that has to be applied in estimating the weight of the verdict of the jury, is whether the opinion is such as could on the particular facts and evidence of the case have been held by reasonable men, however much the Judge may differ from that view. In the present case the surmise made by the learned Judge seems to be correct. The jury took away the documents in their retiring room and after ten minutes came out, presumably after a comparison of the signatures and the majority of them brought in a verdict of not guilty. It is evident that they did not take into consideration the very strong circumstantial evidence against the accused. Hence their verdict must be wrong.