

Emperor Vs. Asimoddi and ors.

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Court : Kolkata

Decided On : Jan-09-1918

Reported in : 45Ind.Cas.841

Judge : Chitty and ;Smither, JJ.

Appellant : Emperor

Respondent : Asimoddi and ors.

Judgement :

1. This is a somewhat peouliar case. Three persons Naimoddi, Asimoddi and Musti were placed upon their trial before the Sessions Judge of Dacca and a Jury on charges under Sections 465, 467 and 193, Indian Penal Code. The offence alleged against the accused was that, by personating Mir Baksha, the husband of one Sabjan and brother-in-law of the accused Naimmuddi before the Muhammadan Marriage Begistrar in Dacca, they had induced the Registrar to make an entry of the divorce of Sabjan by her husband Mir Baksha, to which entry they had affixed their thumb impressions and thereby made a false docnment within the meaning of Sections 463 and 464, Indian Penal Code. At the trial it appeared that the accused Mnsti, who was said to have been present in the Registrar's office, bad taken no active part in the proceeding, and he was accordingly acquitted by the Jury. Nothing more turns upon his share in the case. As to the othpr accused, in the case of Asimoddi, the Jury, by a majority of 3 to 2, found him not guilty. The Judge, disagreeeii'g with that verdict, has referred the

case to this Court under Section 307, Criminal Procedure Code. In the case of Naimoddi, the Jury, by a majority of 3 to 2, found him guilty of an offence under Section 465, Indian Penal Code. The Judge accepted the verdict of the majority in his case and sentenced him to five years' rigorous imprisonment. We may state in passing that this sentence was illegal, inasmuch as the maximum sentence under Section 465, Indian Penal Code, is imprisonment for two years. Naimoddi appealed to this Court from jail. We directed that his appeal should be put up before us at the time the reference in the matter of Asimoddi was taken up. This was done, and Naimoddi has also instructed the same Pleader as Asimoddi. The case made for Naimoddi was that there had been misdirection on the part of the Judge and that the sentence was illegal. We accordingly admitted his appeal and the learned Deputy Legal Remembrancer waiving service of notice of this appeal on behalf of the Crown, Naimoddi's appeal has been argued along with the reference in the matter of Asimoddi. We can, therefore, dispose of the two cases in one judgment.

2. It will be convenient to take the case of Naimoddi first. The trial being by Jury, he could only Appeal on a question of law and that in this case would be misdirection by the Judge. In his grounds of appeal he gives two instances of misdirection which, in our opinion, do not amount to any misdirection at all; but a perusal of the heads of charges shows that there was a misdirection on the part of the Judge on another point. The Judge says: 'If the person who put his thumb impression in the register as Mir Baksha was not really Mir Baksha, it is clear that he made a false document within the meaning of Section 464 and that his intention was that fraud should be committed, also that injury should be caused to Mr Baksha. He, therefore, committed 'forgery.' There are two questions: (1) Is the page of the register, Exhibit 8, a forgery? (2) Did accused Naimoddi and Asimoddi forge it.' Throughout the rest of the charge we find nothing stated by the learned Judge on the question of fraud or dishonest intention on the part of the two accused. He states (in the words which we have quoted) an apparently self-evident fact, and has not left it to the Jury, as he should have done, to say whether on the evidence they found that the intention of the accused or either of them was dishonest or fraudulent. This might under certain circumstances have been a reason for setting aside the verdict of the Jury. But Section 423 (2) of the Criminal

Procedure Code say: Nothing herein contained shall authorize the Court to alter or reverse the verdict of a Jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the Jury of the law as laid down by him.' Here we are asked to set aside the verdict of the Jury, and to order a retrial. The question is whether we should do that in a case where we are of opinion that the verdict is not erroneous and has not been made erroneous owing to the misdirection by the Judge, but which, on the evidence which we have perused in the course of the hearing of these two cases, is perfectly correct. Though the Judge may have been wrong in not directing the Jury more explicitly with regard to the fraudulent or dishonest intention of the accused, it cannot be said that owing to that the Jury have arrived at an erroneous verdict. It appears to us that, so far as the facts of the case and the conviction of Naimoddi on these facts are concerned, it would be idle to send the case back, because it appears to be a perfectly clear case on the evidence against both the accused. We, therefore, dismiss the appeal of Naimoddi so far as it relates to the misdirection by the Judge. But the sentence upon him of five years' rigorous imprisonment was clearly illegal. We think that the circumstances of the case will be met by a sentence upon Naimoddi of one years rigorous imprisonment.

3. Turning to the case of Asimoddi, that is before us on a reference under Section 307, Criminal Procedure Code, and we are not only entitled but bound to go into the facts, and giving due weight to the opinions of the Judge and the Jury, to decide the case upon the evidence. The case, as we have already intimated in speaking of Naimoddi, is perfectly clear against both the accused and it is impossible to understand why one member of the Jury should have pronounced in favour, of Asimoddi when convicting Naimoddi. It is clearly proved that these two men went to the office of the Muhammadan Registrar of Marriages in Dacca on 12th September 1917. That they had been there came to the notice of Mir Baksha, the complainant. He knew (as he has sworn) that Naimoddi had his sister Sabjan (the wife of Mir Baksha) in his house at that time and was reluctant to let her return to her husband. Mir Baksha also had reason to suppose that Naimoddi wanted a divorce to be brought about between the two in order that he might marry his sister to somebody else. Mir Baksha accordingly went to the Registrar's office and found

that an entry: had been made attested by the thumb impressions of two persons, one personating himself and one posing as Sk. Nimai to identify the husband. Nimai was found not to have been there and has given evidence to say that he never went. A complaint was lodged, and then attempts were made to bring about a compromise between the parties. A baithak was held at the house of the witness Nogendra but, as apparently Naimoddi did not carry out the terms of the arrangement then arrived at, these proceedings were instituted. It was clear in the trial that the offence was one under Section 465 and not under Section 437, as the document was not in any sense 'a valuable security.' But that Naimoddi and Asimoddi both made a false document by putting their thumb impressions to the entry, Exhibit 8, admits of no doubt. The proof of it rests mainly, it is true, on the evidence of the expert who has been examined in this case, but there seems to be no reason whatever to discredit the expert's statements, or the conclusion which he drew. It is quite plain that the thumb impressions in Exhibit 8 are those of the two accused and not of Mir Baksha or Sk. Nimai. There can be no question whatever as to the intention of these two men in getting that document drawn up and signing it as they did. It was undoubtedly dishonest and a fraud upon Mir Baksha. That it was a false document under Section 464, Indian Penal Code, cannot be disputed for a moment. If Naimoddi and Asimoddi put their thumb impressions on that document intending, as they did intend, that it should be taken as a signature by Mir Baksha and Sk. Nimais, their action would come directly within the first definition in Section 464. We do not think that there is any distinction to be drawn in the guilt of the two men. We accordingly convict Asimoddi under Section 465, Indian Penal Code, and sentence him also to one year's rigorous imprisonment. Asimoddi, if on bail, must surrender to his bail and serve out his sentence.