Mobarak Ali Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/886476

Court : Kolkata

Decided On : Apr-18-1912

Reported in : 15Ind.Cas.81

Judge : Holmwood and ;Imam, JJ.

Appellant : Mobarak Ali

Respondent : Emperor

Judgement :

1. This is an appeal from the judgment and sentence of the learned Sessions Judge of Noakhali who, agreeing with both the assessors, convicted the appellant Mobarak Ali under Section 471 read with Sections 466, 474 and 193, Indian Penal Code and sentenced him under Section 471 road with Section 466 to rigorous imprisonment for five years and passed no separate sentence under Section 474 and Section 193.

2. It appears that the accused, as the plaintiff in Suit No. 245 of 1910, filed a certified copy of a decree of the Munsif dated Sraban 1302 and in the certified copy filed by him he altered Sraban 1302 to Sraban 1301. The alteration is clear and apparent on the face of the document, and it is not now disputed. Now it is alleged by the prosecution that the only object in making this alteration was to establish that his mortgage was prior to that of the defendants, and that was the plea he took in his plaint, and the list of documents by which the plaint was to be

supported contained this copy of the decree as the first document on the list and obviously it was the basis of the claim made in the plaint. It was verified on affidavit by the accused himself as the plaintiff. As a matter of fact, he did not file the document till the 26th August, the plaint having been filed on the 16th July. But the forgery was not discovered till the 6th December when the defendant haying taken advice from the Muktear who appears to have been concerned on behalf of the accused in the suit of 1897, that gentleman on referring to his note-book found that the proper date of the decree was 1302. The defendant Abdul Aziz thereupon brought the matter to the notice of the Court and the Court called upon Mobarak Ali to make a statement. That statement is Exhibit 7. In that statement Mobarak Ali took the responsibility for making over this decree to his Pleader, Babu Susil Chandra Chatterjee, for filing it on has behalf in Suit No. 730 of 1910, and said that the document was entered as the principal one in the list of document. It will be observed that he says nothing there as to his brother. Hasan Ali, lately deceased, whom he now suggests may have made the alteration.

3. The first point taken in appeal is that there is nothing to raise any presumption of guilty knowledge on the part of the accused. The learned Judge says rather vaguely in one part of his judgment that it has been held that the fact that a man is interested in establishing the contents of a forged deed raises a presumption that he filed it knowing it to be forged. The learned Judge has not given us any reference and we are unable to accept this proposition. It is a proposition which is far too wide. The authorities, on the contrary, are that there must be the using of a document by a person who knows or has reason to believe that it is forged. The element of fraud or dishonesty must be present in the mind of the accused.

4. Now, we are unable to accept the plea of the accused that his brother Hasan Ali was in any way responsible either for the forgery or the user. It is a very easy thing to make charges against a dead man, but those who make them certainly must be very careful to support them with the strongest evidence. No evidence whatever is produced to show that Hasan Ali had anything whatever 'to do with the user or the forgery of this document. On the contrary, the Legal Practitioner engaged in the case denied that he had anything to do with it. The inference which is sought to be drawn from the statement is that Hasan Ali was a cleverer man than his brother

and was in fact a Pundit. We think that this is the strongest reason to suppose that he would not have committed this somewhat obvious forgery. However, though the forgery appears to us when our attention is drawn to it to be pretty obvious, it did pass muster with the ministerial officers of the Court, one of whom tells us that having examined the document, he saw nothing suspicious about it, and also with the Muktear who ought to have remembered that the decree was in 1302. He also was deceived. However, the defendant himself as suspicious of fraud and he told the Muktear, and the Muktear then looked up his notes and discovered from his professional notes that the decree was really in 1302. A true copy was then procured and the fraud was discovered. Being confronted with this, the accused dropped the case and did not appear again. His Pleader says that he went to him and made some statement about having forgotten the date. But he omitted to do what any honest man would have done, namely, instruct his Pleader to state that as he found his case was based upon a forged document, he withdrew it and would not rely upon the document. He did* nothing of the kind. From first to last he appears to have relied on the document, and when he was found out, he merely fled away. We cannot hold that his conduct is in any way consistent with his innocence and conduct is the principal criterion of guilty knowledge.

5. Then, the second point arises. We are asked to hold, on the authority of the case of Ambika Prasad Singh v. Emperor 35 C. 820 : 8 Cr.L.J. 398, to which one of us was a party, that the mere filing of a document in Court without tendering the same in evidence does not constitute user of it within Section 471, Indian Penal Code. This head-note, as has been pointed out by Carnduff, J., in a more recent unreported case, is entirely misleading; and speaking for myself as one of the Judges who was a party to that decision, I must say that it never entered into my mind to lay down such a proposition which would obviously be contrary to the statute law on the subject. What we did hold was that there was no evidence that these receipts had been used fraudulently or dishonestly by the accused. They were produced by a third party in a case under Section 144, Criminal Procedure Code. They were not documents upon which the decision of the case depends in the sense that the documents filed with the plaint are the basis of a Civil suit, and the evidence that the accused himself had anything whatever to do with these documents was very weak. He did not attempt to assert their genuine character

after they had once been impugned, and under those circumstances, we were unable to hold that there had been any user. The case obviously depended upon its own facts as most criminal cases do. But the filing of a document as the basis of a plaint or as a necessary sequel to the pleas in the plaint is, in our opinion, itself an user, and it then becomes incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine. We have already held that in this case it cannot be held that the accused so filed this document.

6. Lastly, there is the point of law as regards the charges. We agree with the proposition that was laid down in the case of Queen v. Nuzur Ali 6 N.W.P.H.C.R. 39 that convictions under Sections 471 and 474, Indian Penal Code, cannot stand together. The two things must be charged in the alternative; obviously, one being the use as genuine of a document he knows to be forged and the other being the possession of such document with intent to use it. It must, therefore, be taken that the charges under Sections 471 and 474 are in the alternative and that there cannot be convictions for both. The conviction, therefore, under Section 474 in this case must be set aside. But this is immaterial as no separate sentence has been passed.

7. Then we come' to the fact that the charge, although it mentioned the certified copy of a decree of a Court of Justice as the forged document, is laid under Section 465 read with Section 471 and that was never amended in the Sessions Court. The learned Judge speaks of the charges as amended as well as a fresh charge framed by the Court under Section 193; but we find that the amendment to which he refers is merely one of date, that the offence was committed between the '26th August and 6th September instead of between 16th July and 26th August as charged by the Magistrate. That being so, we are of opinion that it was not open to the learned Judge to convict and salience the accused under Section 466 read with Section 471. The accused is entitled to the benefit of this somewhat fortunate error for him, and he could not receive a greater punishment than that which the law provides under Section 465.

8. We must, therefore, alter the conviction under Section 471 read with Section 466 to one under Section 471 read with Section 465 and reduce the sentence to

one of two years' rigorous imprisonment under Section 455. With this modification, the appeal is dismissed.

9. It is unnecessary for us to say anything about the conviction under Section 193 which depends on the false verification of the plaint. If the document relied on is false, then the verification is also false.