APPELLATE CRIMINAL.

Before C. C. Ghose and Duval JJ.

HARUN RASHID

v.

EMPEROR.*

1925

Dec. 1.

Charge—Trial on a charge under ss. 467/109 of the Penal Code—Conviction of dishonest user under ss. 471 and 467—Legality of the conviction thereunder without a charge—Criminal Procedure Code (Act V of 1898) ss. 236 and 237.

An accused person charged under sections 467/109 of the Indian Penal Code, with the abetment of forgery of a *kobala*, cannot be convicted under sections 471 and 467, of dishonest user of it on a subsequent date, by presentation to a sub-registrar for registration, without a charge of the latter offence. Sections 236 and 237 of the Criminal Procedure Code do not warrant such conviction.

THE appellant, Harun Rashid, was tried with four others, Sajid Ali, Atar Ali, Yakub Ali, and Salim Mia before the Court of Sessions at Cachar with the aid of three Assessors. The four accused were charged under section 467 of the Penal Code, and the appellant under sections 467/109. Atar, Yakub and Salim were acquitted, and the appellant and Sajid found guilty by the Assessors. The Sessions Judge acquitted the latter, and convicted the appellant under sections 471 and 467 of the Penal Code, and sentenced him, on the 4th June 1925, to six years' rigorous imprisonment.

The prosecution case was that, on the 30th March 1924, Sajid Ali wrote out the *kobala*, which purported to state that Mahammad Yusuf and Sultan Mahammad sold 120 bighas of land to the appellant for Rs. 4,000.

* Criminal Appeal No. 482 of 1925, against the order of A. de C. Williams, Sessions Judge of Silchar, dated June 4, 1925.

The names of Atar, Yakub and Salim appeared on the document as attesting witnesses. On the 31st July 1924, the appellant presented it for registration to the Sub-Registrar who issued notices on the alleged executants. They appeared before him and denied execution of the *kobala* altogether, and the prosecution, resulting the conviction of the appellant, was then instituted.

Babu Debendra Narain Bhattacharjee (with him *Babu Satyendra Kishore Ghose*), for the appellants. On a charge of abetment of forgery, a conviction under sections 471 and 467 of the Penal Code is not warranted by sections 236 and 237 of the Criminal Procedure Code. The meaning of the latter sections was explained in *Queen-Empress* v. *Croft* (1), and *Akram Ali* v. *Emperor* (2). The forgery and its abetment was an entirely different transaction from the subsequent user. The Assessors were not asked to give their opinions as to the latter offence.

The Deputy Legal Remembrancer (*Mr. Ashraf Ali*), for the Crown. The abetment and the user of the *kobala* were parts of one transaction, and the conviction of user was legal under sections 236 and 237 of the Code.

C. C. GHOSE AND DUVAL JJ. The appellant before us has been convicted by the learned Sessions Judge of Cachar under sections 467 and 471 of the Indian Penal Code, and has been sentenced to undergo rigorous imprisonment for a period of six years. He was put on his trial along with four others, Sajid Ali, Atar Ali, Yakub Ali and Salim Mia, they being charged under section 467 with forgery, and he being charged under section 467, read with section 109, of

(1) (1895) I. L. R 23 Calc. 174, 177, 178. (2) (1913) 18 C. L. J. 574.

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abetment of forgery. The four others were acquitted. The trial was with the aid of three Assessors who found the accused guilty of having abetted the forgery of a certain document.

The case for the prosecution was that the accused Sajid Ali had written out a *kobala* by which Mahammad Yusuf and Sultan Mahammad purported to convey to the accused, Harun Rashid, 120 bighas of land for Rs. 4,000 ; the consideration being accounted as follows, namely, Rs. 2,000 due to Harun Rashid on account of a certain debt, and Rs. 2,000 as commission due to him from them. In other words, no money was alleged to have been paid at the time of the execution of the *kobala*. The three witnesses to the execution of the *kobala* were the accused Atar Ali, Yakub Ali and Salim Mia, who were discharged by the Judge as not knowing that the deed was a forgery. As regards the accused Sajid Ali, there was evidence that he had written out the *kobala* in question. The Assessors found him guilty of forgery, but the learned Sessions Judge being of opinion that there was nothing to show that Sajid Ali did not write out the *kobala bonâ fide* at Harun's request, acquitted him as stated above. The charge against the appellant, Harun Rashid, was that he had abetted the forgery of a valuable security which was forged in consequence of his abetment.

The evidence goes to show that he presented the *kobala* for registration at the Sub-Registrar's office. The Sub-Registrar thereupon called on the alleged executants to attend, and thereafter the alleged executants appeared and denied execution of the document. The learned Sessions Judge found on the evidence that there could be no doubt whatsoever that the *kobala* in question was a false document. It was clearly a valuable security, and its very nature showed that it was

made with intent to cause the alleged executants to part with property. It was, therefore, a forged document. He found that there was no evidence worth the name that Harun had abetted the forgery by entering into a conspiracy to procure the forgery, but he was of opinion that the transaction, as disclosed in the evidence, pointed rather to Harun having committed an offence punishable under section 471 of the Indian Penal Code, *i.e.*, Harun had used the document as a genuine one, knowing that it was a forgery, and that the recitals in the said document were all untrue, and that his intention was to cause wrongful loss to the alleged executants. The learned Sessions Judge was of opinion that Harun should have been charged under sections 467 and 471 of the Indian Penal Code, the user of the forged document being its presentation to the Sub-Registrar for registration. He, accordingly, convicted him under the said sections, and sentenced him as stated above.

On behalf of the appellant it has been argued that he, having been tried on a charge of abetment of forgery, cannot be convicted under section 471 of using a forged document as genuine, without a trial having been held on a charge under section 471 of the Indian Penal Code. It appears from the record that the learned Sessions Judge relied upon the provisions of section 237 of the Criminal Procedure Code as authorizing him to convict the appellant under section 471 of the Indian Penal Code. It, therefore, becomes necessary for us to examine the provisions of section 237 of the Criminal Procedure Code and see whether the procedure adopted by the learned Sessions Judge is legal. Section 237 of the Criminal Procedure Code runs as follows:—

"If, in the case mentioned in section 236, the "accused is charged with one offence, and it appears

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"in evidence that he committed a different offence "for which he might have been charged under "the provisions of that section, he may be convicted "of the offence which he is shown to have committed, "although he was not charged with it". It will be seen that section 237 is only applicable to cases which properly fall within the scope of section 236 of the Code of Criminal Procedure which says:—"If a single "act or series of acts is of such a nature that it is "doubtful which of several offences the facts which "can be proved will constitute, the accused may be "charged with having committed all or any of such "offences, and any number of such charges may be "tried at once; or he may be charged in the alterna-"tive with having committed some one of the said offences". We do not think that sections 236 and 237 can apply in this case. The charge was abetment of forgery, an offence which is complete when the document was written and signed. But the conviction is for a subsequent act. The forgery purports to be on the 30th March, 1924. The date the document was presented for registration and used was the 31st July, 1924. The user is, therefore, a distinct and different offence for which the accused is entitled to be separately charged.

Before a person is convicted under a particular section of the Indian Penal Code or of any other enactment, it is imperative that, subject to the provisions of section 237 of the Criminal Procedure Code, he should be formally charged with having committed the offence specified in the section and be given an opportunity to defend himself against the specified charge. That has not been done in this case, and we are constrained to hold that the conviction and sentence in the present case cannot stand. The result, therefore, is that the conviction and sentence in this

case are set aside, and the case is sent back in order that the appellant may be re-tried according to the provisions of the law after framing suitable charges. The appellant will remain on the same bail as he is on now, pending further orders of the Sessions Judge.

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E. H. M.

CRIMINAL REVISION.

Before C. C. Ghose and Duval JJ.

SURENDRA NATH SINGHA

v.

JANAKI NATH GHOSE.*

1925

Dec. 15.

Judgment—Defective judgment of acquittal—Order of acquittal set aside—Criminal Procedure Code (Act V of 1898) s. 367.

Where the Magistrate acquitted the accused, on a charge of rioting with the common object of taking possession of the complainant's land and assaulting his *durwans*, without coming to a finding on the question of possession :—

Held, that the judgment was not a satisfactory one, as the Magistrate should have arrived at a proper decision on the point, and that the order of acquittal must be set aside and a re-trial ordered.

THE prosecution story was that one Kartik Kara had some 7½ bighas of land, in Gariahat Road, under Janoki Nath Ghose and Mantu Ghose. In 1908 he sold his tenancy right to Mritunjoy Sirdar and Khirode Sirdar who were in possession of the land by cultivation. A dispute having arisen between the purchasers and the landlords, a proceeding under section 145 was instituted between the parties. While these proceedings were pending the petitioner, who is the son-in-law of Khirode, went on the land

* Criminal Revision No. 811 of 1925, against the order of I. J. Cohen, Honorary Magistrate, Alipore, dated Oct. 12, 1925.