

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR v. KHUSHALI AND ANOTHER.*

Act No. XLV of 1860 (*Indian Penal Code*), sections 230 and 420—

Definition—"Coin"—Uttering false coin—Cheating.

Where the offence charged consisted of selling or pawning as genuine gold mohars of the reign of Shahjahan silver rupees of that reign which had been gilt or in some way covered over with gold, it was held that the offence would be that of cheating and not that of uttering false coin. A gold mohar of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of section 230 of the *Indian Penal Code*, as it is not used for the time being as money. *Regina v. Babu Yadav* (1) followed. *Queen v. Kunj Beharee* (2) distinguished.

Two persons, Khushali a chamar, and Jwala a sonar, were committed for trial upon a charge under section 239 of the *Indian Penal Code*. The circumstances upon which the charge was based were that they had gone round to various persons of the village where they lived selling or pawning to certain residents of the village sundry coins which they alleged to be gold mohars of the reign of the Emperor Shahjahan. These coins were in fact silver rupees of that reign which had been coated with gold. The fact that the two accused had sold or pawned, as the case may be, the coins in question, was indisputable, as was the fact that they were not gold mohars; but the chamar pleaded that he knew nothing about the coins not being genuine—he had merely been employed by the sonar to help to sell them; while the sonar also pleaded ignorance of the true nature of the coins, and said that they had been given to him to sell by another sonar of a neighbouring town. The two accused were acquitted by the Sessions Judge of Mainpuri, and against this order an appeal was preferred by the Local Government.

The Assistant Government Advocate (Mr. W. K. Porter), for the appellant.

BANERJI and AIKMAN, JJ.—This is an appeal by the Local Government from an original order of acquittal passed by the Sessions Judge of Mainpuri. Khushali and Jwala were sent up by the Police upon a charge of cheating, in that they passed to certain persons as genuine gold mohars of the time of Shahjahan silver rupees of that reign which had been gilt or in some way

* Criminal Appeal No. 849 of 1906.

(1) (1874) 11 Bom. H. C. Rep., 172. (2) (1878) 5 N. W. P., H. C. Rep., 187.

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covered over with gold. The Magistrate, however, committed the accused to the Court of Session for trial for an offence punishable under section 239 of the Indian Penal Code, that is, for fraudulently delivering counterfeit coin with the knowledge that it was so. In our opinion, looking to the definition of the word "coin" as given in section 230 of the Indian Penal Code, a gold mohar of the reign of Shahjahan cannot be deemed to be a coin, inasmuch as it is not used for the time being as money. The same view was taken by the Bombay High Court in the case of *Regina v. Bapu Yadav and Rama Tulshiram* (1). In that case the Court had to consider whether a coin of the time of the Emperor Akbar came within the definition of "coin" as given in section 230 of the Indian Penal Code. The learned Judges held that it did not, as it was not a current coin. With this view we agree. We were referred to the case of *Queen v. Kunj Beharee* (2). We think that case is distinguishable, as the coins in question in that case, namely, Kaldar and Jeypore mohars "were still in circulation as a medium of exchange." That cannot be said of the mohars of the reign of the Emperor Shahjahan. If the accused committed any offence, it was the offence of cheating and not an offence under Chapter XII of the Indian Penal Code. Although we do not agree with the learned Sessions Judge that it was not proved that the accused had passed the coins, the evidence to bring home guilty knowledge to them is so extremely meagre that we do not deem it right to order their retrial for the offence of cheating. We accordingly dismiss the appeal. The accused if in custody must be at once released.

(1) (1874) 11 Bom. H. C. Rep., 172. (2) (1873) 5 N.-W. P. H. C., Rep., 187.