

## APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. ABAJI RAMCHANDRA.\*

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February 18.

*Indian Penal Code (Act XLV of 1860), Secs. 474 and 475—Possession of forged documents bearing counterfeit marks—Ingredients of the offence—Charge to the jury—Misdirection.*

To support a charge under section 474 of the Indian Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in section 466 or section 467 of the Indian Penal Code.

To support a charge under the latter part of section 475 of the Indian Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in section 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged.

The accused was charged with being in possession of forged documents, an offence punishable under sections 474 and 475 of the Indian Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to connect them with the accused being the kind of document he would be likely to have in his house and he alone, and that if they found this issue in the affirmative, they must return a verdict of guilty.

*Held*, that the charge to the jury was defective and misleading and insufficiently complied with the requirements of section 297 of the Code of Criminal Procedure (X of 1882).

APPEAL from the conviction and sentence recorded by the Joint Sessions Judge at Belgaum in the case of *Queen-Empress v. Abaji Ramchandra*.

The accused was charged with being in possession of forged documents, thirty-seven in number, which were found by the police in a cupboard in his house on the 18th August, 1889.

\* Criminal Appeal, No. 381 of 1890.

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The accused was at first convicted under section 475 of the Indian Penal Code and sentenced to transportation for life.

The High Court reversed this conviction and sentence<sup>(1)</sup>, and directed the accused to be retried by the Court of Sessions with a new jury.

Thereupon the accused was again put on his trial on the following charges :—

1st. "That he on or about the 18th August, 1889, had in his possession the papers (specified in the charge) upon which seals or signatures or other marks and devices which are used for the purpose of authenticating documents of the nature of valuable securities, had been counterfeited, intending that such seals, or signatures, or other marks and devices should be used for the purpose of giving authenticity to documents thereafter to be forged on such papers, and that he had thereby committed an offence under section 475 of the Indian Penal Code."

2ndly. "That he at the same time and place had in his possession the said documents knowing the same to be forged, and intending that the same should fraudulently or dishonestly be used as genuine, and that he had thereby committed an offence punishable under section 474 of the Indian Penal Code."

In his charge the Judge directed the jury that it had been abundantly proved (and indeed admitted by the defence) that the documents were forgeries, and that the main question for their consideration was whether the documents were found in the possession of the accused. He then continued :—

"Apart from this direct evidence it was also necessary for the prosecution to show that these forged papers were such as the accused would have an interest in, in fact to trace some connection between the accused and these forgeries. It is especially necessary to do this, as Mr. Máneksháh has pointed out that the papers were not found in a locked cupboard or box, and as other people were living in the house with the accused, it is difficult to show his 'exclusive' possession of them, except by showing the interest that he alone had in one or more of these documents. Now it must be admitted that, with the exception of Exhibit C 16, the other documents found are not shown to have any connection with the accused at all.....The one document on which the prosecution relies to prove this connection is Exhibit C 16, and I invite your attention especially to this. It is a rough sketch of a pedigree of the accused's family. It is signed in a tentative way by two Deputy Collectors (both forged signatures, of course) and seems to be a rough sketch to serve as practice for a finished forgery, but which has not yet been used, and which could not be used, in its present form. Now this document is very important, and to ascertain its

(1) I. L. R. 15 Bom, 189,

importance the history of the accused has to be looked to .....  
I think now I have called your attention to the chief points in the case. The issues you have to decide are:—

“Is the evidence sufficient to enable you to say (1) that these papers were found in the accused's possession in a house of which he was in occupation? (2) that the nature of one, at all events, of them is such as to connect them with the accused, being the kind of document he would be likely to have in his house, and he alone.

“If you find in the affirmative that the forged papers were in the possession of the accused, as proved by the direct evidence of the finding and the indirect proof of the connection of one of the papers with the affairs of the accused, you must find him guilty. And if you find the issue in the negative, or entertain such grave doubt that you cannot make up your minds, you must give the accused the benefit of the doubt and acquit him.”

The jury returned an unanimous verdict of guilty on both the charges.

The Sessions Judge accepted this verdict, and convicted the accused under sections 474 and 475 of the Indian Penal Code, and sentenced him to transportation for life.

Against this conviction and sentence the accused appealed to the High Court.

*Branson* (with him *Máneksháh Jehángirsháh*) for appellant:—  
In his charge to the jury the Sessions Judge says nothing about the intention of the accused. Even assuming that the accused was in possession of the forged documents, it must be shown that he knew that they were forged, and intended to use them as genuine. The only document in which the accused is shown to have any interest is Exhibit C 16. But that document is not such as is described in section 466 or 467 of the Indian Penal Code. It is only a study or preparation for a forgery. If so, it does not fall under either of those sections. The attention of the jury was not drawn to this circumstance, and yet this was the only document out of the whole lot which can be said to implicate the accused. The charge is most vague and misleading.” The conviction cannot, therefore, stand.

*Shintáram Niráyan*, Government Pleader, for the Crown:—I admit that Exhibit C 16 is not a document falling under section 466 or 467 of the Indian Penal Code. But the charge was not

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confined to this document only. It is in respect of all the documents found in the accused's possession, and they are admitted to be forgeries.

**BIDWOOD, J.** :—The Sessions Judge's charge to the jury deals so imperfectly with the questions which it was necessary for the jury to consider that it cannot be regarded as sufficiently complying with the requirements of section 297 of the Code of Criminal Procedure, which provides that, in charging the jury, the Court shall sum up the evidence for the prosecution and defence and lay down the law by which the jury are to be guided. That is, the Court is to lay down fully and clearly the law applicable to the facts of the case.

Now, the jury in the present case have convicted the accused of offences under sections 474 and 475 of the Indian Penal Code in respect of his possession of thirty-seven documents which are specified in the charge. To support a charge under section 474 of the Indian Penal Code, it was necessary for the prosecution to prove, (1) that the thirty-seven documents were forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents was of the description mentioned either in section 466 or section 467 of the Indian Penal Code. In such a case it might have been more convenient if a separate head of charge had been prepared in respect of each of the documents in question. Illustration (d) of paragraph 1 of section 235 of the Code of Criminal Procedure shows that that would have been a permissible course. The course actually adopted, however, is not illegal, and would not have prejudiced the accused if the attention of the jury had been directed separately to each document. In his charge to the jury the Sessions Judge says that the documents are admitted by the defence to be forgeries; but he does not deal at all with the question whether the accused knew them to be forgeries, and intended that they should be fraudulently and dishonestly used as genuine. The only document which he refers to in any detail is Exhibit No. 16. That is the only document in which the accused is shown, in the opinion

of the Sessions Judge, to have any interest; and it is because this document was found with the other documents in the accused's house, that the accused's connection with all the documents was held to be established. But as regards this particular document the Sessions Judge remarks that it seems to be "a rough sketch to serve as practice for a finished forgery but which has not yet been used, and which could not be used in its present form." The Sessions Judge did not apparently intend to direct the jury, in respect of this particular document, to find the fourth of the points for determination above indicated against the accused. There is no direction at all as regards that point in respect of any of the other documents. Again, there is no attempt whatever to discuss the question whether any of the documents was of the description mentioned either in section 466 or 467 of the Indian Penal Code. But except to documents falling under one or other of those sections section 474 has no application at all.

Again, to support the charge under the latter part of section 475 it was necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks on those papers were counterfeited on them; (3) that the devices or marks were such as are used for the purpose of authenticating any document described in section 467 of the Indian Penal Code; (4) that the accused intended that the devices or marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. Now the Sessions Judge does not, in his charge to the jury, even refer to the provisions of section 475 of the Indian Penal Code which are applicable to the case, or indeed to that section at all. He refers only to section 474. Nor does he in any part of his charge deal with the third and fourth points for determination above indicated. The charge, as it stands, is most defective and misleading and the case must be re-tried. At such re-trial, which must be by a Sessions Judge who has not already formed an opinion on the merits of the case, the necessity for adding a charge under section 476, Indian Penal Code, should be considered.

We reverse the conviction and sentence, and direct that the case be re-tried by a Court of competent jurisdiction. The Gov-

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ernment will be moved to appoint a special Sessions Judge to try the case with a new jury at Belgauva.

PARSONS, J. :—It is much to be regretted that the verdict of the jury at this second trial cannot be accepted and that a fresh trial should be ordered, but in my opinion it is the only course open to us to take.

The accused was charged, first, “with having in his possession 37 papers, on which seals or signatures or other marks and devices which are used for the purpose of authenticating documents of the nature of valuable securities have been counterfeited, intending that such seals or signatures or other marks and devices shall be used for the purpose of giving the appearance of authenticity to documents thereafter to be forged on such papers—an offence punishable under section 475 of the Indian Penal Code.”

To sustain a charge under this section, it is necessary to show, first, that a device or mark has been counterfeited on some material; second, that the device or mark, so counterfeited, is used for the purpose of authenticating any document described in section 467; third, that the accused is in possession of that material; and fourth, that the possession is with intent that such device or mark shall be used for the purpose of giving the appearance of authenticity to a document then forged or thereafter to be forged on that material. These several points should have been clearly placed before the jury with the evidence relating thereto, and the jury directed that they could convict the accused for the offence charged under section 475 only, if they found all of them in the affirmative. Instead of doing this, the Sessions Judge, in his charge to the jury, has, nowhere, so much as mentioned section 475 of the Indian Penal Code, still less explained to them the substance of the offence described in it. From the first opening sentence—“In this case the accused is charged with being in possession of forged documents, an offence punishable under section 474, Indian Penal Code”, to the concluding remark—“If you find in the affirmative that the forged papers were in the possession of the accused \* \* \* you must find him guilty”—the Sessions Judge, in his charge to the jury, has

only dealt with the second offence alleged against the accused, namely possession of forged documents, under section 474 of the Indian Penal Code, so that, although the jury convicted the accused of an offence under section 475, it is impossible to accept that verdict. It was passed with regard to an offence, the nature of which was not explained to them and the evidence necessary to support which was never placed before them, and as to which the Judge was wholly silent.

The second charge against the accused was "being in possession of the above mentioned 37 documents knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine—an offence punishable under section 474." To sustain a charge under this section, it is necessary to show, first, that the accused was in possession of the documents; second, that he knew the same were forged and intended that the same should fraudulently or dishonestly be used as genuine; and third, that the documents are of the description mentioned either in section 466 or section 467 of the Penal Code. These several points should have been clearly placed before the jury with the evidence relating thereto, and the jury directed that they should convict the accused under section 474 only if they found all of them in the affirmative. The Sessions Judge, however, has dealt with the first of these points only in his charge to the jury; throughout he has charged them that the only question for them to consider is, were these forged documents found in the possession of the accused, and he leaves the case to them with these words:—"If you find that the forged papers were in the possession of the accused as proved by the direct evidence of the finding and the indirect proof of the connection of one of the papers with the affairs of the accused, you must find him guilty." He thus has ignored altogether the question of knowledge combined with intention which is so absolutely requisite to justify a conviction and upon which the accused was entitled to have the opinion of the jury. Moreover, the Sessions Judge has omitted to direct the jury as to the description of the documents which is necessary for the constitution of an offence under section 474. He mentions at any length one only, Exhibit C 15, and he calls this in one

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place "a rough sketch to serve as practice for a finished forgery, but which has not been used and which could not be used in its present form," and in another, "a tracing or attempt to portray a pedigree". Such a document apparently would not come under the description of either section 466 or 467. With respect to the description of the other documents he is silent, and yet, unless they are found to fall within the description mentioned in either section 466 or section 467, the conviction under section 474 is illegal, and unless they fall within the description mentioned in section 467, the sentence is illegal. It is impossible to accept the verdict of the jury given after such an imperfect summing up and such a deficient and wrong direction as to the elements necessary to constitute the offence in respect of which they were to deliver their verdict. They have evidently convicted the accused of offences under sections 474 and 475 on the direction of the Judge that, if they found that the papers were in the possession of the accused, they must find him guilty. Such a direction was palpably wrong, for possession alone would not constitute an offence under either of the said sections. I concur in reversing the conviction and sentence and ordering a fresh trial.

*Conviction reversed and new trial ordered.*

NOTE.—The accused was acquitted by an unanimous verdict of the jury on his third trial.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

1891. HANMANT RAMCHANDRA DESHPANDE (ORIGINAL PLAINTIFF),  
February 23. APPELLANT, v. BABAJI ABAJI DESHPANDE (ORIGINAL DEFENDANT),  
RESPONDENT.\*

*Mortgage—Assignment or appropriation of rents till payment of debt—Intention to appropriate rents as distinguished from the lands—"Aivaj" (money)—Usufructuary mortgage—Right to take kabuliyats from tenants and to make*