

APPELLATE CRIMINAL.

Before Mr. Justice Stephen and Mr. Justice Holmwood.

AMBIKA PRASAD SINGH

v.

EMPEROR.*

1908

May 27.

Forgery—Dishonestly using as genuine a forged document—User—Filing document, but not tendering it in evidence—Penal Code (Act XLV of 1860), s. 471.

The mere filing of a document in Court without tendering the same in evidence does not constitute user of it within section 471 of the Penal Code.

CRIMINAL APPEAL.

The appellant was tried before the Sessions Judge of Bhagalpore, with the aid of Assessors, charged under section 471 of the Penal Code

The Assessors acquitted him, but the Judge differing from them convicted and sentenced him to eighteen months' rigorous imprisonment on the 26th February, 1908.

The appellant was the third party in a proceeding under section 144 of the Criminal Procedure Code, instituted in the Court of Babu S. C. Mitter, which was subsequently altered to one under section 145.

On the 27th November 1906 the accused, according to the finding of the Judge, either in the company of one Bhim or by himself handed over certain rent receipts to his muktear and the latter's *mohurir*, and they were filed in Court by the former with a list of documents. The evidence, however, that the accused himself had anything to do with the filing of the receipts was very weak. The first and third parties claimed to be tenants, the second party being the maliks. The receipts were intended to establish the appellant's claim that the lands in dispute were his *ryoti* holdings. On the day on which they were filed the muktear of the first party denounced them as forgeries to the Magistrate, in whose Court the proceedings were pending, and the latter signed and dated one of the receipts.

* Criminal Appeal No. 200 of 1908, against the order of J. C. Twidell, Sessions Judge of Bhagalpore, dated the 26th February, 1908.

They then remained in the custody of a *mohurir* of the Magistrate's office, and were not tendered in evidence on behalf of the appellant during the course of the proceedings.

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Mr. P. L. Roy (Babu Karunamoye Bose with him) for the appellants. There was no user of the receipts. They were simply filed in Court, and no use was made of them by the appellant. Refers to section 195 (1) (c). The words "produced or given in evidence" mean "tendered" or "admitted" in evidence. These receipts were never tendered in the proceedings under sections 144 and 145 of the Code. The evidence that the accused himself had anything to do with the filing of the documents or was cognizant of their character is extremely weak.

The Deputy Legal Remembrancer (Mr. Orr) for the Crown. There is evidence that the appellant gave the receipts to his muktair and to the muktair's *mohurir* for the purpose of being filed in the proceedings pending before the Magistrate and with the intention of supporting his claim to the disputed lands. This is sufficient user.

STEPHEN AND HOLMWOOD JJ. This is an appeal against a conviction under section 471 of the Indian Penal Code for fraudulently or dishonestly using as genuine documents, which the appellant knew or had reason to believe to be forged. The learned Judge differing from both the Assessors has convicted the accused, who has appealed from the conviction.

The case against the appellant is that on the 27th November 1906 he used two rent receipts, which he must have known to be forged, in a proceeding, which was instituted as one under section 144 of the Criminal Procedure Code and was subsequently altered into one under section 145. What happened was that he was the third party in the proceeding, and the case, as made against him by the counsel appearing on behalf of the Crown, was that he handed the receipts in question to his muktair, in order that they might be filed in Court in support of his claim. We need not consider whether the receipts were in fact forged, and whether they must be taken to have been forged with the knowledge of the accused, because we

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consider that the case breaks down on the point that there is no evidence that these receipts have been used or have been used fraudulently or dishonestly by the accused.

It appears from the evidence of the accused's muktair and of his muktair's *mohurir*, that what happened was that he with another party to the case produced the receipts in question, and they were entered in a list, which was filed with the statement made on behalf of the third party. They were at once denounced as forgeries, and they were never tendered in evidence. In the first place it appears to us that this does not on the facts before us constitute any user. There was no attempt to use these documents as evidence, and we are not at all satisfied that there was any fraudulent intention on behalf of the accused so to use them. There was certainly no attempt made to assert their genuine character, after they had once been impugned, and under these circumstances we cannot hold that there has been any user. In the second place the evidence that the accused himself had anything to do with whatever was done with these documents is very weak. He was at the time a boy of about 20. He saw his legal advisers in the presence of several other persons, and apparently was under the guidance of a man named Bhim. The muktair tells us that he did not seem to be particularly intelligent, and it appears likely enough that, if any body used these documents, within the meaning of section 471 of the Indian Penal Code, that person was Bhim and not the accused. Bhim was originally implicated in this offence, but he has been discharged by the Magistrate and was not before the Court. His absence seems to us to make it impossible for us to affirm the conviction of the accused. We have assumed that the receipts are forgeries, but the case, as made out by the prosecution, seems to us to have in it elements of considerable suspicion, and we must be taken to confine our decision to the two points we have mentioned.

The result is that this appeal must succeed, and the conviction and sentence passed on the appellant are set aside.

The accused will be discharged from his bail bond.

E. H. M.