

Emperor Vs. Badan Singh

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SooperKanoon Citation : sooperkanoon.com/447416

Court : Allahabad

Decided On : Jan-04-1928

Reported in : AIR1928All150; 118Ind.Cas.577

Appellant : Emperor

Respondent : Badan Singh

Judgement :

Iqbal Ahmad, J.

1. This is an application in revision by one Chaudhari Badan Singh, who was convicted by a Magistrate of the first class for an offence punishable under Section 171-F, I.P.C., and was sentenced to a fine of Rs. 500, and the conviction and sentence was upheld by the learned Sessions Judge on appeal. There is a connected criminal revision by the Local Government (Revn. No. 529 of 1927) for enhancement of sentence passed on Badan Singh. The facts that led to the prosecution of Badan Singh are as follows:

2. Badan Singh was a candidate in a District Board election that was held on 9th December 1925, at Khandowa polling station in the district of Budaun. One Thakur Chandan Singh was his rival candidate. 232 votes were polled at the said election out of which Badan Singh secured 141 and Chandan Singh 91 votes, and as such Badan Singh was declared elected by a majority of 50 votes. Chandan Singh filed an election petition in the Court of the District Judge praying that the election of

Chaudhari Badan Singh be declared invalid and he (Chandan Singh) be declared duly elected. The election petition was based on the allegation that Chaudhari Badan Singh was guilty of 'corrupt practice' inasmuch as he had induced one Salik to personate his brother Behari at the said election and to vote for Badan Singh, though Behari had died prior to the date of the election. Chaudhari Badan Singh asserted in the election case that Behari was not dead on 9th December 1925, and that Behari himself voted at the polling station and contested the election petition inter alia on the following grounds:

That the practice in force at the Khandowa polling station with regard to the identification of voters was that after the names and numbers of the voters were filled on slips prescribed therefor, they were handed over to a member of the staff who obtained their thumb-impressions or signatures as the case may be and distributed them amongst the voters to obtain identification who in their turn presented it to the patwari, or the candidates whoever might be present at the time for the same.

That at times when there was rush of voters, it became impossible for those who identified them to ascertain that the slip which they presented for identification was the same which bore their thumb mark, although the voter may have been thoroughly familiar to them.

3. On being directed by the learned Sessions Judge to plead further and better particulars

in regard to the point of who had affixed his thumb-impression to the signature slip, Ex. P, issued in the name of Behari deceased,

4. Badan Singh pleaded as follows:

And under these circumstances the respondent cannot be positive about the thumb-impression of Behari on the identification slip, although he is sure that the man who presented it was Behari himself.

5. In short the case set up by Badan Singh before the learned District Judge was that, though he was not sure that the thumb-impression on the signature slip

issued in the name of Behari which was attested by him was that of Behari, he was positive that Behari presented the slip to him for identification.

6. The learned District Judge came to the conclusion that the thumb-impression on the signature slip was that of Salik and not of Behari, and it is now admitted on all hands that this finding of the learned District Judge was perfectly correct. The learned District Judge also held

that on the day of polling Behari was dead, and that his signature slip was obtained by Salik, who voted for Behari,

and as Badan Singh, on his own showing, 'attested the thumb impression, which he did not see affixed' he 'did abet Salik in personating Behari' The learned District Judge expressed his inability to record a finding on the materials before him on the question whether Badan Singh

had arranged before hand for Salik to personate his brother or he was unscrupulous enough to attest wrongly on the spur of the moment.

7. As a result of the findings arrived at by him, the learned Judge set aside the election of Badan Singh and declared 'a casual vacancy' to have been created and ordered that Badan Singh be

declared incapable for a period of two years of being elected as a member of the Board, or being appointed or retained in any office or place in the gift, disposal, pay or service of the Board,

8. Then the necessary sanction for the prosecution of Badan Singh for an offence punishable under Section 171-F of the I.P.C., was obtained from the Government and Badan Singh was put on his trial.

9. The case for the Crown was that Behari had died on or about the 25th October 1925 and Salik Ram, brother of Behari, personated him at the election and voted in the name of Behari, and that Chaudhari Badan Singh, by identifying him as Behari committed the offence of personation at the election. The defence of Badan Singh is set out at length in the judgment of the learned Magistrate at pp. 7 and 8.

It was impossible for Badan Singh to deny that the thumb-impression on the signature slip issued in the name of Behari was that of Salik, and, therefore, he had to admit this fact. But he maintained, as he did in the election case, that Behari was alive on the date of the election, and it was Behari who handed over the signature slip to him for identification, and then voted at the polling station. While admitting that he identified about 50 electors he qualified this admission by the statement:

I never identified any such man, whose thumb-impression was taken before me.

10. He further suggested that he was the victim of a plot engineered by his rival candidate Chandan Singh at whose instance Salik must have put his thumb-impression on the signature slip and then handed over the same to Behari, who asked Badan Singh to identify him.

11. The learned Magistrate came to the conclusion that Behari was dead on the date of the election and Salik personated him and Badan Singh abetted personation by identifying him as Behari, and, therefore, convicted Badan Singh; but in view of the fact that Badan Singh 'did this on the spur of the moment... when the rush of the electors was the heaviest' and had not arranged 'this personation from beforehand' he refrained from passing a sentence of imprisonment on Badan Singh.

12. On appeal by Badan Singh the learned Sessions Judge definitely rejected the case for the defence that Behari went to the polling station and voted there or that Salik 'was even a tool in the hands of Thakur Chandan Singh or his men.' Having arrived at this conclusion he rightly observed that if Behari did not go to the polling station and was not present at the time of the election and the appellant identified Salik as Behari, the question whether Behari was alive or dead on the date of the election was a question of minor importance inasmuch as even if the prosecution failed to prove that Behari was dead on the date of the election, the case for the prosecution would remain altogether unaffected.' But the learned District Judge also considered the evidence on the point of Behari's death and affirmed the finding arrived at by the learned Magistrate.

13. At the hearing of these applications a question of considerable importance was raised by the learned Government Advocate. He argued that the concurrent findings on questions of fact arrived at by the Courts below must be accepted notwithstanding the fact that the Local Government had applied for enhancement of sentence. He maintained that Clause 6 Section 439, Criminal P.C., did not entitle the person, to whom notice had been issued, to challenge the findings of fact recorded by the Courts below and that he could show cause against his conviction only on legal grounds. I am unable to agree with this contention. By Clause 6, Section 439, it is intended to give a person, to whom notice has been issued why his sentence should not be enhanced, the right of showing, by arguments a fortiori not only that the sentence should not be enhanced, but that the conviction is wrong and cannot be maintained. In showing cause against his conviction the accused is entitled to argue that the estimate of evidence made by the Courts below is erroneous, and that the conviction is against the weight of evidence upon the record. To give effect to the arguments of the learned Government Advocate would be to introduce in Clause 6 the words 'in law' after the words 'against the conviction' words which are not there. The scope of Clause 6 is unlimited and I find no warrant for restricting the scope of that clause in the manner suggested by the learned Government Advocate.

14. Holding the view that I do of the true interpretation of Clause 6, Section 439, I have gone into the evidence with a view to find for myself whether the conviction of Badan Singh can be sustained, and after giving my anxious consideration I have come to the conclusion that the conviction must Stand. As I am in agreement with the Courts below in holding that Badan Singh miserably failed to prove that Behari went to or was present at, the polling station or handed over the signature slip to Badan Singh for identification, I need not repeat the reasons assigned for these findings by the Courts below. On the findings mentioned above there is no escape from the conclusion that Badan Singh is guilty of the offence of which he has been convicted. This conclusion is sufficient for the disposal of the application filed by Badan Singh. But the application filed by the Local Government makes further and more detailed consideration of the case imperative. (The judgment then discussed the evidence given in order to prove that Behari died on or about the 25th October 1925 and proceeded). Be that as it may, this part of the

prosecution case is open to the obvious comment that the prosecution tried to substantiate it by false and perjured evidence, by forged entries in public revenue records, and by suppression of two public documents, viz., the death registers. An attempt like this raises a violent presumption against the truth of the allegation that Behari died on or about the 25th October 1926 and I prefer the evidence for the defence on this point to that for the prosecution. I am alive to the fact that in view of the other findings accepted by me, the question that Behari was or was not alive on the date of the election is almost immaterial but I have expressed my view on this point, as it is one of the matters, which I have taken into consideration in considering the question whether the sentence passed on Badan Singh is inadequate. The conclusion at which I have arrived is that both the prosecution and the defence were out to prove their case at any cost, and did not hesitate to produce false evidence.

15. The only portion of the defence case that has favourably impressed me is that Badan Singh, though technically guilty of the offence of which he has been convicted, the evidence falls short of proving that he deliberately procured personation at the election. It is not so difficult to predicate the result of a District Board election as that of a Council election. There is one and only one polling station for the former and numerous for the latter. The number of electors in District Board elections is much less than in Council elections. The degree of secrecy observed in voting in the two elections varies in a large measure. In the case of District Board elections in nine cases out of ten before the ballot papers are scrutinized and counted the result is definitely known to the competing parties. In the present case the total number of votes were 232 and Badan Singh secured a majority of 50 votes. That being so, I cannot persuade myself to believe that Badan Singh would not have been sure of his victory during the progress of the election. Can it then be believed that Badan Singh would deliberately imperil the prospect of his assured victory by intentionally abetting personation at the election, and that by trying to pass off a hale and hearty man for a man whose leprosy was in advanced condition? I cannot answer the question in the affirmative. The presence of a leper like Behari at the polling station could not fail to arrest the attention of any person, and, therefore, the risk involved in putting forward another man in his place was very great.

16. In this connexion I cannot lose sight of the fact that the only case of personation brought to light is this solitary case, which has formed the subject-matter of the trial giving rise to these applications. Confusion at such elections reigns supreme. The low paid officials in charge of signature slips, etc., are not fully alive to their responsibilities, and breach of rules at times becomes the order of the day. The agents of the candidates, more often than not, display greater excitement and zeal than the candidates themselves. There is no occasion for surprise, therefore, if some agent of Badan Singh, may have been guilty of procuring Salik to personate Behari, and Badan Singh without taking care to ascertain whether the thumb-impression was that of Behari, as he was bound to do, recklessly attested the signature slip. Attestation is a personal guarantee given by the person attesting the signature slip that the signature or the thumb-impression on the slip is of the elector in whose name the signature slip was issued, and, therefore, Badan Singh is no doubt technically guilty, but I. cannot on the materials before me hold that he deliberately committed the offence of personation.

17. Now I pass to a consideration of the question of sentence. It has been argued by the learned Government Advocate that having regard to the fact that Badan Singh is a man of education and an M.L.C., the sentence passed on him is grossly inappropriate. I am totally unable to accept this contention. The system of election in India is still in its infancy, if not in its experimental stage. The degree of solemnity that attaches to elections in England does not attach to elections in this country, and these possibly are the reasons that influenced the legislature in providing for comparatively lenient and alternative punishments for offences committed at elections in India as compared to the punishments provided in England. A person convicted in England of personation, or of aiding, abetting, or procuring is to be punished by imprisonment for a term not exceeding two years together with hard labour. The punishment provided by Section 171-F, I.P.C., is imprisonment of either description for a term which may extend to one year or with fine or with both.

18. Because of his reckless conduct Badan Singh's election has been set aside and he has been disqualified to be a member of the District Board for a period of

two years. He has been convicted of the offence of personation and the stigma will attach to him throughout his life, As a consequence of his conviction Badan Singh will be non-seated from the Local Council of which he is a member today and will further be disqualified from being a candidate for the local legislature for a period of five years. He must be smarting under the grievance that no less than three public servants, who gave false evidence against him, have not been prosecuted and still retain their services and are paid from public funds. I am free to admit that Chaudhari Badan Singh being a man of education ought to have been alive to his responsibilities in a greater measure than he has been and ought to have known better, but the fact that he is an elected representative of people of his district is a matter that I decline to take into consideration as a justification for enhancing the sentence passed on him. I have always held the view that the sentence passed on a convicted person should not be such as to be open to the criticism that it is an unmitigated exhibition of superior force unredeemed by a tinge of judicial balance. The question that I have to decide and decide judicially, is whether the sentence passed on Badan Singh is so grossly inadequate as to call for interference by this Court. I have no hesitation in answering the question in the negative. The Magistrate thought that the sentence of fine of Rs. 500 was adequate. When the appeal of Badan Singh was before the Sessions Judge, no application for enhancement of sentence was filed by the Crown before the learned Judge. The learned Judge, while observing that the sentence erred on the side of leniency was of opinion that it did not call for interference. In short neither of the Courts below have come to the conclusion that Badan Singh merited a sentence of imprisonment, and I do not see my way to hold that those Courts were wrong.

19. For the reasons that I have given, I would dismiss both the applications.

Walsh, J.

20. In this case I find myself unable to agree with my brother on the subject of the appropriate sentence. It is established that the accused who was a candidate identified the thumb-impression of a leper who was not present and who could not and did not present himself to vote. On the evidence I am unable to decide to my own satisfaction whether the leper was dead or only dying. I see no reason,

therefore, for differing from the conclusions reached on this issue by both the lower Courts.

21. The accused has admitted that he knew the leper. He has falsely alleged that the leper was present at the election and handed him the identification paper. This is a palpable falsehood, because, if it were true there was no reason why the leper should not have affixed his thumb-impression himself and have voted. Personation by a non-voter is a deliberate fraud. It cannot be effected without the aid of an identifier and if an identifier aids it he abets a fraud. It is said that the confusion was such that this man did it negligently and is therefore only technically guilty. I do not agree. The House of Lords have held that reckless statements made without belief in their truth, or without caring whether they are true or false, are fraudulent.

22. The question of punishment seems to me to depend on two considerations: firstly the public importance of the offence, and the deterrent effect of the punishment; secondly the desserts of the particular offender. On public grounds this class of offence ought in my opinion to be stamped out with great severity. Elections may be a new thing, but the difference between right and wrong is old. Above all candidates who profess to represent respectable electors, and even to legislate for them, must set the highest standard of conduct themselves and an example to their agents and to the general public. Further mere fine, in the case of a candidate, who may be presumed to be better off than the majority of his constituents, would create an impression that there is 'one law for the rich and another for the poor.' A poor man guilty of this offence would have to go to prison.

23. On the grounds personal to this particular accused, I am influenced not only by his public position. He is still an M.L.C. I am not concerned with his qualifications for such office. But he was an M.L.C. when he committed this offence and I regard it as an aggravation. He has further greatly aggravated it by the dishonest defence and false evidence upon which he has relied and in which he has persisted even before us. I am of opinion that the sentence should be enhanced to one of six months rigorous imprisonment in addition to the fine.

24. As the Bench is equally divided in Opinion on the question of sentence, the case must be laid before another Judge under Section 429, Criminal P.C., for his opinion.

Mears, C.J.

25. This is a matter referred to me under Section 429, Criminal P.C. The Local Government applied in revision against an order by which one Chaudhri Badan Singh was sentenced to pay a fine of Rs. 500 for the offence of abetment of personation. The Local Government were of opinion that in the circumstances, the sentence should be enhanced.

26. The matter came before a Bench consisting of Mr. Justice Walsh and Mr. Justice Iqbal Ahmad. They were agreed that Badan Singh had committed the offence with which he was charged, but they held different views as to the nature and extent of the punishment which should be inflicted. Mr. Justice Walsh was of opinion that the gravity of the offence was such that a period of imprisonment was the appropriate penalty. Mr. Justice Iqbal Ahmad thought the fine of Rs. 500 a sufficient exoneration. That being the position, it became my duty to hear the whole of the evidence so as to acquaint myself thoroughly with the facts of the case and thus be in a position to decide between the divergent views of the Bench and then under Section 429 to deliver my 'opinion,' the judgment or order to follow such opinion Section 429, Criminal P.C.

27. On the 9th December 1925 Chaudhri Badan Singh was a candidate in a District Board election at Khandowa in the Budaun District. He is described by his counsel as a small zemindar.' He lives at Zarifnagar. His opponent in the election was one Chandan Singh who lives near a village Rampuri. For some time previously there had lived at Rampuri a leper by name Behari Lal and the case made against Chaudhri Badan Singh was that Behari Lal having died, his brother Salig Ram personated. Behari at the election and recorded a vote. The facts found and with which I am in complete agreement are that Behari was probably dead on the 9th December 1925 but that if he were alive he most certainly was not at the polling station, and equally certainly he was personated by his brother, Salig Ram. The method in which this personation is said by prosecution to have been carried

out is as follows: Salig Ram presented himself to one or other of the officials whose duty it was to fill in identity slips. That he, Salig Ram for this purpose called himself Behari Lal and an identity slip was made out in this name. Salig Ram put his thumb-impression on the slip and then requested Chaudhri Badan Singh to identify him as Behari Lal. Chaudhri Badan Singh did so and undoubtedly appended his signature to the identity slip thus vouching that the man then in the presence of the official and Chaudhri Badan Singh was Behari Lal and no other. Thereupon Salig Ram was allowed to vote in the belief that he was Behari Lal.

28. The defence set up by Badan Singh was that he was the victim of a trap set by his opponent or someone acting on his behalf. The theory, which rests on no evidence, is that Salig Ram by preconcerted arrangement went to some official who was making out identity slips and proclaimed himself to be Behari Lal. Having affixed his thumb impression, he then by some maneuvers not easily understandable prevailed upon the official to give up the identity slip which, he passed to Behari Lal who was in the plot. That Behari Lal then approached Badan Singh, said that he had given his thumb-impression and wanted an identifier. Badan Singh readily agreed to identify him as he in fact knew Behari Lal quite well.

29. If this is what happened, then obviously Chaudhri Badan Singh committed no offence. This story was disbelieved by the District Judge on the hearing of the election petition at which Chaudhri Badan Singh was unseated by the trying Magistrate, by the Sessions Judge in appeal and by the Bench sitting in revision.

30. There is in this case no question of mistaken identity and the position therefore is that Chaudhri Badan Singh falsely identified one Salig Ram as Behari Lal. All the constituents of the offence of abetment of personation having been found by the revisional Bench I have to consider what in my opinion is the proper penalty. The Magistrate inflicted a fine of Rs. 500.

31. On a full consideration of all the circumstances I must hold that this was an insufficient punishment. The offence of personation at elections is a most serious one. It is an act done with deliberate intent to profit at the expense of an opponent. It is difficult of detection and when, as in this case, four Courts have been completely satisfied that Behari whether alive or dead was certainly not present at

the polling station and that Badan Singh was not the victim of a plot the inevitable inference is that Badan Singh corruptly, wrongfully and intentionally abetted Salig Ram in the personation of his brother.

32. Except the bare statement made to me by counsel that Chaudhri Badan Singh was 'a small zemindar' no evidence was given as to his financial position and a fine of Rs. 500 may be a matter of indifference to him and to many others who would act similarly as he has been proved to do if it were thought that a fine would be the only penalty in the unlikely event of their conduct being found out. The fact that he is a man of some education and position and a member of the Legislative Council cannot be urged in his favour as an argument for the infliction of a fine only. Indeed these considerations cut the other way and the case must be treated as one of public importance and an offence as one of gravity.

33. My opinion, therefore, is that the proper punishment in this case is one of imprisonment. My order is that Caudhri Badan Singh serve a sentence of simple imprisonment for three months. I sweep away the sentence of fine and direct that if it be already paid it be returned to Chaudhri Badan Singh.

34. I, therefore, allow the revisional application of the Local Government. Let the office issue a warrant in the ordinary form and communicate this order to the District Magistrate with the accompanying warrants and to Chaudhri Badan Singh who will then surrender himself to the District Magistrate.