

Emperor Vs. Dip Narain

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Court : Allahabad

Decided On : Jan-26-1915

Reported in : AIR1915All224; (1915)ILR37All247

Judge : Chamier and ;Piggott, JJ.

Appellant : Emperor

Respondent : Dip Narain

Judgement :

Chamier and Piggott, JJ.

1. This is an appeal by the Local Government against the acquittal of one Dip Narain, who was convicted by a Magistrate of the first class of an offence punishable under Sections 211/109 of the Indian Penal Code, but acquitted by the learned Sessions Judge of Azamgarh on appeal. As a matter of fact nine persons were put on their trial before the Magistrate, all of whom were convicted and all of whom appealed. The Sessions Judge dismissed seven of the appeals, but acquitted Dip Narain and one Musammat Talia. There has been no appeal against the acquittal of the latter.

2. The task before us is a simpler one than was before the courts below, as many matters which were in controversy there have been accepted in argument in this Court as fully established by the evidence. We find that Gaya, Sunar, resident of

Shahzadpur in the Fyzabad district, was on bad terms with his relatives, Sarju and Lachhman. He somehow or other came to believe that a false charge brought against these persons could be successfully prosecuted, if suitable measures were taken, before a certain Bench of Honorary Magistrates exercising jurisdiction at Azamgarh. He came in to Azamgarh for that purpose, and there got into communication with various persons, including Gulab, Sunar, and one Muhammad Ishaq, a dealer in timber. A conspiracy was hatched for the filing of a false complaint before a Bench of Honorary Magistrates consisting of Raja Muhammad Shah and Babu Krishan Deo Narain Singh. Salaran, Teli, of Azamgarh was employed to come forward as complainant; and it seems to us perfectly clear on the evidence - if indeed this much also has not been practically conceded in argument before us - that there were members of the conspiracy who professed to be able to ensure its success by bringing improper influence to bear on Babu Krishan Deo Narain Singh. Accordingly, on the 3rd of April, 1914, Salaran filed a complaint before the Honorary Magistrates already named, in which he falsely charged Sarju and Lachhman with having committed, within the jurisdiction of the said Magistrates, offences punishable under Sections 323, 406 and 417 of the Indian Penal Code. Salaran was examined on his complaint and put in a list of witnesses. We cannot refrain from remarking that a magistrate of experience could scarcely have helped seeing that the story told by Salaran was a most extraordinary one, and that even if it might prove on inquiry that there was some truth in the other allegations made by him, the story of the assault said to have been committed by Sarju and Lachhman on the 1st of April bore every appearance of being a piece of imaginative embroidery. The Honorary Magistrates, however, took cognizance of the complaint as one of causing hurt (under Section 323, Indian Penal Code) only, and issued process for the attendance of the accused persons and of the witnesses named by Salaran, fixing the 17th of April, 1914, for the trial. On that date Sarju and Lachhman, having come to Azamgarh and secured the services of Sheikh Faiyaz Husain, a local mukhtar, presented a petition before the Sub-divisional Magistrate asking for a transfer of the case against them to some other court. There were allegations made in this petition which satisfied the Sub-divisional Magistrate that prompt action was called for on his part. He transferred the complaint of Salaran to his own file, and went over in

person to the court of the Honorary Magistrates to take possession of the record and secure the attendance before himself of the complainant and his witnesses. The falsity of the complaint was at once disclosed. Salaran absconded. His witnesses denied all knowledge of the affair. The complaint was dismissed, and the Sub-divisional Magistrate initiated a proceeding under Section 476 of the Code of Criminal Procedure, which resulted in the trial out of which the present appeal has arisen.

3. As against Dip Narain the case for the prosecution is that he was an active member of the conspiracy which organized the institution by Salaran of his false complaint of the 3rd of April, 1914, and more particularly that he was the member to whom the others looked as the instrument through which improper influence was to be brought to bear on the Honorary Magistrate, Babu Krishan Deo Narain Singh.

4. In this connection we may at once proceed to comment on one aspect of the case which calls for special notice. The learned Sessions Judge seems to have been much influenced, by the view that the case for the prosecution involved serious allegations against this Honorary Magistrate. He considered those allegations grossly improbable and very inadequately supported by the evidence. He then followed out a train of reasoning according to which the acquittal of Dip Narain appears to follow as a necessary consequence on the failing of the prosecution to establish any specific charge of corruption or misconduct against Babu Krishan Deo Narain Singh. We are quite unable to look at the case in this light. The Honorary Magistrate was not on his trial. No charge was preferred against him, and no onus lay on the prosecution of establishing any such charge. The question with which we are concerned is whether Dip Narain represented himself, or was understood by the other conspirators, to be a person in a position to bring corrupt influences to bear on the Honorary Magistrate. Whatever remarks we may find it necessary to make on any portions of the evidence, we have to bear in mind that the point for determination is the guilt or innocence of Dip Narain, and that his guilt is perfectly consistent with the entire innocence of the Honorary Magistrate.

5. The Judgment then proceeds to discuss the facts and evidence.

6. This is the position we have reached without even touching upon the two most controverted points in the case, the evidence of the witness Chedi Rangrez and the confession of the accused Muhammad Ishaq. If we could be sure that these two men spoke the truth to the best of their knowledge, we need not have discussed any other evidence. Both assert that the filing of Salaran's complaint was the outcome of an elaborate conspiracy, in connection with which Dip Narain was an important member, acting (or purporting to act) as go-between for the others in their dealings with Babu Krishan Deo Narain Singh. The confession of Muhammad Ishaq obviously requires to be taken into consideration against all the accused; the learned Sessions Judge need have had no misgivings on this point. Muhammad Ishaq was not convicted on his plea of guilty, and he was tried jointly with the other accused. Under the circumstances of this case the trying Magistrate would have shown very poor discretion if he had convicted Muhammad Ishaq on his plea of guilty, thereby recording his belief in the substantial truth of Muhammad Ishaq's confession before the other accused had even entered on their defence. The case obviously required the most thorough sifting out, before any court could say with confidence that Muhammad Ishaq's confession was substantially true, even where it implicated himself. As it is, the learned Sessions judge has taken into consideration the confession of Muhammad Ishaq to a far greater extent than did the trying Magistrate; only he has used it to discredit the witness Chedi and to throw doubt on the prosecution case generally, as if the prosecution could be made responsible for all the allegations which Muhammad Ishaq saw fit to make against the Honorary Magistrate.

7. The Judgment again proceeded to discuss the facts and evidence.

8. We set aside the Session Judge's order of acquittal, and we restore the Magistrate's convicting Dip Narain on the charge under Sections 211/109 of the Indian Penal Code as framed. No special argument has been addressed to us on the subject of sentence, and we see no adequate reason for departing from the sentence originally passed by the trying Magistrate. We sentence Dip Narain to be rigorously imprisoned for one year and to pay a fine of Rs. 60. In default of

payment of fine he will undergo farther rigorous imprisonment for two months. He must surrender to his bail accordingly. Any period of imprisonment which he may have already undergone will count towards execution of the sentence now imposed.

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