

**Jai Mangal Vs. Rex**

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**Court :** Allahabad

**Decided On :** Jun-14-1948

**Reported in :** 1949CriLJ87

**Judge :** Bhargava, J.

**Appellant :** Jai Mangal

**Respondent :** Rex

**Judgement :**

**Bhargava, J.**

1. The appellant Jai Mangal, and two other persons named Baohoo Singh and Prabhu were prosecuted for an offence punishable under Section 420, Penal Code. It was alleged that, on one occasion, they cheated Shet Khan and his son, Shirin Khun and, on another occasion, they cheated Ram Narain and induced them to deliver big sums of money and there were two separate charges in respect thereof. The appellant as well as the other accused denied the allegation and contended that they had been falsely implicated owing to enmity. They were tried by the Assistant Sessions Judge of Kanpur with the aid of a jury, who returned a unanimous verdict of guilty against the appellant and of not guilty against the other two accused. The appellant was, accordingly, convicted in respect of be to the charges under Section 420, Penal Code, and sentenced to an aggregate term of five years, rigoroua imprisonment and the other two accused

were acquitted.

2. The appellant's learned Counsel has, in the first place, contended that the trial Judge did not comply with the mandatory provisions of Section 297, Criminal P. O., in so far as in his charge he did not lay down the law by which the jury were to be guided and the trial was consequently vitiated.

3. On the other hand, the learned Counsel for the Crown has contended that the learned Judge explained the law to the jury while delivering the charge and there was sufficient compliance with the provisions of Section 297, Criminal P. C. At the end of the charge the learned Judge stated:

I have explained to you the law necessary for the case, and have read over to you the definition of offence of cheating.

In support of big argument the Crown counsel pointed out the following passages in the charge:

(1) It may be noted that in the writing Ex. P1. the accused Jai Mangal and Prabhoo seem to have confessed their guilt, and to have given out the name of Bachoo Singh as their accomplice.... I do not think that much can be made of this admission or extra-judicial confession against the accused Jai Mangal and Frabhu, much less as against the third accused Bachohoo Singh whom they had named as their accomplice.'

(2) 'I do not think that much importance attaches to the identification proceedings in this case.... The legal position is that mere identification is not enough for conviction, and there must in addition be direct and circumstantial evidence of the commission of an offence by a particular accused without any doubt before he can be convicted.'

(3) 'It is for the prosecution to prove the case to the hilt against each individual accused.'

4. Section 297, Criminal P. C, imposes a duty on the trial Judge to lay down the law for the guidance of the jury; in other words, to explain the law applicable to the

facts and circumstances of a particular case in clear and unambiguous terms, so that the jury consisting of laymen may be able to understand and apply the same to the facts of the case before them. The record of the heads of charge to the jury should show how the law was explained to enable the appellate Court to form an opinion whether it was properly explained or not.

5. The charge delivered in this case is, however, unsatisfactory from more than one point of view; and there was not sufficient compliance with the provisions of Section 297, Criminal P. C. It is not clear from the charge whether apart from reading over the definition of the offence of cheating the learned Judge explained to the jury the essential ingredients of the offence of cheating or told them what matters must be proved to constitute the said offence. The mere reading of the definition of an offence, like the one with which the appellant was charged, was not enough. It was necessary to explain what amounted to 'cheating' or 'dishonest inducement' or 'delivery of property.' There was an allegation that the other two accused had represented themselves to be persons other than they really were. The offence of 'cheating by personating' is dealt with in Section 416, Penal Code; and the jury should have been told how the case was brought within the purview of Section 420, Penal Code. This was not done. It is, therefore, clear that the law was not properly explained.

6. The learned Crown counsel has relied upon the ruling reported in *Hanif and Ors. v. Emperor* : AIR1932 Cal786 , where the Sessions Judge had 'read and explained to the jury' the various sections under which the accused persons were charged and that was held to be sufficient compliance with the provisions of Section 297, Criminal P. C. That ruling is, however, confined to cases where there is no special difficulty in understanding the relevant sections. Moreover, in that case the Judge had explained the sections to the jury, while in this case the Judge merely read the definition of the offence, although further explanation was necessary. The ruling, therefore, has no application to the facts of the present case.

7. The learned Counsel for the appellant has, on the other hand, cited the rulings reported in *Wahiduzzafar Khan v. Emperor* 1946 A.L.J.R. 439 : A.I.R. (34) 1947

ALL. 72 : 48 Cr. L. J. 539), *Israr Eusain v. Emperor A.I.R.*, (-28) 1941 oudh 567 : 42 Cr. L. J. 728), *Arnold Monteath Mathews v. Emperor A.I.R.* (27) 1940 Lab. 87 : 41 Cr. L. J. 482) and *Emperor v. Mohammad Israil* : AIR1930 All24 wherein it has been pointed out that the Judge has to explain the law with clearness and distinctness in every case.

8. On behalf of the appellant it has been further contended that the learned Judge misdirected the jury in as far as he condemned the defence as weak and unconvincing and exhorted the jury to ignore the same and that he expressed his views against the appellant. We find that in the charge the Judge stated:

You may not even take into consideration the weak and unconvincing defence of the accused set up by them in their statement under Section 342, Criminal P. C., in this Court.

At another place he said:

In case Ram Narain and Sher Khan were actually cheated, Jai Mangal was certainly one of the swindlers.

He further stated:

You can well understand that all of us, specially the unsophisticated members of the public, deserve protection of the strong hands of the law against cheats and swindlers.

The Judge referred to Ex. P-I and said:

It may be noted that in the writing Es. P-I he accused Jai Mangal and Prabhoo seem to have confessed their guilt and to have given out the name of Bachohoo Singh as their accomplice.

Exhibit P.-1 does not contain any confession, It is a statement by Prabhoo. It was, no doubt, written by the appellant but he had alleged that he was forced to write it. This was not brought to the notice of the jury. The Judge expressed himself in an unsatisfactory manner and did not properly warn the jury when he expressed his opinion on the facts in issue. Thus, there was misdirection to the jury.

9. Lastly, it was contended by the appellant's learned Counsel that the verdict of the jury, in consequence of the non-compliance with the provisions of Section 297, Criminal P. C., and the misdirection to the jury was perverse. The verdict of the jury cannot be described as perverse, but it may be erroneous when the law applicable to the facts of the case was not properly placed before the jury and there was misdirection. The appellant was, undoubtedly prejudiced and the trial was vitiated by the error in law pointed out above.

10. The appeal is, therefore, allowed, the conviction and sentence imposed upon the appellant are set aside. He will be retried by a Court of competent jurisdiction other than the Judge who tried him before.

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