

Durga Prasad Vs. Emperor

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Court : Allahabad

Decided On : Jul-19-1910

Reported in : 7Ind.Cas.411

Judge : Chamier, J.

Appellant : Durga Prasad

Respondent : Emperor

Judgement :

Chamier, J.

1. This is an application for revision of an order of the Sessions Judge of Agra, confirming the conviction of the applicant by a Magistrate of the first class under Section 223, Indian Penal Code, but substituting a fine for a sentence of imprisonment. On behalf of the applicant it is contended that even if the facts are as found by the Courts below, the applicant has committed no offence under Section 223.

2. The following statement of facts is taken from the judgment of the Magistrate. The applicant was the officer in charge of Thana Dawki in the Agra District. Seven men, who were subsequently convicted of dacoity and other offences, were arrested by the Circle Inspector on November 10th last and sent to the applicant's Thana. Early on the morning of the 11th, the Superintendent of Police, who was in

camp a few miles away, went to the Thana and ordered the applicant to send the prisoners to his camp on their way to Agra and informed him that he (the Superintendent) would leave for Agra about I.P.M. The Superintendent waited till 1-30, and as the prisoners had not appeared, left for Agra. Meanwhile the applicant, taking a constable with him, went off to attend to what has been described as a petty cattle theft case and left the moharrir Irshad Ali who was a Head Constable, to arrange for the despatch of the prisoners. There being only one constable, named Dharamjit, in the Thana. Irshad Ali had to await the return of others. At about 12 o'clock, two constables, named Pahalwan Singh and Mukhtar Ali, returned, and at 1-30 a constable, named Azimullah, returned. Soon afterwards the prisoners were despatched in charge of constables Dharamjit, Pahalwan Singh, Mukhtar Ali and Azimullah and six chaukidars, who had been on duty all night in the Superintendent's camp. The prisoners were handcuffed, permission to take them in handcuffs having been given by the applicant before he left the Thana, At the Superintendent's camp the place of Pahalwan Singh was with the approval of Irshad Ali taken by a constable, named Angan Lal, who was on duty there. All went well till the party reached a place called Tora, about half past six in the evening. There the prisoners acting apparently in concert suddenly rushed off the road and four of them succeeded in escaping.

3. As the above statement of facts shows, the prisoners were not in the immediate custody of the applicant when they escaped. But the Courts below consider that he may be held responsible for the escape because he did not make proper arrangements for the despatch of the prisoners. It was, no doubt, the duty of the applicant to arrange for the despatch of the prisoners, but the question is whether he can be said to have 'negligently suffered them to escape' within the meaning of Section 223, Indian Penal Code. It appears to me that before a person can be convicted under this Section of having negligently suffered a prisoner to escape, it must be shown not only that he was guilty of negligence, but that the escape was at least the natural and probable consequence of his negligence. Indeed, I am disposed to think that it must be shown that the escape was directly due to the negligence.

4. The Magistrate uses language from which it may be inferred that he was of opinion that the applicant probably intended that the prisoners should escape, but the Sessions Judge acquits him of any such intention, and I may say at once that I see no reason whatever for supposing that the applicant acted as he did intending that the prisoners could escape. When the applicant left the Thana, he knew that the prisoners could not be sent off at once for there was only one constable left in the Thana. He must have known that Irshad Ali would not be able to send off the prisoners until some of the constables returned. It is not or ought not to be beyond the competence of a moharrir Head Constable who is left in temporary charge of a Thana to arrange for the despatch of prisoners. Irshad Ali might have sent to the Superintendent's camp for assistance. He did not do so. He awaited the return of constables attached to the Thana, and he ultimately sent the prisoners away in charge of constables who, according to the Magistrate's description, were quite unfit to escort dangerous criminals and of chaukadars who had been on duty all night. The Magistrate describes constable Dharamjit as 'a man of 60 who is ill and has no flesh on his body,' Constable Angan Lal as 'a man of 45 and a skeleton who has been suffering for the last eleven years from pneumonia,' and Constable Azimullah as 'a man of 50, very weak and almost a skeleton.' According to the Magistrate, the only able bodied constable was Mukhtar Ali, who had been out on duty all night and was completely exhausted. It is not suggested that four constables and six chaukidars would not ordinarily be a sufficient escort for seven prisoners, but it is said that in the circumstances the escort was too weak. The Courts below seem to hold the applicant responsible for the weakness of the escort, but the applicant is not responsible for the presence in the Thana of three constables who, according to the Magistrate, were not fit to be there, and even if he is responsible for them, he could not, when he left the Thana, have known that those three would form part of the escort. Presumably there were attached to the Thana some able-bodied constables. The applicant may have been guilty of the neglect of duty in leaving the arrangements for the escort in the hands of the moharrir Head Constable, but the escape of the prisoners was not the natural and probable consequence of his negligence and certainly was not the direct result of that negligence. The escape of the prisoners was, in my opinion, too remotely connected with the negligence of the applicant to bring the case within Section

223, Indian Penal Code.

5. I allow this application, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

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