

Jia Lal Vs. Emperor

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Court : Allahabad

Decided On : Feb-03-1936

Reported in : AIR1936All357

Appellant : Jia Lal

Respondent : Emperor

Judgement :

ORDER

Niamatullah, J.

1. This is an application by Jia Lal against an order passed by the learned Sessions Judge, Meerut, upholding his conviction by a special Magistrate under Section 420, I.P.C. Originally no less than five persons were prosecuted for conspiracy to cheat under Sections 420/120-B, I.P.C. They were two brothers, Jia Lal (the applicant) and Moola, their uncle Badri Prasad, and cousin Khacheroo, and a stranger Parkashi. The case was instituted on a complaint by Kewal Ram, whose story was as follows:

2. The applicant Jia Lal had a sister, Abha Dei, who had reached a marriageable age. Kewal Ram had a son, Lakhi Ram. All the five accused brought about an engagement of marriage between Mt. Abha Dei and Lakhi Ram on the condition that Kewal Ram would pay Rs. 100 immediately: Rs. 400 on receipt of the marriage letter and Rs. 200 at the time of the actual ceremony. Rs. 100 was paid,

as agreed. It was further stipulated that, as soon as the sum of Rs. 400 was paid by Kewal Ram on receipt of the marriage letter, Jia Lal would execute a promissory note ostensibly agreeing to pay Rs. 500. The note was however intended as a security for the due performance of the marriage and was to be returned by Kewal Ram to Jia Lal when the marriage became an accomplished fact. The payment of Rs 400 was made, and a promissory note was executed. The arrangement for marriage proceeded satisfactorily, and the 'barat' arrived in due course. The guests were feasted, and every one expected that the actual ceremony of marriage would take place shortly. The five accused approached Kewal Ram and asked for the return of the promissory note and Kewal Ram returned it in the confidence that the marriage would be performed within a short time. He however received a rude shock when 20 minutes afterwards the accused made a demand for the sum of Rs. 200, which was to be paid at the time of the marriage ceremony, and an additional sum of Rs 300. Kewal Ram declined to pay the additional sum of Rs. 300, and insisted on the marriage ceremony being performed before the remaining sum of Rs. 200 was paid. The accused persisted in their demand, and Kewal Ram on his side was equally obdurate in refusing to pay any more money. The result was that the engagement was broken off, and the 'barat' returned without the marriage being celebrated. Subsequently the girl was married to someone else, and Kewal Ram instituted the criminal proceedings, which have given rise to the present revision.

3. It was admitted by the accused that an engagement had taken place and that the 'barat' actually arrived at the house of Jia Lal, where the marriage was to be celebrated, but he pleaded that he learnt that Kewal Ram's brother-in-law (sister's husband) Mitter Sen, who was an intermediary in settling the marriage, had taken Rs. 1,300 from Kewal Ram for payment to Jia Lal and that Jia Lal greatly resented the dishonour involved in Mitter Sen's dishonest action, and therefore he declined to have the marriage celebrated, and returned the barat.' In support of the case for the prosecution a number of witnesses, including Kewal Ram and Mitter Sen, were examined. Both the lower Courts have accepted the story told by the witnesses for the prosecution. The Magistrate doubted the complicity of the accused other than Jia Lal and acquitted them, giving them the benefit of doubt. Jia Lal was convicted and sentenced by the Magistrate to one year's rigorous imprisonment and a fine of

Rs. 100. In appeal the learned Sessions Judge reduced the sentence of imprisonment to four months, but enhanced the sentence of fine to Rs. 250.

4. It is argued on behalf of Jia Lal that, on the facts found by the lower Courts, an offence of cheating has not been established. It is pointed out that the charge sheet mentions practically the whole case as alleged by the prosecution, and the sections of the Indian Penal Code applied by the charge are 420/120-B. It may be conceded that the facts leading to the return of the promissory note do not by themselves prove deception. Learned Counsel's contention is of a twofold character. He argues, in the first instance, that there is nothing to show any dishonest intention in the mind of Jia Lal up to the time when he obtained a return of the promissory note, and that the evidence is consistent with the theory that he conceived of the intention of demanding a further sum of Rs. 300 after the promissory note had been returned. It is argued, secondly, that the charge, as originally laid, was one of conspiracy and that Jia Lal should not have been convicted of the substantive offence of cheating under Section 420, as if he alone committed it. As regards the first contention, if the premises on which the argument is based be accepted, the contention is undoubtedly sound. But the lower Courts have inferred-and in my opinion rightly - from the conduct of Jia Lal that the whole object of obtaining a return of the promissory note before it was returnable according to the original contract was to take possession of the only security which Kewal Ram had for enforcing the promise of Jia Lal. The fact that shortly after the return of the promissory note Jia Lal demanded an additional sum of Rs. 300 threatening to break off the engagement is a clear indication of the dishonest intention with which the return of the promissory note had been obtained before due time. On these facts Jia Lal was rightly held to have misrepresented, expressly or impliedly, to Kewal Ram that the marriage would come off, as agreed, and that the promissory note might be safely returned, though Jia Lal had already made up his mind to refuse to have the marriage celebrated, unless an additional sum of Rs. 300 was paid. This is clearly cheating, as defined by Section 415 I.P.C.

5. The second contention is that a charge of conspiracy to cheat should not have been convened into a simple charge of cheating under Section 420, when 4 out of 5 of the accused were acquitted. I do not think that there was any error of law

involved that procedure. Where five persons are alleged to have combined to deceive another, and four are given the benefit of doubt, the position of the remaining accused who is found guilty of deception is not affected. The participation of the others being eliminated, he is the only person who was responsible for deception which ex hypothesi did take place. I am satisfied that the conviction of the applicant is not vitiated by the fact that 4 of his co-accused, who were said to have conspired with him, were acquitted.

6. The sentence awarded by the learned Sessions Judge is appropriate in the circumstances of the case. This application is dismissed. The applicant shall surrender to his bail.

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