

Mathura Prasad Vs. Emperor

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Court : Allahabad

Decided On : Jan-10-1917

Reported in : AIR1917All132; 40Ind.Cas.303

Judge : George Knox, J.

Appellant : Mathura Prasad

Respondent : Emperor

Judgement :

1. Mathura Prasad has been convicted of an offence under Section 408, Indian Penal Code. He appealed from the Court of first Instance to the Court of the Sessions Judge of Allahabad, who dismissed the appeal. He comes here in revision. Speaking generally the findings of the Court below are accepted in revision; but there is nothing to prevent this Court from going into the evidence if occasion arises to doubt the findings arrived at by the Courts below upon the facts before them. In the present case the judgment of the learned Sessions Judge does not give one much help in determining the case, and the Assistant Government Advocate very properly laid before me the judgment of the Joint Magistrate who has gone very fully into the evidence before him. But on hearing that judgment it seemed to me that there was reason to apprehend that the learned Joint Magistrate had relied for his decision of the case rather upon the weakness of the defence than upon the completeness of the prosecution. Briefly put, the facts are as follows: On the 21st of May 1915 Mathura Prasad, who was at

the time sarbarakar of an estate known as Chilonda Estate, received certain moneys handed over to him by Parmeshar Dial who in turn had received them from a Pleader called Gajadhar Prasad as costs which had been given in a case in favour of the Chilonda Estate. The Chilonda Estate forms part of an endowment founded by Rani Gomti Bibi. This fact is admitted by the accused. It is also admitted by him that the moneys in question were not deposited in the treasury of the estate until the 12th of September 1916. There is evidence which has not been contravened that in the interval between the 10th of April 1916 and the 12th of September 1916 Sardar Santokh Singh, who is a Deputy Superintendent of Police in the Criminal Investigation Department, while engaged in investigating into another case quite apart from the present and in no way connected with it found that these moneys had been received by Mathura Prasad and had not at the time when he was investigating, namely, on the 16th of April 1916, been deposited in the treasury of the estate. The evidence against the accused consists of statements made by Sardar Santokh Singh the Investigating Officer, Gajadhar Prasad the Vakil who had paid the money in the first instance to Parmeshar Dial, and Parmeshar Dial who paid the money over to Mathura Prasad, Gaya Prasad, siaha nawis of the estate, Budhu Lal who swears to the deposit of Rs. 115-7-0 in the treasury of the estate on the 12th of September 1916, and Inspector Piare Nath Bannerji who investigated the present case. Nothing further of any importance so far as the prosecution is concerned was elicited from these witnesses. The Joint Magistrate considered that a prima facie case had been made out against Mathura Prasad and called upon him for an explanation. He says that he took these moneys to the treasurer on the 16th of October 1915 and the treasurer told him that Babu Gaya Prasad, who apparently is the manager of this endowed estate, had given verbal orders that no money of Mauza Chilonda should be deposited. He goes on to say that he deposited the money in the custody of the treasurer Murli Dhar, In this matter he is supported by the evidence of Murli Dhar that the money was returned to him in January or February 1916 and that he finally deposited the money on the 12th of September 1916. He gives certain reasons for not having deposited the money between the 21st of May, 1915 and 16th of October 1915, namely, that he had to get in the revenue, and that in July 1915 his brother became very ill, and was again ill in April 1916 and

died on the 5th of June 1916. I may at once say that in this part of the case I agree with the learned Joint Magistrate that the explanation given of the delay between the 21st of May 1915 and the 16th of October 1915 is very flimsy. But the first question in every criminal case is is the Court satisfied that the prosecution have placed beyond reasonable doubt the offence with which they have charged the accused, what the prosecution in the present case say is sufficient to establish an offence under Section 408, Indian Penal Code, is that the accused being a servant was entrusted with this Rs. 115-7-0 and that he retained the money in his possession for more than a year. No evidence has been put forward pointing to a distinct act or acts of criminal breach of trust in respect of this money. In fact it was contended on behalf of the prosecution that there was no necessity for the prosecution to prove the actual mode of criminal breach of trust or criminal misappropriation, and in support of this contention they put forward the case of Emperor v. Kadir Baksh 8 Ind. Cas 687 : 8 A.L.J. 88; 33 A. 249; 11 Cr. L.J. 699. The case, however, put forward differs in one very marked respect from the case before me. Kadir Baksh was a peon entrusted with summonses to witnesses and with diet money per witness. He returned the summonses unserved but not the money. Now the course of procedure for peons entrusted with the serving of summonses is laid down by definite rules which are well-known. There is a rule definitely saying that a peon of this kind returning summonses unserved must deposit with a nazir the money which he received for this purpose and which has not been paid out. The learned Judges who decided the case of Emperor v. Kadir Baksh 8 Ind. Cas. 687 : 8 A.L.J. 88 : 33 A. 249 : 11 Cr.L.J. 699 rely in their judgment upon the provisions of Section 114 of the Indian Evidence Act. It is true that a Court may presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Its terms are very wide and as regards private business one cannot omit from consideration what is known to be too often the practice regarding moneys received on account of a private firm. In the present case the estate is a private estate. No attempt has been made on the part of the prosecution to prove that any rule of the estate, or any contract, express or implied, lay between the estate and Mathura Prasad regarding the time and the

manner in which all such moneys were to be deposited. It is easy to say that they should be deposited without delay, but that must be a matter of proof as much as any other matter of fact in the case. Retention of moneys for fifteen months after receipt undoubtedly raises a very serious doubt of bona fides against an accused, but the mere retention is not conclusive proof of criminal misappropriation or criminal breach of trust. In the present case it is alleged that there were moneys due to Mathura Prasad, and there is evidence that something like Rs. 300 had been paid to him at any rate one month before the deposit of this Rs. 115 to re-pay the moneys due. This matter should have been more worked out by the prosecution, and it ought to have been shown how long these moneys had been due to him. Unfortunately there is nothing on the record to show whether these debts due to him were of long standing or merely of yesterday. The accused from the very first opened his hand and said 'I was paying the money in within four months, but the treasury refused to take it on the ground that it had received orders from the manager not to receive moneys of the Chilonda Estate.' The prosecution knew what they had exactly to prove, that the witnesses whom they put forward should depose to the procedure in this private estate regarding the time when moneys had to be deposited. They could without any difficulty have sent for the manager Gaya Prasad and put him into the witness-box and definitely ascertained whether he admitted or denied such orders having been issued. It is quite within the bonds of possibility that if Gaya Prasad were sent for now and examined as a witness in the case, he might on oath affirm that there were such orders in existence and why they had been issued. There is nothing on the record on which beyond probability a Court should infer that no such orders had ever been given and that there were no reasons for issuing such orders. Again, there was more than one opportunity in which the prosecution might have asked the witnesses produced by them on these points which must have been well known. But no such question was asked. It is a matter of experience which cannot be overlooked that procedure regarding deposit of moneys and dealing with moneys in private firms is often very lax and loose. Of course whether Gaya Prasad's evidence was to be believed could only be arrived at when his evidence were on the record and was open to consideration. He was not sent for in the present case, and it is contended that it was not for the prosecution to produce him but it was for

the accused to have called him in defence. I have carefully considered this point. Looking to the present case where there is no evidence before me that the accused disposed of this money or attempted to dispose of it in some way other than that in which he was bound to do, the burden, in my opinion, still rested upon the prosecution to place before the Court beyond reasonable doubt that the evidence was sufficient to be conclusive proof that criminal breach of trust had been committed. As I said at the beginning of this judgment, the prosecution relied upon the bare retention which has been challenged by the defence, the latter having given a certain amount of evidence to show that the retention was not for sixteen months as alleged by the prosecution, coupled with the weakness of the explanation given by the accused. I think there is room for doubt, and the accused must be given the benefit of that doubt. I accordingly set aside the conviction and sentence. The fine, if paid, will be refunded. The bail-bond is discharged. Conviction set aside.

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