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Court : Allahabad

Decided On : Jan-31-1961

Reported in : AIR1961All639; 1961CriLJ759

Judge : W. Broome, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 415 and 419

Appeal No. : Criminal Revn. No. 1218 of 1960

Appellant : Baboo Khan

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : S.A. Kazmi, Adv.

Judgement :
ORDER

W. Broome, J.

1. Babu Khan, the applicant in this criminal revision, has been, convicted by a first class Magistrate of Budaun for an offence under Section 419, I. P. C. and has been sentenced to nine months' R. I. and a fine of Rs. 100/-. His conviction and sentence were confirmed in appeal by the Second Temporary Civil and Sessions

Judge of Budaun.

2. The prosecution allegations were that on 9-6-1959 the accused-applicant came to the village of Shekhupur, pretending to be Dr. Mohan Lal, the famous eye specialist of Aligarh, and induced the complainant Zalim to allow him to perform an operation on the right eye of Zalim's 12-year old son Rajpal. The boy had previously been shown to a certain Dr. Gupta, who had declared his eye to be incurable but the accused assured Zalim that he could restore sight to the eye by performing the operation. The accused made an incision in the boy's eye-lid and extracted some whitish matter and then bandaged up the eye and told Zalim to bring Rs. 32/- to his camp at Ujhani. Next day Zalim accordingly went to Ujhani but could not fhld any trace of the camp that had been referred to by the accused. Eventually he met the accused, who said that he had taken a house on hire and asked for payment of Rs, 32/-; but by now Zalim's suspicions had been aroused and he took the accused off to the police station and lodged a report.

3. The accused-applicant denied that he had ever personated Dr. Mohan Lal of Aligarh. He admitted, however, that he carried on the business of treating eye disorders as a kind of unregistered practitioner and that he had performed an operation on the eye of Zalim's son Rajpal. According to him, there was a tumour on the eye-lid, which he had removed; but after the operation, when he demanded his fee of Rs. 20/-, Zalim avoided payment and in Ujhani next day when he repeated the demand a quarrel took place, and he was then taken off to the police station and implicated on a false charge.

4. The defence plea that an operation for tumour had been performed has been disproved by medical evidence. The prosecution allegations on. the other hand have been fully substantiated by the testimony of a number of witnesses, who have been believed by the courts below, and I see no sufficient reason to differ from the conclusions that have been arrived at on questions of fact.

5. The main point to be seen in this case, however, is whether any offence under Section 419, I. P. C. has been made out or not. Personation is of course clearly established, but the question is whether the necessary ingredients of cheating as defined in Section 415, I. P. C. have been proved. The definition of cheating given

in Section 415 runs as follows:

'Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'

In the present case it is clear that the accused Babu Khan deceived the complainant Zalim by pretending to be Dr. Mohan Lal of Aligarh and intentionally induced him to allow an operation to be performed on his son Rajpal, which he would not have allowed to be performed if he had not been so deceived. But before the offence of cheating can be made out it has further to be shown that the act which the person deceived was induced to do by the deception practised on him caused or was likely to cause 'damage or harm to that person in body, mind, reputation or property'. No harm has been caused to reputation or property in this case.

Damage or harm in body has been caused to Rajpal who was operated on; but by the definition quoted above it is necessary that the harm should be caused to the person deceived not to any one else, and in this case the person deceived was not Rajpal but Zalim. There remains however to be considered damage or harm in mind; and it seems to me that Zalim himself was harmed in mind by the act which he was induced to do on account ot the deception practised by the accused, for his permitting the operation to be performed on his son's eye must inevitably have caused him a good deal of mental anguish.

'Damage Or harm in mind' has not been defined in the Penal Code, but I presume that it covers both injury to the mental faculties and also mental pain (just the same as damage or harm in body would cover wounds or other hurts and also physical pain). To sum up, I am satisfied that the complainant Zalim was deceived by the accused and was thereby induced to do an act (allowing his son to be operated upon) which he would not have done if not so deceived; and that this act caused Zalim harm in mind in the mental! anguish. It is clear therefore that all the

ingredients of the offence of cheating, defined in Section 415, I. P. C., have been made out in the present case and that the accused's conviction under Section 419, I. P. C. suffers from no legal flaw.

6. There remains the question of Sentence. No lasting damage seems to have been inflicted on the body of Rajpal. The accused merely performed a minor operation on his right eye-lid but did not tamper with the eye itself, and there is no suggestion that the operation in any way damaged or impaired the boy's sight, for in any case that eye was already blind and its condition had been pronounced incurable. In the circumstances I am of opinion that the sentence of nine months' R. I. that has been imposed by the trial court is somewhat excessive. I find that the accused has already been in jail for about three months, and it seems to me that this period of imprisonment, together with the fine that has been imposed, will be sufficient to meet the ends of justice.

7. The result is that while confirming theconviction of the accused-applicant under Section 419,I. P. C., I reduce his sentence of imprisonment tothe period already undergone, I make no alteration in the sentence of fine.

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