

Bechai Vs. Emperor

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Court : Allahabad

Decided On : Mar-24-1922

Reported in : AIR1922All244; 69Ind.Cas.159

Judge : Ryves, J.

Appellant : Bechai

Respondent : Emperor

Judgement :

Ryves, J.

1. Bechai was tried at one trial under sections 420 and 380 of the Indian Penal Code by a Magistrate of (be First Class and was convicted under both charges and given consecutive sentences of imprisonment. He appealed. The learned Sessions Judge dismissed the appeal but made the sentences concurrent. In revision before roe the point has been taken that it was illegal to try the accused under both the charges at the same trial because the joinder of the two charges must prejudice him. The facts found are as follows:

One Suraj Bali, a villager, tame into the Allahabad city with some wheat for sale. He put up with Bechai, the applicant, who is his first cousin. Suraj Bali's object in coming to Allahabad was to dispose of his wheat and to purchase silver to make ornaments for his wife. Bechai agreed to buy the wheat and promised to show

Suraj Bali where he could purchase the silver. He took him next morning, not to the part of the town where the sonars' shops are situated, but near the clock tower where he pointed out a man who was sitting in front of a closed shop as a good man who would sell him the silver, Suraj Bali was not quite satisfied as there were no sonars' shops there, but was assured by the Boused that it is all right, and he purchased some bars of silver. Later in the day his suspicions were aroused and he took the silver bars to a goldsmith who tested them and found that they were a base alloy very thinly washed with silver. Suraj Bali came back to Bachai's house in a great state of trouble and Bechai reassured him that they would recover their money from the goldsmith who had sold the silver; so they both went off in search of the goldsmith to try and find him. Needless to say, they did not find him. That night Suraj Bali slept in the house of Bechai and towards morning woke up feeling as if some one was tugging at his clothes in which the bars which he had bought were wrapped up. He saw Bechai and another man, who has since been acquitted, going off with the bars. The charge under Section 420 of the Indian Penal Code related to the cheating, i.e., passing off the base metal for silver, and the charge under Section 380 of the Indian Penal Code related to the taking away of the bars subsequently. It was argued that the provisions of Section 235 of the Criminal Procedure Code would not apply to the facts of this case. It seems to me certainly very difficult to find that the two offences were committed 'in one series of acts so connected together as to form the same transaction.' The cheating seems to have been completed once the base metal was given to Suraj Bali in exchange for his money. The necessity for stealing the base metal only arose when Suraj Bali had discovered that he had been cheated. If Suraj Bali had not had his suspicions aroused, and the accused might naturally expect that his suspicions would not be aroused, he would have gone away to his village with the silver and no thought of stealing it would occur to the accused; but once the accused knew that Suraj Bali had discovered that he had been cheated, then it naturally occurred to him that it would be to his advantage if he was able to get away with the base metal so as to remove the evidence against him, I think, however, that there has been no real prejudice against the accused in joining these two charges. It is quite clear. I think, that the evidence which went to establish the charge under Section 380 of the Indian Penal Code would have been admissible even if no such charge

had been framed, not to prove the case Under Section 380 of the Indian Penal Code but as evidence in proof of the charge under Section 420 of the Indian Penal Code. Evidence of subsequent conduct is admissible to show the state of mind of an accused, and it was admissible, therefore, to show that the accused knew of and was a party to the cheating: . He has not, therefore, been prejudiced in the sense that he might not have been convicted under Section 420 of the Indian Penal Code if he had not also been charged under Section 380 of the Indian Penal Code, because the] evidence was admissible, and he has not otherwise been prejudiced because the sentences were made concurrent on appeal. In my opinion, therefore, there is no necessity to interfere and I reject the application.

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