

Shimbhu Narain Vs. Emperor

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Court : Allahabad

Decided On : Mar-28-1923

Reported in : 73Ind.Cas.526

Judge : Ryves, J.

Appellant : Shimbhu Narain

Respondent : Emperor

Judgement :

Ryves, J.

1. This is an unusual case. Shimbhu Narain was convicted by a Magistrate of the First Class under Section 344 of the Indian Penal Code and sentenced to one day's detention, till the rising of the Court, and a fine of Rs. 200. His appeal was dismissed by the learned Sessions Judge of Farrukhabad and he comes here in revision. The facts are not disputed.

2. Shimbhu Narain is a wealthy Zemindar and an Honorary Magistrate in the town of Kanauj. The charge against him is that of having wrongfully confined his brother, Maheshwar Narain, for more than ten days, in fact, from the 29th of March until the 3rd of July 1932. It appears that Maheshwar Narain is subject to fits of insanity, and, on such occasions, exhibits dangerous and violent tendencies. On or about the 29th of March he certainly became very violent and went about

brandishing a sword and threatening to do violence to people. I think there is no doubt that on that date he was insane, and dangerously so. Shimbhu Narain had him chained up with very heavy chains and kept him in that condition until the 3rd of July, when, the matter having been reported to the District Judge, Shimbhu Narain was called upon to produce Maheshwar Narain before him. He did so and brought him to Court chained in the same fetters in which he had been confined. An examination of Maheshwar Narain's mental condition was then made by two medical practitioners and he was certified to be then sane. These facts are admitted.

3. It is argued that Shimbhu Narain was justified in what he did and that he acted honestly. As evidence of his honesty, attention is drawn to the fact that he produced Maheshwar Narain before the District Judge in the very fetters with which he had been chained. Both the lower Courts have 'held that the manner in which Maheshwar Narain was chained was unnecessarily cruel. This, it is argued, is irrelevant and does not affect his guilt. In my opinion, although the matter has not been considered in the same light by the Courts below, it is relevant on the question of the good faith of the accused. The accused relies on Sections 88 and 92 of the Indian Penal Code as justification. The learned Sessions Judge has rightly held that an accused person who desires the benefit of this or any of the other exception in the Code must prove that he comes within its scope, and that the accused has failed to do so. Under both Sections 88 and 92, the accused person must show that he acted in good faith. Now, 'good faith,' for the purposes of those sections, is explained by Section 52 of the Code which says, 'nothing is said to be done in good faith which is done without due care and attention.' The evidence shows that although Maheshwar Narain is subject to fits of violent insanity nevertheless he has lucid intervals. It seems, in fact, that these fits only come on occasionally and are temporary. Under these circumstances, having regard to the fact that the accused is a person of education and wealth and that he lives in a town where medical attendance could easily be procured, he cannot be said to have acted with due care and attention in chaining up his brother in this unnecessarily cruel way for over three months, and apparently he would have continued so to confine him indefinitely if the District Judge had not interfered. If the definition of 'good faith' as given in the General Clauses Act Act X of 1897

which says 'a thing shall be deemed to be done in good faith Where it is in fact done honestly whether it is done negligently or not' had been applicable, there might have been some force in the argument of the learned Counsel for the applicant, although even then I am doubtful whether the accused having regard to his position in life, could be entirely exonerated. In my opinion the conviction is right. I decline to interfere.

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