

Roopsingh and anr. Vs. State

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Court : Madhya Pradesh

Decided On : Jan-31-1958

Reported in : AIR1958MP179; 1958CriLJ896

Judge : T.C. Shrivastava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 239

Appeal No. : Criminal Revn. No. 167 of 1957

Appellant : Roopsingh and anr.

Respondent : State

Advocate for Def. : Sharma, Govt. Adv.

Advocate for Pet/Ap. : Khanvilkar, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

T.C. Shrivastava, J.

1. The petitioners Roopsingh and Udesingh were tried by the Magistrate Sitamau for offences under Sections 420 and 420/109 I. P. C. and were convicted and sentenced to rigorous imprisonment for six months and a fine of Rs. 500/- each.

Against this conviction they preferred an appeal to the Additional Sessions Judge, Mandsaur, who dismissed the appeal but modified the sentences. This revision petition is against the order of the Additional Sessions Judge.

2. Facts alleged by the prosecution were these: The two accused along with others had conspired with one Bhaga to cheat the villagers by representing to them that whatever money they gave to them would be returned with an additional equal amount within a short time by doubling it through divine power. The modus operandi was that Bhaga installed the idol of a Goddess in the house of the applicants. Before the idol some pots were kept and people were invited to drop money in those pots and they were told that double the amount would be returned.

Accordingly several persons offered money between 20-10-1951 and 5-12-1951 but nothing was returned to them. The prosecution put up instances of five persons who had thus been cheated by the applicants during that period.

3. Shri Khanvilkar did not press the grounds mentioned in the application on the merits of the case. The only contention he has raised is that the trial was bad for misjoinder of charges and persons. According to him, the five instances constituted separate and distinct offences and could not be tried together. In reply to this contention Shri Sharma for the State relied upon Section 239 (d) of the Code of Criminal Procedure stating that the offences formed part of the same transaction and the trial was therefore valid.

4. The expression 'same transaction' has not been defined and it is difficult to say precisely what it means. It is however clear from decided cases that there should be continuity of purpose and action connecting the various acts sought to be included in the same transaction. In this connection the following observations in *Emperor v. Datto Hanmant*, ILR 30 Bom 49 (A) are instructive :

'According to its etymological and dictionary meaning the word 'transaction' means carrying through' and suggests, we think, not necessarily proximity in time so much as continuity of action and purpose. The same metaphor implied by the word is continued in the illustrations where the phrase used is 'in the course of the same transaction'. In Section 215, the phrase is used in a connection which implies that

there may be a series of acts -- Illustration (f) to that section indicates that the successive acts may be separated by an interval of time and that the essential is the progressive action, all pointing to the same object.

In Section 239, therefore, a series of acts separated by intervals of time are not, we think, excluded, provided that those jointly tried have throughout been directed to one and the same abjective. If the accused started together for the same goal this suffices to justify the joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible (vide Section 239, illustration (b)).

We think the foundation for the procedure in that section is the association of two person? concurring from start to finish to attain the same end.'

Further, another point to be remembered in considering the legality of a joint trial is that the sameness of a transaction is to be judged from the allegations in the charge-sheet and not in the light of the facts which may ultimately be found. The view of the Allahabad High Court on this aspect is expressed in *Rafi-uz-raman Khan v. Chhotey Lal*, 27 Cri LJ 445 : ((AIR 1926 All 334) (B), thus :

'We prefer the phrase 'identity of purpose' to the phrase 'community of purpose'. The latter phrase is ambiguous in that it may mean only identity of purpose' or it may suggest that the purpose of each was not only the same but was known to the others, or in other words, 'conspiracy'. We do not consider 'conspiracy' in any way a necessary element though if it is present, its presence will be a further element supporting a finding that the offences were committed in the same transaction. It is clear that the framers of the Criminal Procedure Code could never have had in mind the necessity for any proof of conspiracy before the terms of Section 239 could be applied. There is nothing requiring any element of conspiracy indicated by Section 239.'

Similarly in *Bhagolelal v. Emperor*, AIR 1940 Nag 249 (C) it is observed :

'For Section 239 Criminal Procedure Code, it is enough if the different offences are committed in the course of the same transaction. In *Babulal Chaukhani v.*

Emperor, AIR 1938 PC 130 (D). it was laid down that the criterion which makes a joint trial allowable is what the prosecution case is, not what the result may be.'

5. It is apparent from the decisions cited above that an allegation of conspiracy is not strictly necessary but if it is alleged that there is a conspiracy, the identity of purpose can safely be presumed. In fact in, Emperor v. Gopal Raghunath, ILR 53 Bom 344 : (AIR 1929 Bom 128) (E), the charge of conspiracy failed but the convictions for specific acts proved in a joint trial were upheld. In the instant case it is clearly stated in the charge-sheet that the accused had entered into a conspiracy to cheat people in this particular way. Accordingly, there existed an identity of purpose between them.

The scheme of installing the deity and inviting offers on the promise of doubling the money was one single plan and both the accused worked all along to the same end. In Emperor v. Datto Hanmant (A), referred to above, two persons in charge of trust funds had committed criminal breach of trust with respect to different sums separated by intervals of time but in pursuance of a common scheme. They were held to have committed the offences in the course of one transaction and joint trial on all the charges was held legal. The principle of the case applies fully to the instant case.

6. Shri Khanvilksr relies upon Rajnarayan v. The State, AIR 1953 All 448 (F), in which it was held that joint trial of several persons for eight dacoities committed by them on the same night was bad as the acts did not form the same transaction. This was a case where there was nothing to show that there was unity of purpose and it was found that each instance of dacoity was a completed act in itself having nothing to do with the other.

7. From the modus operandi in the instant case, there is no doubt that the several instances of cheating formed part of the same transaction. The fact that the victims made offerings on different dates does not make any difference.

8. The trial is not therefore bad for mis-joinder of persons or charges as contended. On merits, there is ample evidence on record to show that the two accused had acted in concert and had actually obtained money successfully

cheating the villagers. The convictions and the sentences are therefore proper.

9. In the result, the revision petition fails and is dismissed.

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