

Benupani Behera Vs. State

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Court : Orissa

Decided On : Mar-04-1992

Reported in : 74(1992)CLT400; 1992(I)OLR571

Judge : A. Pasayat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107 and 109

Appeal No. : Criminal Revision No. 617 of 1988

Appellant : Benupani Behera

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : M. Misra and B.S. Tripathy (2)

Judgement :

A. Pasayat, J.

1. Petitioner faced trial being charged under Section 419/420/109 of the Indian Penal Code, 1860 (in short, 'IPC') on the accusation that he was a party to impersonation and cheating, resulting in improper payment of land acquisition compensation.

2. The synoptical presumption of the case of the prosecution is as follows :

On 5-9-1979, one Madhab Majhi impersonated as Sanu Golari, and received Rs. 7,718.80 from the Zone Officer, Land Acquisition Upper Kolab at Lamtaput, towards land acquisition compensation payable to the said Sanu Golari. Accused Madhab Majhi was identified by the Petitioner, and other accused persons namely, Adu Majhi and Dhanurjaya Guntha. When actual claimant Ronila Golari, widow of sanu Golari complained regarding non- payment of compensation, indiscretion of Madhab Majhi was found out. First Information Report was lodged by the Zone Officer, and after investigation charge-sheet was submitted against the petitioner and other three named accused persons. The case was numbered as G. R. Case No. 103 of 1980. Learned Sub-Divisional Judicial Magistrate, Koraput (in short, the 'SDJM') on consideration of evidence of the witnesses held petitioner guilty under Section 109, IPC for abetting the offence punishable under Section 419 and 420, IPC, convicted him and sentenced him to undergo simple imprisonment for one month. Other accused persons were also convicted and sentenced to various sentences. Appeals were preferred by the present petitioner and other accused persons which were numbered as Criminal Appeal Nos. 7 and 4 of 1988 respectively which were re-numbered as Criminal Appeal Nos. 36 and 33 of 1988 and were heard by learned Additional Sessions Judge.

3. Petitioner took a definite stand that he was new to the Place and was not knowing the persons to whom amounts were to be disbursed and therefore was reluctant to identify any claimant. But on the assurance by the Zone Officer that everything was in order, he put his signature. He had no role to play even if any wrong payment was made to Madhab Majhi. Learned SDJM did not accept this plea and held him guilty, which conclusion was affirmed in appeal. The conviction and sentence were maintained.

4. Mr. M. Misra, learned counsel for petitioner has urged that ingredients necessary to constitute offence under Section 109, IPC are absent in the present case. Learned counsel for State however, stated that once having accepted that identification was done by him, it was for the petitioner to establish that there was no instigation and/or conspiracy and/or intentional aid.

5. There are four stages in the commission of a crime, viz. (i) the mental stage in which the crime is considered and determined upon. (ii) the preparatory stage, (iii) the stage of execution, and (iv) the stage, of concealment i. e. after a crime has been committed, the attempt to conceal or profit by conduct.

6. Section 109, IPC comes into operation if there is abetment of an offence. Section 107 deals with abetment of a thing, Abetment under the provision involves active complicity on the part of the abettor at a point of time prior to actual commission of offence. It is essence of crime of abetment that the abettor should substantially assist the principal culprit towards commission of offence. Concurrence in the criminal acts of another without such participation therein as helps to effect the criminal act or purpose does not per se become culpable. Mere negligence in an act also does not bring in a person within the purview of the offence of abetment. An act of abetment may take place in one of the three ways ; (i) instigation, (ii) conspiracy or (iii) intentional aid. Expression 'abettor' has been defined in Section 108, IPC to mean a person who abets either commission of an offence, or commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. Offence of abetment depends upon intention of a person who abets and not upon knowledge or intention of the person he impels to act for him. Intention to aid commission of the crime is the gist of offence of abetment and in the absence of necessary intention, such offence is not made out. Liability of an abettor of a crime is generally co extenso with the principal offender

7. For the application of Section 109, three essential features must exist, that is, (a) there must be abetment of an offence, (b) the act abetted must have been committed in consequence of the abetment, and (c) there must be no express provision made in the IPC for the punishment of such abetment. Such express provision is made in Sections 110 to 123, 130, 132, 133, 134, 136 and 139, IPC. There is no evidence of instigation or conspiracy in the case at hand. Therefore only question is, whether petitioner intentionally aided the acts of impersonation and cheating.

8. From the evidence on record, it is seen that petitioner was posted at Lamtaput shortly before the alleged date of occurrence. Except the act of identification, no other overtact is attributed to him. It was his specific case that being new, he did not want to take the risk of identification, but on being told by the Zone Officer, he identified the recipients of compensation. Intention should be to aid commission of a crime. It should be to aid an offence or to facilitate commission of an offence. Mere giving of aid will not be sufficient to attract culpability if the person who gives aid did not know that an offence was being committed or contemplated. The language Used in Section 107 and 109 is 'intentionally aids'. As observed by the Supreme Court in Shri Ram v. The State of UP AIR 1975 SC 175, in order to constitute abetment, the abettor must be shown to have 'intentionally' aided to commission of the crime. Mere proof, that the crime charged could not have been committed without involvement and/or interposition of the alleged abettor is not enough compliance with the requirements of Section 107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107. No evidence has been brought on record to establish that the petitioner had requisite knowledge that a criminal act was being committed or was contemplated. In the absence of evidence, there is no scope for fastening culpability under Section 109, IPC.

9. In the above premises, judgments of conviction and sentence passed by Courts below are interdicted and are accordingly, set aside. The petitioner is acquitted of the charges. Bail bonds be discharged.

The Criminal Revision is allowed.

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