

**Bapu Daldi Vs. the Queen**

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**Court :** Chennai

**Decided On :** Feb-26-1882

**Reported in :** (1882)ILR5Mad23

**Judge :** Innes and ;Muttusami Ayyar, JJ.

**Appellant :** Bapu Daldi

**Respondent :** The Queen

**Judgement :**

1. In this case the prisoner has been tried and convicted of criminal breach of trust as a carrier under Section 407 of the Indian Penal Code, and sentenced to 4 years and 6 months' rigorous imprisonment and 500 rupees fine, or, in default, to be rigorously imprisoned for a further period of 15 months. The prisoner was originally tried for this offence in 1869, but the High Court, on the 10th January 1870, ordered a retrial. Prisoner however escaped as he was being brought back from the Cannanore Jail and has only lately been rearrested.

2. The evidence for the prosecution tends to show that certain rice was entrusted at Mangalore to prisoner, who was the tindal of a pattimar, for conveyance to one Kesava Naick at Calicut. After prisoner got to sea, instead of taking his pattimar to Calicut, he went off to Goa and there sold the rice.

3. In the case, as formerly tried, it was held by the High Court that, assuming that the deviation of prisoner from his course took place beyond a marine league from

the shore, the Court with local jurisdiction would, under certain English Statutes, only have jurisdiction over the offence if there had been a complete conversion of the property at the time and place of the deviation, since deviating from the course with intention to convert or misappropriate, though sufficient under the Indian Penal Code to complete the offence, would not satisfy the English Statute creating the offence of larceny by a carrier. The actual conversion (breaking bulk, &c.;) was found to have taken place at Goa. This being foreign territory, the ordinary jurisdiction of the British Indian Courts was excluded, but the Sessions Judge of Mangalore had power to give himself jurisdiction over the offence, though committed in foreign territory, by recording an order under Act I of 1849. The High Court ordered a retrial as the Judge had not thus given himself jurisdiction. But the retrial was prevented by the circumstances already adverted to.

4. The Sessions Judge, before proceeding to retrial of the prisoner, recorded proceedings to the effect that Section 671 of the present Criminal Procedure Code appears to give him jurisdiction though the offence was committed at Goa, that it is very doubtful if the Judge of to-day has any power to give himself jurisdiction to try offences under the repealed Act I of 1849, but that, in order to be on the safe side and avoid, if possible, the necessity for a third trial in this case, he had proceeded to record a formal order giving himself jurisdiction over the offence in question. He added, 'this formality together with the provisions of Section; 702 of the present Code will, I trust, be sufficient to prevent the present trial also being set aside.'

5. If, as appeared in the former case and as the evidence in the present case shows, the offence was committed at Goa, Section 67 of the Procedure Code cannot give jurisdiction as supposed by the Sessions Judge. That section is part of a Code of Procedure for the trial of offences committed in British India. It extends to the whole of British India, but cannot give the Courts jurisdiction over offences committed beyond the limits of British India. The words 'journey or voyage' spoken of in it do not include a voyage on the high seas or in foreign territory, but are confined in their meaning to a journey or voyage within the territories of British India, as down the Ganges or the Buckingham Canal; nor can Section 70 of the Procedure Code render the trial effectual notwithstanding that the Court had not jurisdiction over the offence. That section as well as Section 67 has relation only to

a trial of an offence committed in British India, in which the only defect is that some Court in British India, other than the Court which actually tried the charge, had local jurisdiction over the offence. Nor can an order under Act I of 1849 give the Judge jurisdiction or validate the trial. That Act was repealed by Act XI of 1872, and that latter Act has been again repealed by Act XXI of 1879. This latter Act admits of proceedings being taken in British India in such a case only on the condition that the person charged is a native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory (Section, 9,3 Act XXI of 1879).

6. As ruled by this Court in the former proceedings in 1869, if the intention to commit the offence and the act of deviating from the course with that intention took place upon the high seas, but the act of conversion did not take place till Goa was reached, there was no offence committed on the high seas so as to give the Court jurisdiction under 12 and 13 Vic., Cap. 96, as extended by 23 and 24 Vic., Cap. 88.

7. We are of opinion that the Judge had not jurisdiction in the circumstances to try the case, and that the trial cannot be upheld. The conviction and sentence must be set aside and the proceedings quashed. It will be open to the Court to move the Magistrate to take proceedings under Act XXI of 1879. The prisoner must be discharged from jail.

1 Place for inquiry or trial where scene of offence is uncertain; or not in one district only or an offence is continuing or consists of several acts.

[Section 67: When it is uncertain in which of several districts an offence was committed; or where an offence is committed partly in one district and partly in another; or where the offence is a continuing one and continues to be committed in more districts than one; or where it consists of several acts done in different districts, it may be inquired into and tried in any one of any such districts.]

2 Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

[Section 70: No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or sessions division, unless it is proved or appears that the accused person, was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.]

3 Liability of British subjects for offences committed out of British India.

\* [Section 9: When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place beyond the limits of British India.

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be such, for the territory in which the offence is alleged to have been committed certifies, that in his opinion, the charge is one which ought to be inquired into in British India : Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar against further proceedings against him under this Act in respect of the same offence at any place beyond the limits of British India.]

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