

Sk. Asabuddin Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/852882

Court : Kolkata

Decided On : Jan-11-1938

Reported in : AIR1938Cal399

Appellant : Sk. Asabuddin

Respondent : Emperor

Judgement :

Henderson, J.

1. The petitioner was convicted by the unanimous verdict of the jury of an offence punishable under Section 466, I.P.C. He is a clerk in the service of the Midnapore Municipality. The prosecution arose in the following way: A certain person named Gajendra Nath Pakhira instituted a title suit against one Tarapada Maity on 12th September 1934. A decree-on compromise was passed on 24th November. On 18th December an application was filed by one Nirada Dasi under Order 9, Rule 13, Civil P.C. Her case was that Tarapada was a minor and that the summons had not, therefore, been properly served. This application was dismissed on 16th February 1935. On 14th March 1935, this Nirada Dasi, describing herself as the guardian of Tarapada, instituted a title suit in order to get the compromise decree set aside on the ground of Tarapada's minority. On her behalf a certified copy of an entry in the register of births maintained by the Municipality was filed purporting to show that Tarapada was born on 26th May 1918. The suit was dismissed and a

prosecution was lodged with respect to the entry in this birth register.

2. Now it is only necessary to look at the register of births to see that the entry in question cannot be genuine. It is not made in the register at all. It is written out on a plain piece of paper and then pasted on the appropriate page. This entry is to the effect that the birth was reported by the head vaccinator who obviously had nothing to do with the matter. We do not suppose that any jury would have failed to reach the conclusion that this forgery was made for the purpose of bolstering up the case brought by Nirada Dasi. The other side also appears to have resorted to the creation of evidence in the form of a report by the peon who served the summons to the effect that at the time of service Tarapada informed him that he was a major. When the peon was asked in cross examination to explain why he made this irrelevant inquiry he stated that Tarapada appeared to be a dwarf and so his suspicion was aroused. After an inquiry the petitioner was put upon his trial before the Assistant Sessions Judge of Midnapore. As I have already stated, the jury were unanimous in their opinion and the learned Judge sentenced him to rigorous imprisonment for three years. An appeal to the Sessions Court was summarily dismissed and this Rule was obtained from our learned brother who presided over the Vacation Bench.

3. Various points have been taken in support of the Rule. One question that the jury had to decide, was whether they were satisfied that the forgery was done by the appellant. He himself suggested that it might have been done by one of the other clerks. That part of the learned Judge's charge that deals with this aspect of the case has been criticised on the ground that he did not put the evidence clearly before the jury. Now the evidence briefly is this :-The appellant was the clerk who was in charge of this register throughout the time at which this forgery must have been done. It is true that he had an assistant who might have done it but the circumstantial evidence was put forward before the jury by the learned Judge very clearly indeed. He might have stressed it against the petitioner more strongly than he actually did. Then there was the evidence of a handwriting expert who compared the forged entry with some admitted handwriting of the petitioner and he expressed the opinion that they were identical. In addition to this the prosecution examined one of his fellow clerks who expressed the opinion that the forgeries

were in the handwriting of the petitioner. The evidence was put before the jury in a satisfactory way. We have ourselves no difficulty in understanding why the jury unanimously were of opinion that this entry was actually made by the petitioner. In view of this evidence any other decision would have been perverse.

4. Then there remains the question of the manner in which the learned Judge dealt with the prosecution allegation that the entry was a forgery. This has been criticised firstly on the ground that the learned Judge misunderstood the real signification of the charge and secondly that he admitted inadmissible evidence. The prosecution examined the peon in order to prove his endorsement on the back of the summons. He stated that at the time of the service of summons Tarapada gave his age as 22 years. The prosecution also attempted to give evidence that a similar statement of a negative character is said to have been made by Tarapada. We agree with Mr. Mukherjee that this evidence ought not to have been admitted at all. Tarapada is neither an accused nor a witness. If the prosecution wished to prove this statement, they should have examined Tarapada himself. The learned Judge's charge was to the effect that in order to satisfy themselves that this document was a false document, the jury must reach the conclusion that the age of Tarapada was wrongly entered; this of course, is not so. If in fact the head vaccinator reported to the clerk-in-charge on 31st May 1918, that a son was born to Ashutosh Maity on 26th May 1918, and then the clerk-in-charge made these entries in the Register, it is utterly immaterial whether the report of the head vaccinator was true or not. Similarly if no report was made at all to the Municipality, and if the present entry was pasted into the Register in order to create evidence to be used in Nirada Dasi's suit, it does not make the slightest difference whether Tarapada was born on 26th May or not. Now the prosecution case was that this is not a genuine entry, that the birth was not reported to the Municipal authorities and that this paper was pasted in it at a subsequent date. From this point of view the direction of the learned Judge about the actual date of the birth of Tarapada was quite beside the point. The question now to be decided is whether the jury were misled by him in bringing in the verdict.

5. The inadmissible evidence relates solely to the real age of Tarapada, and it could only have affected the opinion of the jury on that point. Mr. Mukherjee

contended that as the jury were not properly instructed on this part of the case, it cannot be said that the verdict was not due to misdirection. Now if we thought that the opinion of the jury might have been that these entries really were made by a Municipal clerk on 31st May 1918, we should have no hesitation in ordering a re-trial. But it is clear from what the learned Judge says in another part of his charge that this cannot be the case. The prosecution actually contended that the forgery must have been done between the date of Nirada Dasi's application for setting aside the compromise decree and her application for a certified copy of this entry. This was prominently put before the jury by the learned Judge in his charge. There is therefore no reason to suppose that the jury thought that the entry was made at the time when it purports to have been made. The position therefore is this that the jury were satisfied that the petitioner made the entry and that he did so sometime between 18th December 1934 and 10th February 1935. When once they reached that conclusion, they could not fail to bring in a verdict of guilty on that finding if the case was properly put before them. The only effect of the learned Judge's reference to the evidence about the real age of Tarapada was to give them an opportunity to bring in an improper verdict of not guilty. Possibly if they had been satisfied on the evidence that Tarapada was really born on 26th May 1918, they might have brought in a verdict of not guilty, and that verdict would have been due to misdirection. On the other* hand, this evidence could not have had any effect upon the verdict of guilty which was actually brought in. We have no doubt whatever that the petitioner was properly convicted :and that the verdict of the jury ought to be sustained. We accordingly discharge this Rule. The petitioner must surrender to his bail to serve out the remainder of his sentence.

Bartley, J.

6. I agree.