

Hulas Chand Baid Vs. Emperor

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Court : Kolkata

Decided On : Aug-13-1926

Reported in : AIR1927Cal63

Appellant : Hulas Chand Baid

Respondent : Emperor

Judgement :

Duval, J.

1. In this case the accused was put on his trial under Section 420, Indian Penal Code, before the Additional Chief Presidency Magistrate and sentenced to one year's rigorous imprisonment.

2. The case against him is that he went to the complainant's gaddi on some business and subsequently he met the complainant with a Bhatia. The Bhatia then produced a hundred rupee note and said that he could prepare notes like that. On the following day, the Bhatia made a hundred rupee note in the presence of the complainant and the accused, and the complainant was satisfied that the Bhatia was a man who could double notes. Then an arrangement was come to under which the Bhatia, the complainant, and the accused were to get a share each in the profits of the doubled notes in a certain proportion, the complainant taking the biggest share, presumably because he was the man who was to supply genuine thousand rupee notes for the purpose. Then, on the next day, the 15th February,

the complainant borrowed a thousand rupee note and went with the accused to the Bhatia, and the Bhatia made one forged note (apparently unnumbered) by some chemical process and gave 21 unfinished notes to the accused to keep. The complainant was then asked to bring 21 different thousand rupee notes, so that these 21 unfinished notes could be completed by having the numbers reproduced on them from the genuine notes. The story then is that the complainant could only raise eight thousand rupee notes and that thereupon they met at the accused's gaddi in the evening. The Bhatia came there with some chemicals and various processes were performed and suddenly apparently the whole of the notes, genuine notes and other notes, got burnt. As a matter of fact, it appears that the eight thousand rupee notes somehow must have been extracted from the bundle as they were subsequently cashed in the Currency Office. The complainant, however, lost this money and the Bhatia disappeared. The complainant complained to the police and the accused has been put on his trial and sentenced as I have said. The conviction has been under Section 420 read with Section 114, Indian Penal Code.

3. Now the evidence against the present accused consists simply of the evidence of the complainant himself; and it is urged on accused's behalf that this is insufficient to warrant a conviction. For the appellant it is argued, to begin with, that the charge was under Section 420, Indian Penal Code, and that the provisions of Section 288, Code of Criminal Procedure, do not extend to justify a conviction without any charge being framed for abetment of an offence under Section 420 instead of Section 420 itself. For the Crown, it is urged, that in the present case the defect, if any, in the charge is immaterial, because the accused fully knew before the charge was framed the case he had got to meet; and it is also urged that there might equally well be a conviction under Section 420, Indian Penal Code. I am of opinion that it was necessary to frame a charge of abetment, if that was the charge on which the man was tried and convicted. But I do not base the decision I am about to give on that alone.

4. Now the defence was that the accused was equally as much hood-winked and swindled by the Bhatia as the complainant and that he cannot, therefore, be convicted as being an abettor of the Bhatia in this swindle. It is in evidence, and it

is not denied, that towards note-doubling, the accused also produced two thousand rupee notes. But it is urged that he was the man who introduced the complainant to the Bhatia, and that when the complainant found that his eight thousand rupee notes had disappeared, the accused¹ did not join with him in finding fault with the Bhatia, but he took him home and said that things were all right and that the money could be recovered. It is also urged that the whole of the evidence being that of the complainant, it is not sufficient to justify the conviction. The complainant is an accomplice in an attempt to swindle the Government and the public by the issue of forged notes and it would be unsafe to rely on his uncorroborated evidence as an accomplice as to what the Bhatia did and what the accused did. In this state of evidence, I am by no means convinced that it is sufficient to justify the conviction of the present accused. He, no doubt, introduced the Bhatia to the complainant, but beyond that there is nothing to show that both of them might not equally have been duped by the Bhatia. If that is the evidence, and if there is no direct evidence that the present accused was really in league with the Bhatia, or that he found out that this Bhatia could do the-trick and so asked the complainant whom he knew to be a more moneyed man than himself to join in the swindle, this is not, in my opinion, sufficient to prove that the accused, who must have the benefit of doubt, if there is any, actually was a party with the Bhatia in trying to induce the complainant to part with his money.

5. In this view, I would allow the appeal and acquit the appellant. The appellant will also be discharged from his bail.

Graham, J.

6. I agree. As regards the legal objection that the accused could not be convicted of the abetment of the offence when there was a charge against him of a substantive offence under Section 420, Indian Penal Code, it seems to me, having regard to the provisions of Section 238, Code of Criminal Procedure, that this objection must be held to be well-founded. Sub-section 2A of this section was inserted by Act XVIII of 1923 and, having regard to the manner in which the section expressly makes mention of an attempt to commit an offence, while it is silent with regard to abetment of the offence, the inference, it appears to me, to be

that, in the case of abetment, it is necessary that a charge should be framed.

7. On the merits, it is to be observed that the complainant, on his own showing, was an accomplice in a swindling transaction. That being so, title reliance can be placed upon his evidence. Furthermore, it cannot, I think, be said that the circumstances which have been proved in this case are inconsistent with the appellant having been duped as well as the complainant. In my judgment, the prosecution have failed to prove any facts which may be said to have established the guilt of the accused beyond all reasonable doubt.

8. I agree, therefore, that the appeal must be allowed.

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