

C.G. Lloyd Vs. Emperor

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Court : Kolkata

Decided On : Dec-08-1932

Reported in : AIR1933Cal136

Appellant : C.G. Lloyd

Respondent : Emperor

Judgement :

1. This is a rule granted by my learned brother M.C. Ghose, J. and myself calling upon the Deputy Commissioner of Dibrugarh to show cause why the order dismissing the appeal of the petitioner against his conviction and sentence should not be set aside. The petitioner is an employee of the Telegraphs-Department in Assam. He was convicted on 5th November 1931 by the Extra Assistant Commissioner on charges under Section 409, I.P.C. The charges were three in number and related to sums of money amounting in all to Rs. 413-4-0. The trying Court convicted and sentenced the petitioner in respect of the first charge to six months' rigorous imprisonment and to a fine of Rs. 413-4-0 or in default to a further term of imprisonment for two months, the fine, if realised, to be paid to the telegraphs department as compensation. In respect of the other two charges the petitioner was convicted and sentenced to six months' rigorous imprisonment on each of them, the sentences to run concurrently with the sentence of imprisonment imposed in respect of the first charge. The petitioner appealed to the Sessions Judge of the Assam Valley Districts and on 1st February 1932 his appeal was dismissed. He obtained this Rule on 14th March 1932. The Rule was granted upon

six out of ten grounds set out in the petition. The grounds upon which we propose to dispose of the rule are those which are concerned with the admissibility of certain evidence tendered by the prosecution. It was the case for the prosecution that the petitioner in his capacity of Sub-divisional Officer, Telegraphs, Dibrugarh Subdivision was in charge of Government Funds drawn on imprest account for various purposes, among which was the payment of wages to coolies employed from time to time on casual labour in connexion with repairs to telegraph lines in the Dibrugarh Subdivision.

2. It is stated by the prosecution that with respect to the three sums with which the charges are concerned the petitioner, instead of paying those sums to the coolies as wages, converted them to his own use, and it is also the case for the prosecution that the muster rolls, which from the record of the payments which the petitioner states he made, are fictitious documents in the sense that no payment was made to the persons whose names appear on the muster rolls or to any one. The prosecution called witnesses and produced documents to prove that the petitioner did not in fact make any of the payments appearing in the muster rolls, and that circumstances showed that the story that he had made such payments was not false but impossible. In addition to the evidence relating to the sums of money which formed the subject-matter of the three charges the prosecution called evidence in respect of other payments which, they alleged, the petitioner falsely claimed to have made, whereas in fact there had been no such payments, the petitioner having applied the sums in question to his own use. It appears that in addition to the three muster rolls with which we are concerned, and which related to the charges on which the petitioner was convicted, 14 other muster rolls were tendered and admitted in evidence and the circumstances with regard to the payments shown therein were investigated in the case at any rate of a large number of them. The petitioner contended before the learned Sessions Judge that the Magistrate had wrongly admitted the evidence concerning the payments and muster rolls other than the payments which were the subject-matter of the charges and the muster rolls supporting them.

3. The learned Sessions Judge has come to the conclusion that in this respect the petitioner's contention is well founded, and that under the Evidence Act the

evidence to which the petitioner takes exception is not admissible. In the circumstances of the case we have first to consider whether the learned Sessions Judge was right in the view he took, because if we were of opinion that the evidence was admissible we should not have to consider the question of discharging or of making absolute the rule on any of the grounds connected with that evidence. We have come to the conclusion after hearing learned Counsel for the petitioner and the learned Advocate General on behalf of the Crown, that the Sessions Judge was right in the view he took, and that the evidence should have been rejected by the trying Magistrate. The section of the Evidence Act under which the Crown seeks to justify the admission of the evidence is Section 15. In our opinion, Section 15 has no application to the circumstances of the case. The act alleged was misappropriation of public money, and if the prosecution story was true that the petitioner had applied the money for his own purposes and had endeavoured to conceal his dishonesty by fabrication of false muster rolls, no question arose whether his act was an intentional or accidental act. Moreover it was common ground that if the petitioner had done what he was alleged to have done he must have done it with full knowledge of the nature of his action and with dishonest intention. Various cases were brought to our notice where the conduct alleged and proved against the accused was susceptible of more than one interpretation.

4. In such cases it is permissible for the prosecution to call evidence of similar acts on the part of the accused for the purpose of showing that his conduct is systematic, and therefore, not capable of a favourable interpretation. In the statement filed by the petitioner when he was examined under Section 342, Criminal P.C, there are various observations to the effect that if it transpired that the payments which he alleges he made, were made to persons who were not entitled to receive them, he had acted bona fide and under misapprehension. The fact that in his statement he suggested the possibility of having made the payments to the wrong persons under misapprehension does not justify the prosecution in calling evidence of other transactions in which they say, the petitioner appropriated sums of money out of the fund entrusted to him to his own use. The case for the prosecution was not that he had dishonestly paid money to persons who were not entitled to it. The case for the prosecution was that not only

had he not made any payment, but that it was impossible for him to have made any payment. If it be said that they were entitled to anticipate his defence of bona-fide mistake, the answer to me appears to be that such an anticipation would not justify them in tendering evidence of instances of dishonesty of a different nature, because obviously it is one thing for a Government servant to put government money into his own pocket and quite another thing to pay it dishonestly to persons not entitled to receive it. Therefore it appears to me that if the issue was whether the payments, if made were made bona fide, examples of conversion of money to the petitioner's own use would merely show general dishonesty, and as such would be irrelevant for the purpose of rebutting the petitioner's defence of bona fide payments to wrong persons. For these reasons we agree with the Sessions Judge that the evidence ought not to have been admitted.

5. Having dealt with the evidence the admissibility of which was challenged, the Sessions Judge proceeded to consider the rest of the evidence as to the admissibility of which exception cannot be taken, and came to the conclusion that, if he excluded from his consideration the evidence wrongly admitted, the remaining evidence justified the conviction of the petitioners. At the first sight it would appear that the learned Sessions Judge has followed the course contemplated both by the Code and by Section 167, Evidence Act, and has after due consideration of the evidence properly admissible come to the conclusion that the accused is guilty. His finding is a finding of fact and prima facie we should not be disposed to interfere with it or question its propriety in revision. But it is clear from the language of Section 167 that it is not in every case that the admission of inadmissible evidence will be disregarded on the ground that it appears to the appellate Court that independently of the evidence improperly admitted there was sufficient evidence to justify the decision.

6. That, in our opinion, is clear from the language of the section which says that the improper admission of evidence shall not be ground of itself for a new trial or reversal of any decision. We have to consider whether there are circumstances here which would justify our interference with the order of dismissal in spite of the provision of Section 167, Evidence Act. With regard to this there are some important observations in the judgment of the learned Judge. Before the learned

Judge the petitioner had taken exception to the mass of evidence which had been given before the charges were framed, because apparently evidence was given as to the 17 suggested instances of misappropriation prior to the selection of three of such instances as the subject-matter of three charges eventually framed. The learned Judge takes the view that this procedure was undesirable as it was bound to some extent to increase the difficulties of the defence. But he couples with this observation a statement to the effect that it is possible to conduct a trial, without infringing the provisions of the Code, in a manner prejudicial to the accused, and that it is not easy to see how it is possible for the Court to interfere in such a case. This is so, and we recognize the difficulty of giving any redress in cases of hardship where in fact the provisions of the law have been observed, but have operated harshly in the circumstances of the, particular case. But the position is quite different when the evidence is not only embarrassing to the accused by reason of its complexity and bulk but is also legally inadmissible, as we have held it to be here.

7. It has not been questioned that, had the evidence been confined to what was directly relevant to the three charges the scope of the inquiry would have been considerably reduced. It seems to us that we cannot allow the conviction to stand when the lower appellate Court has found that the difficulties of the petitioner have been increased by the amount of material, oral and documentary, tendered by the prosecution, and where the fact that the amount has been so great is due to the admission of a large body of evidence not legally admissible. We attach less importance to the observation of the Judge that the evidence weighed with the Magistrate and influenced him in coming to his decision. We are not prepared to say that is of itself a ground for setting aside the order complained of. The learned Judge was clearly impressed by the difficult position in which the defence was put by the admission of inadmissible evidence, for he repeats the observation to which we have referred shortly before concluding his judgment. In our opinion, the effect in this case of the admission of a large body of inadmissible evidence has been that the trial has taken a course substantially different from that contemplated by the law. We think that this is a circumstance which compels us to hold that the case is outside the purview of Section 167. We need not concern ourselves with the other grounds upon which the rule was granted because we think that the

ground which we have dealt with of itself necessitates a retrial, and that even if the other grounds were substantiated they would not justify order other than one for a retrial. We therefore set aside the conviction and sentence and direct that the petitioner be retried on the same charges by some Magistrate other than the Magistrate who had already dealt with his case. With regard to bail we direct that pending his retrial the petitioner be released on furnishing bail to the satisfaction of the Chief Presidency Magistrate for his appearance on such date and in such Court in the province of Assam as may be required of him.

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