

Adwait Kumar Das Vs. the State

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Court : Kolkata

Decided On : Aug-09-1955

Reported in : AIR1955Cal608,1955CriLJ1578

Judge : J.P. Mitter and ;Renupada Mukherjee, JJ.

Acts : [Evidence Act, 1872](#) - Section 8; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 262, 263 and 409

Appeal No. : Criminal Appeal No. 308 of 1954

Appellant : Adwait Kumar Das

Respondent : The State

Advocate for Def. : N.C. Sen, Adv.

Advocate for Pet/Ap. : Nalin Chandra Banerjee and ;Kashi Kanta Maitra, Adv.

Disposition : Appeal dismissed

Judgement :

J.P. Mitter, J.

1. Appellant Adwait Kumar Das was convicted under Section 409, Penal Code, and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 100/-, in default, to undergo rigorous imprisonment for another fortnight

2. The appellant was the registration cleric at counter No. II of Alipore Post Office from 24-10-1952 to 28-4-1953. Sometime before 28-4-1953, Postal Inspector P. W. 1, Nitish Chandra Bose, happened to inspect at the R.M.S. office some covers of the Alipore Post Office. His view was that some of the registered articles and V. P. parcels emanating from the Alipore Post Office contained previously used stamps. Upon enquiry, it was learnt that the stamps in question had been issued by the appellant.

The matter was reported to the Post Master General and under his direction P. W. 1, Nitish Chandra Bose and another official paid a surprise visit to Alipore Post Office at 11 a.m. on 28-4-1953. Later that day, at about 3 p.m. the appellant was in fact caught red-handed while affixing a previously used stamp on a cover. As the registration clerk, the appellant was given a permanent advance of Rs. 50/- for purchase of stamps. This advance, according to evidence, was to remain with the registration clerk until he was succeeded by another clerk.

According to evidence, a Postal Supervisor should occasionally check this advance. As a result of a check, shortly after the appellant was caught affixing a previously used stamp, only a sum of Rs. 30/5/- was found with the appellant. There was thus a shortage of Rs. 19/11/. As to this shortage, the appellant was unable to give any satisfactory explanation.

3. The appellant's defence was that there was no shortage of stamps advance money during the period in question and that he was wholly innocent of the charge.

4. Upon the evidence adduced at the trial the learned Judge of the West Bengal, 1st Special Court, Alipore, convicted the appellant and sentenced him as aforesaid.

5. Originally the appellant was charged under Sections 262, 263 and 409, Penal Code. Upon an objection taken on the appellant's behalf at the concluding stage of the trial, the charges under Sections 262 and 263 were struck out. The trial upon the remaining charge under Section 409, I. P. C., was proceeded with after an amendment of that charge as to the time of the alleged occurrence. The appellant

was called upon to plead to the amended charge which he did. The appellant was also allowed to cross-examine prosecution witnesses afresh.

6. Mr. Nalin Banerjee on behalf of the appellant has contended that in view of the charges under Sections 262 and 263 having been struck out, the evidence in the case that the appellant was found affixing a used stamp on a cover should have been left out of consideration. The point as to the necessity of sanction to prosecute the appellant under Section 409, Penal Code, was abandoned before us.

7. That there was a shortage to the extent of Rs. 19/11/- cannot possibly be questioned on the evidence in the case. That the appellant had a stamp advance of Rs. 50/- cannot also be challenged. The question is whether on the facts proved in the case the prosecution can be said to have established beyond all reasonable doubt that the appellant was guilty of an offence under Section 409, Penal Code.

In our view, the evidence as to the appellant having been found using a previously used stamp was relevant as proving mens rea in relation to the offence under Section 409, Penal Code. If that evidence was believed, and there is no reason why it should not be believed, then it furnished unmistakable evidence of mens rea. The fact that the appellant was no longer charged with any offence either under Section 262 or under Section 263, Penal Code, cannot affect the admissibility of this evidence.

8. Mr. Banerjee has not sought to challenge the rest of the evidence and we are of the view that the case against the appellant was proved beyond all reasonable doubt. That being so, the appeal fails and is dismissed. The appellant, who is on bail, must now surrender and serve out the sentence.

Renupada Mukherjee, J.

9. I agree.