

Emperor Vs. C.A. Mathews

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Court : Kolkata

Decided On : Jul-29-1929

Reported in : AIR1929Cal822

Appellant : Emperor

Respondent : C.A. Mathews

Judgement :

Cuming, J.

1. This is a reference under Section 307, Criminal P.C. by the learned Additional Sessions Judge of 24-Parganas-in the case of one C. A Mathews. C. A. Mathews was tried by (he learned Additional Sessions Judge of 24-Parganas sit-ting with a jury on a charge of conspiring with a number of other persons to dishonestly and fraudulently induce intending candidates for the post of travelling ticket checkers in the E B. By. administration to deliver moneys to him by deceiving these persons into a belief that they would on such delivery receive appointments on a monthly pay of Rs. 30 and an allowance of Rs. 15. He was further charged with conspiring with the-same persons to cheat a number of persons by obtaining from them moneys as. gratification other than legal remuneration from intending candidates for the post of travelling ticket checkers in the said railway, after deceiving them into a belief that they after the delivery of the money would get appointments as stated in the first charge. The jury by a majority of three to two found the accused5

not guilty. The learned Additional Sessions Judge being of opinion that the accused was guilty under Section 120-B read with Section 161, I. P.C. has referred the-case to this Court. It will be seen that originally Mathews was being tried by the Police Magistrate, Sealdah, jointly with a number of other persons who were alleged to be his coconspirators. Mathews then claimed to be tried as a European British subject and hence he was committed to Sessions and has been tried alone.

2. The case for the prosecution is briefly this: The accused is a sub-officer of the E.B. Ry. and was in charge of the travelling ticket inspection section of the railways. He with a number of other persons who conspired with him induced a large number of persons to give him various sums of money on the pretext that they would be appointed as travelling ticket checkers. These persons worked for various periods of time on the railway and in the month of September 1927, their services were dispensed with. The case for the prosecution is that Mathews had no authority to make such appointments, that these persons were not properly speaking appointed at all by the railway and that Mathews took from these persons various sums of money as a consideration for giving them the appointments. The case of the defence as set forth by Mathews in his statement in the Sessions Court was that the appointments of almost all these persons had been sanctioned by the Chief Auditor and that he never took any money from them as a reason for their appointments in the railway. It is further suggested by the learned Counsel for Mathews that these persons whom he appointed were unpaid probationers and that when their work was found unsatisfactory their services were dispensed with. I say advisedly that this was a case of counsel, because this portion of Mathew's case finds no place in his statement to the' Court and is inconsistent with it. There is no suggestion in Mathews' statement in the Sessions Court that they were appointed as unpaid probationers.

3. I shall first of all deal with the two points of law that arise in this case. The first point deals with the admissibility of the evidence of Mr. W.F. Milne, the Chief Auditor. The facts are these: Mr. Milne was examined as a witness in the Court of the Police Magistrate at Sealdah. At that time apparently the case was being treated as a warrant case and Mathews had been tried together with the other

accused. At the close; of Mr. Milne's evidence the accused were called on to cross-examine him. This they refused to do. The reason for calling on them at that time to cross-examine Mr. Milne when the charge had not been framed was that Mr. Milne was very ill and was proceeding to England shortly, which he actually did on 2nd May. Subsequently Mathews made an application to be tried as a European British subject. This was allowed and the result was that he was committed to Sessions as I have already stated.

4. The prosecution now desire to put in as evidence under Section 33, Evidence Act, the statement of Mr. Milne before the Police Magistrate. Section 33 provides that in certain circumstances evidence given in one judicial proceeding is relevant in a subsequent judicial proceeding provided that the adverse party in the first proceedings had the right and opportunity to cross-examine. That the accused, had the opportunity of cross-examining this witness, is I think, quite clear. He was asked to do so and he refused so to do. But I think it is also clear that at the stage at which the case had arrived he had no right to cross-examine. Section 252 provides that the Magistrate will take all evidence as may be produced in support of the prosecution. Section 254 provides for the drawing up of the charges. Section 256 provides for the cross-examination of the prosecution witnesses. which takes place after the charge. Now as far as I can see the accused in a warrant case has no right to cross-examine the prosecution witnesses until after the charge has been framed. The Magistrate may in his discretion allow him to do so, and probably if the accused requested would allow him to do so but the accused cannot claim as of right to cross-examine until the charge has been framed. Section 138, Evidence Act, on which the prosecution rely deals not with the rights of the party but only provides the order in which the proceedings are to be conducted: see the case of *Ashirbad Muchi v. Maju Muchini* [1904] 8 C.W.N. 888 where it was held that the Magistrate should give the accused an opportunity to cross-examine even though the charge may not be framed. But that is not the same as saying that the Court must give him an opportunity. No doubt Section 256 does not prohibit cross-examination at a previous stage but that is not the same as saying that the accused has any right to cross-examine. I am of opinion that until the stage of the case provided for in Section 256 is reached the accused has no right to cross-examine. That being so in the present case the accused had no right

to cross-examine and so the evidence of Mr. Milne is not admissible in evidence under Section 33.

5. The next point that has been argued is that the evidence of the principal witnesses who deposed to the accused taking money is the evidence of accomplices and so must be corroborated. Section 133, Evidence Act, provides the complete answer to this proposition, for it provides that a conviction is not illegal because it proceeds on the uncorroborated evidence of an accomplice. No doubt there is a rule of prudence and practice to warn juries of the danger of convicting on the uncorroborated evidence of an accomplice though at the same time it is open to the Court to hold that it is not illegal to do so. But it is not correct. I think, to say that the rules of prudence and practice or whatever else they may be called can have the force of law is to supersede the express provisions of the legislature. That might perhaps have some force where the law is what is known as Judge-made law. Here in India there is no Judge-made law, for the law is to be found in the Codes and the Judges can only apply the law and do not make the law. To hold otherwise is to substitute for the enactments of the legislature the opinions of the individual Judges. When a rule of practice or prudence or whatever else it may be called conflicts with the law as laid by the legislature I am obviously bound to follow the law. Section 114, Illus. (b) no doubt provides that a Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated, but ' may ' is not ' must ' and no decision of the Court can make it ' must. ' It seems to me, therefore, that in spite of all that has been said to the contrary in law the evidence of an accomplice stands on the same footing as any other evidence. The Court is not obliged to hold that he is unworthy of credit and must be corroborated. It is for the Court to consider after taking into consideration all the circumstances one of which being that he is an accomplice whether it does or does not rely on the evidence. To entirely rule out the uncorroborated evidence of an accomplice might in many cases lead to a miscarriage of justice.

6. It is to be remembered that there are, it may be said, many grades of accomplices. They vary from the man who, for example, with his own hand committed a murder to the man who as in the present case it is alleged offered a bribe to another when the latter is being tried for taking the illegal gratification and

to that extent aided the accused in committing his offence of taking an illegal gratification. For this man is not strictly speaking guilty of the offence of which the other is being tried and he certainly does not come strictly within the meaning of the term accomplice if we accept the definition of the term accomplice as given by Subrahmanya Ayyar, J. in the case of Ramasawmi Gounden v. Emperor [1904] 27 Mad. 271 or by Glover, J. in the case of Queen v. Ram Sahoy 20 W.R. Cr. 19 Subrahmanya Ayyar, J. held that the term accomplice signifies a guilty associate in crime or where the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused. Glover, J. states:

I understand an accomplice witness to be one who is either being jointly tried for the same offence and makes admissions which may be taken as evidence against a co-prisoner or who has received a conditional pardon on the understanding that he is to tell all he knows and who may at any moment be relegated to the dock.

7. The witnesses whom it is now sought to stigmatize as accomplice could not be tried for the offence with which the accused is now tried. They are, if anything, guilty of an entirely different offence, namely, of offering the bribe. They do not come within the definitions I have just referred to. However, it is not necessary to further pursue this point. The view which I take is that the evidence of an accomplice should be received on its own merits taking into consideration all the circumstances of the case and its truth or falsity tested by the usual tests which are applied. To hold otherwise is to hold something which is entirely contrary to the law. In India we have the Codes and by the Codes we are to be guided and it is not for the individual Judges or Courts to alter the express provisions of the Codes by what are termed rule of practice or prudence. That is for the legislature and that the legislature alone can do. As a very learned Judge of this Court the late Chief Justice Sir Lawrence Jenkins pointed out:

Not one jot or one tittle can be taken away from or added to the plain and express provisions of the Legislature by any decision of the Court': In re, An Attorney [1914] 41 Cal. 446 (at p. 454).

8. The learned Judge was there dealing with Section 195, Criminal P.C. and pointed out that if all the various expressions of opinion are to be read as of

universal application the enactment of the legislature would pass out of recognition-And I am equally prepared to say that if all the observations as to the necessity of corroboration and the amount of or what constitutes corroboration of an accomplice were to be read as law Section 133, Evidence Act, would equally pass out of existence. Like this learned Judge I prefer to take my stand on the sections themselves. If a jury may act on the uncorroborated evidence of an accomplice a Judge may certainly do so. If the evidence of an accomplice requires to be corroborated in all material particulars then obviously it is a waste of time to examine the accomplice at all for his testimony becomes unnecessary. (His Lordship then considered evidence and proceeded). To my mind all these facts go to prove beyond a shadow of doubt that Mathews, Base, Huq, Mitter and others were all parties to a conspiracy to get illegal gratifications from the various victims who have been examined and others to procure them appointments.

9. There is a further fact that, as far as I can see there were really no appointments at any time for these men. No attempt has been made to prove that there were. Mathews contends that all these men were duly appointed by the Chief Auditor or their appointments were sanctioned by him. The witness who could have proved this was Mr. Milne, the Chief Auditor. This witness was examined by the prosecution in the Magistrate's Court. He was in a bad state of health and was about to leave for England. The accused had an opportunity to cross-examine him and refused to do so. They were well aware at that time that he had to leave for England and hence if they did not then cross-examine him they would probably have no other opportunity of so doing. They, however, deliberately refrained from so doing. That being so they can hardly complain that Mr. Milne's evidence is not available. It is to be remembered that even if they cross-examined Mr. Milne then they had a right to further cross-examine him after the charge has been framed. They could not have been prejudiced in any way if they had put necessary questions to Mr. Milne at that time even if he were not available for cross-examination later on. On Mathews' own showing these appointments had to be approved by the Chief Auditor. If that were so why did he refrain from cross-examining the Chief Auditor. None of these men's names ever appeared in any salary bill except one. No explanation has been given of this by Mathews- His counsel suggests that they were unpaid probationers. As I have already remarked

Mathews never suggested any such thing.

10. I am therefore of the same opinion as the learned Additional Sessions Judge that Mathews was guilty of conspiracy to take bribes as charged. It is necessary for me in coming to this finding to take into consideration the verdict of the jury and the opinion of the Judge. In dealing with the opinion of the Judge and verdict of the jury it is to be remembered that these persons all of them saw the witness. The Judge and two of the jurors were of opinion that the accused was guilty and the remaining three jurors were of opinion that he was innocent. Little assistance, therefore, will be got from considering the opinion of the persons who actually saw the witnesses, they being equally divided three believed the witnesses and three apparently disbelieved them.

11. It is not necessary for me to deal with the other charge, namely, that of cheating.

12. To my mind the fraud which has been perpetrated on these men was mean and cruel. They were, as far as evidence shows, young men in very poor circumstances, and felt some difficulty in raising the money. It may be said, no doubt, in one sense they were participators in the crime, because they, offered bribes, After all they were really, trying; to, get appointments. We accept the reference and sentence the accused C. A. Mathews to undergo rigorous imprisonment for six months under Section 120-B read with Section 161, I.P.C.

Lort-Williams, J.

13. I agree that the accused ought to be convicted and sentenced as ordered by my learned brother.

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