

Emperor Vs. Debendra Pershad

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Court : Kolkata

Decided On : Mar-08-1909

Reported in : 2Ind.Cas.601

Judge : Caspersz and ;Ryves, JJ.

Appellant : Emperor

Respondent : Debendra Pershad

Judgement :

1. This is an appeal by the Local Government of Bengal against the appellate judgment of the learned Sessions Judge of Darbhanga, dated the 23rd July 1908, setting aside the conviction of Debendra Pershad who had been convicted by the Sub-divisional Magistrate of Samastipur, on the 3rd of July 1908, under Section 420 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs. 300 or, in the event of non-payment, to an additional term of three months' rigorous imprisonment.

2. We have heard the learned Advocate. General on behalf of the Crown and the learned Counsel for the accused. The facts of the case are set out carefully and accurately in the judgment of the Sub-divisional Magistrate, and we do not propose to recapitulate them at length. Stated briefly, it appears that, on or about the 26th of January 1908, the accused, who was then travelling by train in a second class compartment, at Bazid-pore station sent for one Boodrie who was

then acting as the guard of the train. He told Boodrie that he was the dewan of the Narhan Raj estate, and that the post of manager to the estate, carrying a monthly salary of Rs. 300, was vacant, and asked him if he knew of any one with suitable qualifications for the post. Boodrie said that he himself had some experience of zemindari work and would like to obtain the post for himself, but stated that he would be quite unable to give the security of Rs. 1,600 which, the accused said, must be given. The conversation was renewed when the train stopped at Sonapore station, where Boodrie said he could give Rs. 70 as security, and the accused agreed to accept it if more was not available. On the next day, Rs. 70 was sent to the accused by Boodrie by money-order, and the accused received the money and acknowledged it by a letter on the record. To put the matter shortly, after some correspondence, at an interview arranged at the Hajipur dak bungalow by the accused, Boodrie was given to understand that the Rajah was willing to accept Rs. 100 as security, and Rs. 30, to complete this sum, was, on the 14th of February, despatched to the accused, and its receipt by him has been proved. On a subsequent occasion Boodrie over-heard a conversation among some Railway men connecting the accused's name with alleged fraudulent advertisements for a manager on Rs. 300. His suspicions were aroused and he informed the police. Boodrie swears that he believed the accused's statement that he was dewan of the Narhan estate and was in a position to obtain for him the post of manager on Rs. 300 a month, and that it was in consequence of this that he sent the accused the sum of Rs. 100. The substantial accuracy of Boodrie's evidence as to the first conversation between him and the accused at Bazidpore station is corroborated by the statement of Nawab Thakur who was the brakesman of the same train and was with Boodrie at the time. It has, also, been proved that the accused at that time was not in any way connected with the Narhan estate, although there is evidence that he had some two or three years previously been dewan for a short time. It is also proved that the estate was then under the Court of Wards, and that there was no post of manager or other post with a salary of Rs. 300 vacant. It is admitted that the accused received the sum of Rs. 100, and that he has not repaid any portion of it though a refund had been demanded.

3. On these facts alone, it seems to us that the offence of cheating has been made out. In the Court of the Sub-divisional Magistrate, however, other evidence was

tendered to show that the accused had obtained or attempted to obtain, at or about the same time, sums of money from other persons under very similar circumstances, that is, by falsely alleging himself to be the manager of one estate or another and offering to obtain posts under himself in the particular estate, and had, thereby, induced or attempted to induce other persons to advance him sums of money by way of security. Objection was taken at the trial to the admission of this evidence. The Sub-divisional Magistrate, however, admitted it under the provisions of Sections 14 and 15 of the Indian Evidence Act. That evidence may be summarized as follows. About the end of January or beginning of February 1907 the accused accosted one Abhoy Chundra Ghose, who was then station-master of Kishunpore, and told him that a post of tehsildar, on Rs. 50 per month, was vacant in the estate of Rai Durga Prosad in which he was employed, and that he could obtain the post for Abhoy Chundra Ghose's son on receipt of security for Rs. 300. The witness remitted Rs. 300 to the accused. He had previously known that the accused had been dewan in the Narhan estate, and swore he believed his statements. As his son did not get the appointment he wrote on several occasions to the accused on the subject, but was put off. Losing patience eventually, after waiting some nine months or so, he wrote several times demanding the refund of his money. Failing to get it, he put the matter in the hands of his pleader who threatened to institute proceedings against the accused. Eventually Rs. 200 was remitted by the accused to the witness.

4. It is proved that at that time the accused was in no way connected with the estate of Rai Durga Prosad.

5. On another occasion, about the end of February or beginning of March 1907, the accused got into conversation with one Gideon, a carriage-examiner on the Railway at Samastipur station, and, after some conversation about his pay and prospects on the Railway, told him that he was head manager of the Darbhanga Raj, and that he could get him a post of sub-manager on Rs. 300 a month in consideration of the witness depositing Rs. 500 as security with him in advance. He wrote many letters to the witness subsequently on the subject, and two of them, dated the 3rd and the 9th of March 1907, respectively, are on the record informing him that the appointment would be made on the 15th of April, but that

cash in advance must be sent. Gideon, however, consulted a pleader who advised him not to send the money until he obtained the appointment. He did not get the appointment, and it is proved that the accused at the time was not, in any way, connected with the Darbhanga estate, and it is further proved that no such appointment as he offered was vacant. Similarly the accused, in February 1908, told Mahboob Hossain, assistant station-master at Hatori, that he was employed in the Tikari Raj and could obtain for him a tehsildarship in that estate on Rs. 50 a month, and got him there and then to write out an application for the post. This was to be sent with Rs. 300 as security. The witness said that he would consult his father, and the accused replied that he would be returning the next day but one, and would then receive the application and the money. He then proceeded on his journey. While the witness was having some conversation with another railway employee on the platform, as to whether it was usual to give security before or after appointment, the conversation was overheard by Boodrie whose suspicions were aroused and communicated; and in the result the witness did not send the money. It is also proved that the accused had no connection with the Tikari Raj.

6. The defence of the accused is a strange one. He cross-examined the prosecution witnesses as if to show that he was in a position to obtain a managership on behalf of the Rani's private estate, and that she was desirous to be free from the Court of Wards. He himself declined to make any statement, and his story is told by his witness, Dinesh Prosad, who says that he (the witness) is manager of the Fatehpore Dularpore estate, the malik of which is one Mohunt Gulcharan Bharati. He was looking out for an assistant manager on Rs. 75 a month with Rs. 1,000 security, and he received from the accused two remittances by a messenger of Rs. 70 and Rs. 30, as part security advanced by one J. Boodrie who was said to be an applicant for the post. The witness subsequently sent for Boodrie through the accused to meet him in connection with the appointment, but, as Boodrie had failed to come, he considered himself justified in keeping the hundred rupees, though, as he alleged himself the appointment had been filled up by the appointment of his own younger brother. In corroboration of this story, four letters are put in, purporting to be letters written by the accused to the witness or by the witness to the accused respectively. This story has been totally disbelieved by the Sub-divisional Magistrate, and it is unnecessary to recapitulate the good

reasons which he has given for his conclusion. It is exceedingly unlikely that Boodrie, who was getting Rs. 60 a month as pay and making on an average altogether about a hundred a month, including over-time work,' would throw up his appointment to undertake a post of this kind on a salary of Rs. 75. There are besides, when the letters put in on behalf of the defence are read along with the letters written by the accused to Boodrie, such obvious inconsistencies as to make us believe that the letters put in by the accused in his defence were concocted subsequently, after the Police had begun to investigate the case. None of the envelopes in which the letters would have been contained have been produced, so that there is no guarantee, by a comparison of any post-mark, that the dates which any of them purport to bear were genuine. It is also very significant that, when this witness was examined by the Police, he did not then produce the letters, although he admitted in his cross-examination that the letters were then in his office, only a few yards distant from the place where he was being examined. The witness made over these letters to the police about a week afterwards.

7. There is one other point in the case, namely, whether the Sub-divisional Magistrate who tried the case had jurisdiction to try it. That point, however, we need not now consider.

8. The accused appealed to the learned Sessions Judge with the result which we have stated at the commencement of this judgment. We are wholly unable to appreciate the reasons given by the learned Sessions Judge for the conclusion at which he has arrived. He seems to have been impressed with difficulties in the case which we think have no existence. He makes no attempt whatever to analyse or criticize either the evidence for the prosecution or that of the defence, and has come to no finding as to whether either story is true or false. After dealing at some length with the question of jurisdiction, he says : ' The direct evidence in support of the charge is very slight. I need not detail it as the Magistrate himself considers, and it is conceded on behalf of the Crown, and, in my opinion, quite rightly, that that evidence, alone is not sufficient to sustain the charge. The case really rests on certain other evidence which, it is contended for the appellant, has been wrongly admitted.' After discussing at some length whether that evidence, which related to other similar instances of cheating were admissible or not, he comes to the

conclusion that it was inadmissible and excludes it from consideration. He goes on to say--' there being thus no evidence to support the charge, it follows that the charge cannot be sustained, and the conviction and sentence are set aside.'

9. We are quite at a loss to understand how the learned Judge came to hold that the Sub-divisional Magistrate himself considered that the direct evidence in the case was insufficient to support the conviction. The only passage in the Sub-divisional Magistrate's judgment which could possibly lead to such an inference occurs in that portion of the judgment in which he discusses the relevancy of the other instances of cheating or attempts at cheating by the accused deposed to by various witnesses. He says I have decided to admit the evidence (re the other alleged frauds), and based my decision' (i.e., to admit it) ' not merely on that same section of the Evidence Act on which the defence rely, Section 14, but also on Section 15 of the same Act supported by various rulings. The evidence is, to my mind, relevant as showing the state of mind, amounting in this case to absence of good faith, in which the accused made his offer to Boodrie. It is also relevant under Section 15 of the Act to show the intention of the accused in making that offer. Without that evidence we have merely an isolated promise by the accused to secure at no specified date an appointment which, as it happens, he is unable to give. Admit the evidence, and the offer to Boodrie stands out in its true colours.' It is obvious that what the Magistrate here means to state is not his opinion that the direct evidence for the prosecution is insufficient to maintain a conviction, but that the outside evidence, if we may so call it, when admitted, negatives the assertion made on behalf of the accused that all that the prosecution story really amounts to is nothing more than that on an isolated occasion the accused promised to secure at some future unspecified date an appointment which, as it so happened, he was unable to give. It is quite clear, reading the judgment of the Sub-divisional Magistrate, that he believed the direct evidence for the prosecution and it follows, therefore, that even if he wrongly thought that, as a matter of law, the offence of cheating had not been established, the learned Sessions Judge should not, for that reason alone, have disregarded ' all that evidence. Nor can we understand how it could have been conceded on behalf of the Crown that that evidence was insufficient. At most, such an admission could only be regarded as one of law, and certainly does not estop the Crown from now urging, as it does, that the case is

made out both by the direct evidence and by the other evidence on the record. Before us the main argument has turned on the admissibility of this outside evidence, and a large number of rulings, chiefly of the Courts in England, have been cited. Although we have come to the conclusion that the direct evidence in the case is sufficient for a conviction, we think it is necessary for us to decide the point, having regard to the arguments which have been addressed to us and, as we think, the erroneous views expressed by the learned Sessions Judge.

10. On behalf of the Crown it is conceded that this outside evidence cannot be admitted to prove the actual facts of the case, but it has been argued that satisfactory evidence aliunde has been given to prove the incidents and fact of the transaction between the accused and Boodrie. This outside evidence is admissible to rebut the defence set up, or which might be set up, by the accused, as foreshadowed by the cross-examination of the complainant (the fact that eventually a totally different defence was set up would seem to be immaterial), namely, that his intentions at the time were not fraudulent, by showing that, at or about the same time, both previously and subsequently, the accused had similar transactions with other persons which, taken together, showed a dishonest intention on his part and also showed that the present transaction was only one incident in a series of fraudulent transactions all of which were similar in their nature, and might be regarded as proving a systematic series of frauds.

11. On behalf of the accused, it is argued on general principles that evidence of previous criminal acts is wholly irrelevant in a subsequent trial. It is further contended that the first Explanation to Section 14 and Illustration (o) to that section show that Section 14 is wholly inapplicable. It is argued that instances in which the accused had cheated or attempted to cheat Boodrie might be relevant but not attempts to cheat other persons.

12. It seems to us that the first Explanation to Section 14 of the Indian Evidence Act only amounts to this that facts showing the existence of any state of mind, as instanced in the section, are relevant only if they show that that state of mind exists in reference to the particular matter in issue. In other words they are only relevant if they show in this case the state of mind of the accused in reference to

the particular transaction with Boodrie. This seems clear from Illustration (o) where the issue at trial is whether A murdered B by shooting him. The fact that A had previously been in the habit of shooting at other persons would not render it more probable or less probable that it was A, and not somebody else, who shot B on the occasion in question. On the other hand, if it could be shown that A had on previous occasions attempted to shoot B, that would be some evidence which might lead the Court to believe it probable that on this occasion it was A who shot B.

13. Great reliance has been placed on the case of *Reg. v. Holt* (1860) Bell C.C. 280. There Holt was charged for obtaining, on the 15th April, a sum of money by false pretences from one first by representing that he had been authorized by Uttley to receive that sum on his behalf for goods delivered in pursuance of an order taken by Holt. On behalf of the prosecution evidence was tendered to prove that Holt, on a day not specified, but within a week from the said 13th April, had obtained from another person a sum of money by a like representation. This evidence was admitted and Holt was convicted. The Court of Crown Cases Reserved disposed of the matter in the following terms: 'This conviction must be quashed. In the statement of the case submitted to us we cannot find any facts that would warrant us in saying that the evidence was admissible.' No reasons, whatever, are given for the decision. It seemed to us, however, that this case may be distinguished on the one or the other of two grounds : (i) because the second instance of false representation proved was subsequent to the one at trial, and, therefore, might not be a reliable test of the accused's state of mind or intention on the first occasion. This objection, however, would seem to effect the weight to be attached to the evidence regarding the former transaction rather than its admissibility, and (ii) as suggested by Blackburn, J., during the argument in *Queen v. Francis* (1874) L.R. 2 C.C.R. 128 130 and as apparently accepted by Bruce, J. in *Regina v. Ollis* (1900) 2 Q.B. 758, 775 : 69 L.J.Q.B. 918 : 83 L.T. 251 : 49 W.R. 76 : 64 J.P. 518 : 19 Cox. C.C. 554 : 16 T.L.R. 477 and Lawrence, J. in *Rex. v. Bond* (1906) 2 K.B. 389, 424 : 75 L.J.K. B. 693 : 95 L.J. 296 : 64 W.R. 586 : 70 J.P. 424 : 21 Cox. C.C. 252 : 22 T.L.R. 633 the only question at issue was ' had Holt authority or not.' If Holt's criminality depended on the answer to this question in the negative, obviously, the fact that Holt had acted on one or more occasions

as if he had actually received such authority would be no evidence to prove that, as a matter of fact, he had not. On the contrary, it might be an equally good argument in his defence as showing at least his bona fide belief that he had authority. The report of the case of *Reg. v. Holt* (1860) Bell C.C. 280 is so meagre, and the judgment is so worded, that it is difficult to say what were the exact points on which the Court based its decision. There appears, however, to be force in an observation in Phipson's 'Law of evidence' (4th edition, page 162) that 'the explanation of Blackburn, J., does not, however, satisfactorily explain *Regina v. Holt* (1860) Bell C.C. 280 for there the evidence was tendered not to prove want of authority, of which evidence had been given aliunde, but to show that Holt's misrepresentation was made with guilty knowledge.'

14. In *Queen v. Francis* (1874) L.R. 2 C.C.R. 128 130 the case of *Regina v. Holt* (1860) Bell C.C. 280 though it is mentioned and referred to by Blackburn, J., in the course of argument, is not mentioned in the judgment. This was a case in which the accused was indicted for attempting to obtain money from a pawn-broker by false pretences by alleging that a ring which he had offered to pawn was a diamond ring. His defence was that he did not know that the ring was false, that he received it to pawn from another person and believed that person's assertion that it was a diamond ring. Evidence was tendered to prove that Francis had shortly before offered other false articles to other pawn-brokers. This evidence was admitted and proof was given of three other instances in which the accused had obtained or attempted to obtain money from other pawn-brokers on false articles of jewellery. The Court of Crown Cases Reserved held that the evidence was admissible. Lord Coleridge said : 'It seems clear upon principle that when the fact of the prisoner having done the thing charged is proved, and the only remaining question is whether, at the time he did it, he had guilty knowledge of the quality of his act or acted under a mistake, evidence of the class received must be admissible. It tends to show that he was pursuing a course of similar acts, and, thereby, it raises a presumption that he was not acting under a mistake.'

15. In *Regina v. Rhodes* (1890) 1 Q.B. 77; 82 : 68 L.J.Q.B. 83 : 62 J.P. 774 : 47 W.R. 121 : 49 L.T. 360 : 15 T.L.R. 37 : 19 Cox. C.C 182 the case of *Regina v. Holt* (1860) Bell C.C. 280 was distinguished by Lord Russell in the following terms:

There the false pretence charged was a distinct and separate transaction, and the fact that the prisoner had subsequently made a similar false pre-tence had no bearing on his guilt or innocence of the particular charge preferred *Queen v. Francis* (1874) L.R. 2 C.C.R. 128; 130 is nearer to the pre-sent case, and, although there it is true that the transaction admitted in evidence was prior to that on which the charge was founded, yet it seems to me that the reasoning of the cases will apply here.' This case, it is argued by learned Counsel for the defence, is distinguishable from the present case because there all the frauds were the result of one and the same advertisement and were, therefore, so closely connected with each other as to form a part of one transaction.'

16. The next English case to which our attention has been called is *Regina v. Ollis* (1900) 2 Q.B. 758, 775 : 69 L.J.Q.B. 918 : 83 L.T. 251 : 49 W.R. 76 : 64 J.P. 518 : 19 Cox. C.C. 554 : 16 T.L.R. 477. The difficulty of reconciling the case of *Regina v. Holt* (1860) Bell C.C. 280 with the subsequent rulings becomes apparent if the judgment of Lord Russell and of the majority of the Bench is compared with that of Bruce, J., who in concurrence with Ridley, J., dissented : see also the judgment of Bray J. in *Bex. v. Bond* (1906) 2 K.B. 389; 424 : 75 L.J.K. B. 693 : 95 L.J. 296 : 64 W.R. 586 : 70 J.P. 424 : 21 Cox. C.C. 252 : 22 T.L.R. 633. In that case the question was whether the accused, when he obtained money on a cheque, knew that he had not funds at the bank to meet it. To show that he had this knowledge, evidence was given to prove that, on three dates about the same time, he had obtained money on other cheques which were dishonored. Lord Russell said: 'In the opinion of the majority of the Court, and, in my own opinion, it was relevant as showing a course of conduct on the part of : the accused and a belief on his part that the cheques would not be met. The accused gave cheques on June 24th and 26th which were dishonoured, and finally, a further dishonoured cheque on July 6th, all three cheques having been drawn on the same bank as the first dishonoured cheque was drawn upon. It is impossible to say that all these facts were not relevant as showing an intention to defraud.' Bruce, J., on the other hand, said; ' It is difficult to distinguish *Regina v. Holt* (1860) Bell C.C. 280 from the present case.' He goes on to say 'In the present case there was no question of accident or mistake, the question was knowledge or no knowledge of the state of the bankers' account or of circumstances raising a belief in the mind of the

prisoner respecting the state of his bankers' account;' and he held that ' the successive acts of passing at different dates genuine cheques, falsely pretending that they are valid, are not necessarily successive acts of the same character, because the quality of each successive act depends upon the knowledge of the person passing the cheque, of circumstances existing at the time external to the instrument itself and varying in character from day to day.'

17. From these cases it seems to us that the weight of authority is decidedly in favour of the view we adopt.

18. We, however, have traced still more recent authorities on the same side. In *Rex. v. Wyatt* (1904) 1 K.B. 188 : 73 L.J.K.B. 15 : 68 J.P. 31 : 52 W.R. 285 : 20 T.L.R. 68 : 20 Cox. C.C. 462 the accused was indicted for obtaining credit on false pretences. He hired furnished apartments from the prosecutrix and went away after three days' Occupation of the premises without payment. At the trial evidence was admitted to prove that he had on several previous occasions hired apartments from various other persons and left without payment, the money being still due when he hired the rooms of the prosecutrix. Lord Alverstone, C.J., and four Justices held ' this evidence was Clearly admissible as tending to establish a systematic course of conduct on the part of the accused, and as negating any accident or mistake, or the existence of any reasonable or honest motive,' and confirmed the conviction. To the same effect is *Bex. v. Bond* (1906) 2 K.B. 389; 424 : 75 L.J.K.B. 693 : 95 L.J. 296 : 64 W.R. 586 : 70 J.P. 424 : 21 Cox. C.C. 252 : 22 T.L.R. 633 where Bray, J. pointed out that evidence of the kind under discussion is admissible ' (i) where the prosecution seeks to prove a system or course of conduct, (ii) where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake, (iii) where the prosecution seeks to prove knowledge by the prisoner of some fact.

19. These cases are precisely in point, and in any view we think Section 14 of the Evidence Act does make the outside evidence in this, case admissible. The case of *Queen Empress v. Vajiram* 16 B. 414 seems to support this view, although that case is sought to be distinguished on the ground, that the various fraudulent acts were all committed with the object of evading one and the same decree, and were

all done on the same day, and, therefore, as in the case of *Regina v. Rhodes* (1890) 1 Q.B. 77; 82 : 68 L.J.Q.B. 83 : 62 J.P. 774 : 47 W.R. 121 : 49 L.T. 360 : 15 T.L.R. 37 : 19 Cox. C.C 182 formed parts of one transaction.

20. Section 15 of the Evidence Act is an application of the general rule laid down in Section 14, and the words of the section as well as of Illustration (a) show that it is not necessary that all the acts should form parts of one transaction, but that such acts should form parts of a series of similar occurrence.

21. Our view as to the admissibility of the evidence in this case is, we think, supported by the well-known case of *Makin v. Attorney-General for New South Wales* (1894) A.C. 57.

22. Taking the whole evidence in the case it seems to be established that the accused attempted to obtain money from various subordinate Railway Officials,' who were drawing small salaries, by representing himself as the manager of an important and wealthy zemindari estate and offering to obtain lucrative appointments for them under himself in consideration of their advancing to him a sum of money by way of security. As a matter of fact, there were no such appointments available, and, in any event, the, accused could not have secured them for his nominee. The false representations in' every case were of the same character and were made to persons similarly situated. We think this particular transaction with Boodrie was one of a series of similar frauds, and that, therefore, the evidence of the other frauds, was admissible in Boodrie's case to prove that the obtaining of money by accused from Boodrie was dishonest and fraudulent.

23. For these reasons we allow the appeal, and setting aside the order of the learned Sessions Judge restore that of the Sub-divisional Magistrate. The sentence seems to us very lenient, but, as another case against the accused is before us, we do not think it necessary to interfere with the sentence.