

Dulal Bachar Vs. Emperor

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Court : Kolkata

Decided On : Mar-04-1924

Reported in : 85Ind.Cas.940

Judge : Lancelot Sanderson, C.J. and ;Chotzner, J.

Appellant : Dulal Bachar

Respondent : Emperor

Judgement :

Chotzner, J.

1. This Rule was obtained by the petitioner on the first ground specified in the petition which is that, on the findings of fact arrived at, the conviction is not sustainable in law.

2. The facts of the case appear to be simple. One Bhim Bachar died leaving a Will and on the 13th December 1922, the petitioner who is his nephew and an executor under the Will applied to the Court of the Subordinate Judge of Khulna for Letters of Administration with a copy of the Will annexed. The learned Subordinate Judge directed citation to issue and fixed the 12th January 1923, for proof of service. In the meantime, on the 8th January, the petitioner proceeded to the house of the testator and removed an iron-safe from there which led to the institution of the present charge by Phul Mala the testator's widow on the 11th January. On the

12th January 1923, she appeared in the Court of the Subordinate Judge and entered a caveat. The Judge accordingly ordered the petition to be returned for presentation to the Court of the District Judge as the case had become contentious. The learned Sub-Deputy Magistrate at the trial convicted the petitioner and sentenced him to undergo rigorous imprisonment for six months. On appeal to the Court of the Additional Sessions Judge the sentence was reduced to six weeks' rigorous imprisonment.

3. The learned Sessions Judge found that the safe which was, the subject-matter of the complaint had been in the possession of Bhim's widow and heir and that the appellant had removed it. He further held that though it was conceded by the prosecution that the Will purported to bequeath the safe to the appellant, the, appellant had a criminal intention because he removed it before his application for grant of Letters of Administration had been disposed of by the District Judge.

4. It seems difficult to accept this conclusion. According to the learned Judge the appellant, to use his own words, is an 'illiterate low caste cultivator'. He had in his possession a registered Will which purported to demise the safe to him. He removed the safe on the 8th January; at a time when he could have no suspicion that a caveat was likely to be entered. These circumstances do not seem to us to disclose the presence of a mens rea, without which a conviction for theft cannot be maintained.

5. We are, therefore, of opinion that the, Rule should be made absolute and the conviction and sentence be set aside.

6. With reference to the explanation submitted by the Sub-Deputy Magistrate that 'the complainant,' i.e., the widow 'having filed an objection, the petitioner should have waited for the decision of the District Judge in the case and the removal of the iron-safe before the Will was admitted to Probate or the grant of Letters was with, dishonest motive', we may observe that the caveat was not filed by the widow until after the safe had been removed from her custody.

Sanderson, C.J.

7. I agree.

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