
(1899) 09 CAL CK 0004
In the Calcutta High Court

Queen-Empress

APPELLANT

Vs

Deodhar Singh and Another

RESPONDENT

Date of Decision : 05-09-1899

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 307, 4(1)(n)
Penal Code, 1860 (IPC) — Section 218

Citation : (1900) ILR (Cal) 144

Hon'ble Judges : Rampini, J;Pratt, J

Bench : Division Bench

Judgement

Rampini and Pratt, JJ.—This is a reference by the Sessions Judge of Patna u/s 307 of the Code of Criminal Procedure. Deodhar Singh, Sub-Inspector, and Fariduddin, Head Constable, were placed upon their trial, the former on three charges u/s 161 and two u/s 218 of Indian Penal Code and the latter for abetment of the three offences u/s 161.

2. The jury, by a majority of three to two, found the accused persons guilty on all the charges. The Sessions Judge was willing to accept the finding on the charges u/s 218 against the Sub-Inspector, but was of opinion that the charges of bribery and abetment of bribery were not sustainable, because they rested entirely on the testimony of accomplices who had not been corroborated in material particulars. He, therefore, referred the whole case to this Court, being precluded by Clause (2) of Section 307 of the Criminal Procedure Code from recording a judgment of conviction on the charges u/s 218 regarding which he was in agreement with the verdict of the majority of the jury.

3. The alleged offences are said to have been committed with reference to a gambling case under Bengal Act II of 1867. The accused Sub-Inspector having obtained a warrant u/s 5 of that Act from the District Superintendent of Police to arrest all persons found gambling in the house of Paltu Lall, proceeded at about midnight of the 12th November to make a raid upon the premises. With the aid of the accused Head Constable and a large force of constables he arrested a

great many gamblers and brought them to the thannah, and all the 25 persons whom he sent up for trial were afterwards convicted, with the exception of one man, who was treated as an approver.

4. In his first information report purporting to have been written at 1 A.M., the Sub-Inspector does not include Nawab Singh and Rung Lal in the list of persons arrested, and in his special diary, prepared almost simultaneously, he states that they were found at the door of Paltu's house and were not concerned in the gambling within, and so he had promptly let them go. The case for the prosecution is that these two men were arrested with the others inside the gambling house, taken with them to the thannah and not released till 7 or 8 A.M. The Sub-Inspector is accordingly charged u/s 218 with framing two incorrect records with intent to save Nawab Singh and Rung Lal from legal punishment.

5. It is further alleged that the Sub-Inspector did not release some of the other prisoners on bail until he received bribes for the purpose, and that he was aided and abetted by Fariduddin, Head Constable. Three specific instances of the receipt of illegal gratifications have been deposed to and embodied in the charges, viz: (1) Rs. 200 paid by Radha Lall for the release of Paltu (2) Rs. 50 paid by Mahomed Kasim for the release of Nur Khan, and (3) Rs. 12 paid by Rafat Bahadur for the release of Gopi Lall and Gabhan Lall.

6. As regards the charges u/s 218 two questions arise, one of fact and the other of law. The question of fact is whether Nawab Singh and Rung Lal were actually arrested with the other gamblers and conveyed to the thannah, and there released several hours after their arrest. The Sessions Judge agrees with three of the jurymen that they were, and we are satisfied on the evidence that such was the case. The witness Luchman Sing constable says that 29 men were arrested inside Paltu's house, and that Rung Lal was one of them. Paltu Lall says that both Nawab Singh and Rung Lal were in his house while the gambling was going on. Nadir Ali, constable, who was on sentry duty at the thannah from 2 A.M. to 6 A.M. on the 13th November, says "Deodhar Singh and Fariduddin and others brought 27 persons charged with gambling to the lock up. They were counted in my presence. I know Rung Lal Singh and Nawab Singh alias Bindha Singh. I know them for a long time. I saw these men with the accused. 24 were placed in the hajat: Rung Lal, Nawab and Nanku were not placed in hajat. They were allowed to remain outside the lock-up, and then they were taken to the Sub-Inspector's room. These three men are well-bo-do. They were let go. No money was paid in my presence. I heard the sound of money." Another constable named Mazhur Hossein, whom the Sub-Inspector took with him to the scene, says he was present when the arrests were made, that Rung Lal was one of the persons arrested, and that he was taken to the thannah at 3 A.M.

7. Hari Charan, the approver in the gambling case, deposes that Nawab Singh and Rung Lal were inside Paltu's house with the other gamblers. Finally we have the testimony of Radha Kant, a pleader of the Judge's Court, who says he knows Rung Lal and saw him at the thannah when he went there at 8 A.M. Some

witnesses put the release of the two men at an earlier hour, but the pleader's estimate of time is more likely to be correct. On the whole evidence we are satisfied that the Sub-Inspector released the two men many hours after they had been lawfully arrested, and that he framed incorrect records to save them from punishment, probably because they had made it worth his while to do so.

8. The question of law raised before us is that the offence does not come within the purview of Section 218, because the Sub-Inspector for which the warrant of arrest was issued be a cognizable one, the Sub-Inspector was charged with the du was not "charged" by law or competent authority with the preparation either of a first information report or of a special diary, and that his action was voluntary and superfluous. It is conceded that if the offence of preparing the documents which he furnished. It is contended that the offence is a non-cognizable one within the meaning of Clause (1)(n) of Section 4 of the Code of Criminal Procedure.

9. Now, under the Gambling Act, it is not every Police Officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct the arrest of persons gambling in a house. The District Superintendent being a Police Officer who may, under a law for the time being in force, viz., the Gambling Act, arrest without warrant, we think that the requirements of Clause (1)(f) of the above sections are satisfied, and that the offence in question is, therefore, a cognizable offence. "We cannot accept the contention that the words in that clause" a Police Officer" mean "any and every" Police Officer. It is sufficient if the Legislature has limited the power of arrest to any particular class of Police Officers. We may add that we do not think the word "charged" in the section is restricted to the narrow meaning of enjoined by a special provision of law." The District Superintendent says it was the practice to require a first information report, &c, in gambling cases just as in ordinary cognizable cases, and therefore the Sub-Inspector was not acting of his own volition but in pursuance of an order laid upon him.

10. Therefore, both in law and fact, we find that Deodhar Singh is guilty of the charges u/s 218.

11. Turning next to a consideration of the charge under Sections 161 and 161/114, we find that the first refers to a bribe given by Radha Lall on behalf of Paltu. The witnesses in support of it are Paltu, Radha Lall, Mir Khan, who was punished for gambling, Liakat Hossein, Writer Constable, and the pleader, Radha Kant. The Deputy Legal Remembrancer contends that the last named was not an accomplice, though it seems clear that the others were.

12. The next charge relates to a bribe of Rs. 50 given by Mahomed Kasim to procure the release of Nur Khan. The witnesses to this are Brij Kishwar, mukhtear, Medhi Hossein and Mahomed Kasim; while Beni Mirza gives corroborative evidence as to the demand of money and other circumstances, though he did not actually see the payment. With reference to this matter Radha

Kant says he saw Beni Mirza and Brij Kishwar at the thannah in the Sub-Inspector's room, that they came to bail out Nur Khan and were talking to the Sub-Inspector and Head Constable about releasing Nur Khan on bail, and his impression is that they were talking about money.

13. The third and last charge relates to Rs. 12 paid by Rafat Bahadur for the release of Gopi Lall and Gabhan Lall. Rafat is not connected with these men, but is related to Paltu. Beni Mirza and Nur Khan say they witnessed the payment. Rafat and Nur Khan are undoubtedly accomplices, but regarding these two latter cases the Deputy Legal Remembrancer thought it sufficient, to contend that Beni Mirza was not an accomplice. The question for determination is, therefore, whether Radha Kant and Beni Mizra are accomplices; for if they are not, we think we may safely rely upon their corroboration. Under the existing law the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice. But the presumption stated in, illustration (A) of Section 114 of the Evidence Act that an accomplice is unworthy of credit unless he is corroborated in material particulars has become a rule of practice of almost universal application. The question arises, what is an accomplice? In Wharton's Law Lexicon he is defined as "one concerned with another or others in the commission of a crime." In Webster's Dictionary we find the definition "an associate in the commission of a crime, a participator in an offence whether as principal or an accessory." Mr. Boy for the accused contends that the term "accomplice" has a wider signification, and that both Radha Kant and Beni Mirza were accomplices, because they were present when one or more of the bribes was paid, and yet did not inform the authorities for several days. He cited the following cases in the course of his argument: Queen v. Chundo Chundaline (1875) 24 W.R. 55; Queen-Empress v. Maganlal I.L.R (1889) ., 14 Bom., 115; Queen-Empress v. Chagan, Dayaram ILR (1890) , 14 Bom., 331; Queen-Empress v. O'Hara ILR (1890) 17 Cal., 642; Ishan Chundra v. Queen-Empress I.L.R (1893) 21 Cal. 328; Jogendro Nath Bhaumik v. Sangat Garo (1897) 2 C.W.N., 55; Rajoni Kanto Bose v. Asan Mullick 2 C.W.N., 672; and Alimuddin v. Queen Empress (1895) I.L.R., 23 Cal 361.

14. In Queen v. Chundo Chundaline (1875) 24 W.R. 55, persons who were regarded as accomplices were described as "more or less participators in the crime," which was one of murder by poison. One of them was as inmate, of the house where the man was poisoned in her presence, the other supplied the poison, and both of them, though aware of the crime, took no means to prevent or disclose it, although bound by Section 44 of the Code of Criminal Procedure to give prompt information to the nearest Magistrate or Police Officer.

15. In Queen-Empress v. Maganlal I.L.R(1889) ., 14 Bom., 115, and Queen-Empress v. Chagan Dayaram I.L.R (1890) 14 Bom., 331, the persons, described as accomplices were persons who had either subscribed to the bribe or collected subscriptions or paid the money to the accused. That would bring them within the definition we have previously indicated. In Queen-Empress v. O'Hara I.L.R

(1890) 17 Cal., 642, known as the O'Hara case, Petheram, C.J.. in delivering the judgment of the Full Bench, observed: "We think that, these facts are such as would form sufficient grounds for putting Goldsboromgh on his trial upon a charge of abetting the murder, and this, notwithstanding the remonstrance which, according to his evidence, he offered to O'Hara just before the shot was fired. From this point of view, and having regard to the fact that he had received a pardon u/s 337, and gave his evidence under that section, Goldsborough was, we think, an accomplice within the meaning of the rule under the law existing in India."

16. In the case of *Ishan Chandra v. Queen-Empress* I.L.R (1893) 21 Cal., 328, the informer Gooroo Pershad revealed a plot, which had for its object the substitution of a forged document for a genuine one in a Collectorate record, and his evidence was that he had joined the conspiracy at the outset, not with criminal intent, but in order to frustrate the plot and bring the criminal to justice. In referring to this the Judges said: "We are not prepared to say that he was an accomplice. He may have been one, but it would be impossible to say in this case that he helped in the commission of the offence. He was undoubtedly cognizant of it, and omitted to disclose it for six days. From any point of view we do not think that his testimony is such as to justify a conviction, except where he is corroborated." From this we may gather that in the opinion of the Court the mere fact that Gooroo Pershad was cognizant of the offence, and omitted to disclose it for six days, was not sufficient to constitute him an accomplice when it did not appear that he helped in the commission of the offence.

17. In the case of *Jogendro Nath Bhaumik v. Sangat Garo* 2 C.W.N 55, it appears that after the amount of the bribes had been settled with the Head Constable, the persons went home for the money, and next day they took the two witnesses with them to the thannah and made the payments. There the witnesses seem to have aided and abetted the bribe-givers; they accompanied them for the express purpose of paying the bribes, and so were treated as no better than accomplices. In the case of *Rajoni Kanto Bose v. Asan Mullick* 2 C.W.N. 672, it was held that persons who went to see and assist in the payment of bribes were accomplices. In the case of *Alimuddin v. Queen-Empress* I.L.R (1895) 23 Cal. 36, it was held that where witnesses appeared to have taken an active part in carrying away a person after he had been grievously assaulted and was in a helpless condition, and then leaving him in a field where he was subsequently found dead, their evidence was no better than that of accomplices; at any rate, they took such a part in the transaction as to make it most unsafe for the Court to rely upon their evidence, unless corroborated in material respects.

18. Now, in the present case, no obligation was imposed by law upon Radha Kant or Beni Mirza to inform the authorities about the taking of bribes. And unless it can be shown that they somehow co-operated in the payment of bribes, or were instrumental in the negotiations for their payment, we think that none of the cases which have been cited is an authority for the proposition that they were

accomplices, inasmuch as they witnessed the payment and did not promptly inform the authorities. As regards the pleader witness it is in evidence that, so far from countenancing the payment of a bribe, some angry words passed between him and the Sub-Inspector on the subject. He himself says "I thought it would be foolishness for me to remonstrate, as I saw they were determined to take. I felt that great oppression was practised by the Police Officers. I told Paltu he could get off on presenting a petition; so far as I remember, I said it was not advisable to give any bribe." Refer-ring to his delay in informing the authorities he said: "After Paltu was released on bail I wanted to inform the Magistrate or the District Superintendent of Police, or the Assistant District Superintendent of Police. I did not do it on that day as there was no hurry. On the following Friday, i.e., four or five days after, I informed the Assistant District Superintendent of Police and he recorded my statement." He also said, "I took advice what I should do. I went of my own accord to the Assistant District Superintendent of Police, I was advised by elders not to mix in this matter, unless I was asked....I considered there would be no stop put to such zulum as I saw at the thannah unless I. spoke."

19. We find nothing blameworthy in Radha Kant's conduct, and we think it was only natural that he should hesitate arid fate advice before venturing to launch a complaint of bribery against the Police. Beni Mirza is a mukhtear who went to get Nur Khan released on bail, a perfectly legitimate action. The Sub-Inspector told him that Rs. 200 had been settled, and that if he paid that sum Nur Khan would be released. Next Brij Kishwar came and promised Rs. 50. As a matter of fact Beni Mirza did not stop to seethe bribe paid, and there is nothing to show that he joined in the negotiations regarding it. He says he told the darogah it was illegal. He actually saw Rafat Bahadur pay Rs. 12 for the release of other men, but that was a matter in which the witness in no way concerned himself. He made his statement to the Assistant Superintendent five days after the occurrence.

20. We must hold that Beni Mirza was not an accomplice. It is abundantly proved that the Head Constable, whose presence is not denied, was an active agent in obtaining the bribes. All the charges under Sections 161 and 161-114 are satisfactorily proved. It will, however, be only necessary to pass sentence regarding one of them.

21. We find Deodhar Singh guilty of the charges under Sections 218 and 161 of the Indian Penal Code, and direct that he be sentenced to six months rigorous imprisonment on one charge u/s 218, and to a further term of six months" rigorous imprisonment on one of the charges u/s 161, or to an aggregate of one year"s rigorous imprisonment. We pass no sentence on the remaining charges.

22. We find Fariduddin guilty of the charges u/s 161 read with Section 114 of the Indian Penal Code, and direct that he undergo six months" rigorous imprisonment.