
(1918) 08 CAL CK 0051
In the Calcutta High Court

Superintendent and Remembrancer of Legal Affairs	APPELLANT
Vs	
Tularam Barodia	RESPONDENT

Date of Decision : 26-08-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417
Penal Code, 1860 (IPC) — Section 420

Citation : 49 Ind. Cas. 490

Hon'ble Judges : Teunon, J;Cuming, J

Bench : Division Bench

Judgement

1. This is an appeal against an acquittal.
2. A preliminary objection is taken that the appeal has not been presented by a Public Prosecutor within the meaning of Section 417 of the Code of Criminal Procedure.
3. The appeal was presented by the Superintendent and Remembrancer of Legal Affairs, Bengal, the officer who, by notification of date the 19th May of 1915, has been appointed by the Local Government to be by virtue of his office Public Prosecutor in all cases heard by this Court in the exercise of its appellate jurisdiction. The objection is founded on the fact that the office of -Legal Remembrancer, which received legislative sanction in Regulation VIII of 1816, was abolished by Regulation III of 1829, and appears to pre-suppose that there is no office or officer properly so called. From the official papers placed before us we find, however, that the office of Legal Remembrancer was revived in 1844 or 1845, and the fact that the office is now the creation of executive or administrative order in no way obscures the identity of the officer. We, therefore, reject the preliminary objection.
4. The appeal is against an order of Mr. S. P. Sarbadhikary, an Honorary Presidency Magistrate, who by his order, dated the 21st March 1918, acquitted the accused, one Tularam Barodia, of the charge preferred against him u/s 420 of the Indian Penal Code.

5. It appears that a firm called. Khuman Chand Bhairab Daw are agents in Cooch-Bebar for a Calcutta firm of Commission Agents and Bankers styled Hukum Chand-Ullash Chand carrying on business at 4, Doyahatta Street, Calcutta. On the 10th September 1917, the Munib Gomasta of the latter firm received a telegram purporting to be from their Cooch Behar Agents and containing instructions for the payment, of Rs. 5,000 to one Hira Lal Agarwala. It is then alleged that at about 8 P. M., on the 11th September the present accused called at the place of business of Hukum Chand-Ullash Chand, said that he had deposited money with the Cooch Behar firm, represented himself to be the Hira Lal of the telegram, and so induced the Munib Gomasta to pay to him the sum of Rs. 4,000. The balance he was to take the following morning.

6. He did not re-appear, but was found about a month later in a jute market in Harrison Road. It had in the meanwhile been ascertained that the, Cooch Behar firm had received no money and had not sent the telegram in question and when the accused failed to make good his promise to repay, criminal proceedings were taken against him on the 19th October 1917,

7. In the course of the trial evidence was also given that on the 10th September a similar telegram was received by the firm of Chimniram, Jaswant Mall of 46, Strand Road. This telegram purported to come from that firm's Cooch Behar Brarob, Hukum Chand-Chimniram, and contained instructions for the payment of Rs. 4,000 to one Ram Lal Agarwala. On the 11th - of September at about 2 to 3 p. m. accused, it is said, presented himself at 46, Strand Road, and " requested payment but was invited to call again next day.

8. Now, there appears little reason to doubt that the telegrams referred to were handed in at Cooch Behar (Exhibits 4 and 5) and were delivered, Exhibit 8, to Hukum Chand-Ullash Chand and another, apparently not exhibited, to - Chimniram Jaswant Mull. Amar Chand, the Munib Gomasta of Hukum Chand-Bhairab Das, has deposed that no telegram such as Exhibit 4 was sent, and no such sum of money as is therein referred to was received by his firm.

9. From Exhibit 10 the entry in the firm's rokar and the oral evidence there appears no reason to doubt that the sum of Rs. 4,000 has been lost to the firm of Hukum Chand-Ullash Chand. Thus the essential question is whether it was the accused Tularam Barodia who took away their money.

10. To establish the case against him the prosecution first examined three witnesses, connected with the Cooch Behar Post and. Telegraph Office. Two of these, Sarban Das, a postman on Rs. 13 a month, and Parmeswar Nunia a telegraph messenger on the same pay, speak of the writing and despatch of Exhibit 4 and say that the accused was the man who handed it in. Similarly, Nripendra Kumar Chaokerbutty. a Railway Signaller on Rs. 28 a month, says that accused was the man for whom he wrote Exhibit 5.

11. A 4th witness, Chnni Lal Golaha, a dealer in cloth in Cooch Behar, says that he started for Calcutta by the 6 p. M.; train from Cooch Behar on the 10th,

September and saw the accused, whom he had known as a broker in Calcutta 2 or 3 years before, enter a compartment in the same train.

12. The Honorary Magistrate has found him-self unable to rely on the Cooch Behar Post Office witnesses, partly because they are men on small pay, and partly because they had no previous knowledge of the man who handed in the telegrams, and did not thereafter see the accused till they saw him in Court on the 6th December. He also comments on certain inconsistencies in their evidence and on the fact that officers of higher standing, who had much the same opportunities of seeing the author of the telegrams, have not been called. With regard to Nripendra he further observes that the father of this witness is employed in the firm of Chimniram-Jaswant Mall.

13. As to Chuni Lal Goloha who was also proceeding to 46, Strand Road, where Chimniram Jaswant Mall and other firms carry on business, he points out that if, as he, says, he did not arrive in Calcutta till the 12th or 13th, he must be making some mistake as to the 10th, and farther that if accused travelled by a train starting at 6 P. m. he could not have been with Nripendra at 6.45 p. m. as that witness states. No doubt these matters are capable of explanation. Nripendra may have made a mistake as to the hour, or the train may have started late on that day, though of this the prosecution has adduced no evidence.

14. However that may be, we cannot possibly say that these Cooch Behar witnesses are clearly witnesses on whom the Honorary Magistrate should have relied.

15. The Magistrate next proceeds to consider the evidence of the Calcutta witnesses. He points out that the witnesses to the payment are not independent and criticises the unbusiness-like conduct of the Munib Gomasta Hira Lal Nath in making payment of this large sum to a stranger merely on the faith of his statement that he was residing at the place of business of a firm named Ram Chand Kanai Lal. That firm had in fact ceased to exist some 4 or 5 years before, a fact which should have been known to Hira Lal as to others.

16. He next comments on such facts as the following, namely, (i) that this transaction by telegram is the first and only one of its kind, (2) the appearance of the entry, Exhibit 10, in the rokar, (3) the absence of any serious effort to trace the 1,000 notes in which payment was made, (4) the failure of the prosecution to compare by expert evidence the handwriting of Exhibit 9, the receipt, with the signature "Ram Lal Agarwala" on Exhibit 5, or other writings of the accused who, vide the evidence of Hazari Mull, has been working in the firm of Hupmull-Hanuman Das at 43, Strand Road, since the institution of the prosecution, and two or three years before, vide Chuni Lal Goloha, had worked at the firm of Narsing Das-Tansukh Das, (5) the conduct of the prosecution in allowing the accused to go free on his discovery in Harrison Road, (6) the delay in instituting proceedings, and in giving information to the Police, and (7) the failure of the prosecution to produce evidence as to the information then given.

17. Before us in support of the appeal, stress is laid on the evidence of Hazari Mull, the Munib; Gomasta of Chimniram-Jaswant Mall. The defence on the other hand contends that" his evidence, and -also the evidence of Nripendra re Exhibit 5, is inadmissible. This contention cannot be acceded to. The accused"s statement is that he was in Calcutta on the 10th September. If then by the evidence of Hazari Mull and Nripendra he could be connected with Exhibit 5 and its despatch from Cooch Behar on the 10th, this evidence would go to corroborate the evidence of the" witnesses connecting him with Exhibit 4 and the payment in pursuance thereof. But, as pointed out by the Magistrate, Nripendra is connected with the firm of Chimniram-Jaswant Mall and Hazari Mull, though Hira Lal denies it, is a co-villager with the latter.

18. In face of these considerations it cannot be said that the prosecution has established its case beyond doubt. For the difficulties and omissions in the evidence the prosecution must, be held responsible, and, while disassociating ourselves from the aspersions on or suggestions, against the honesty of the Munib Gomasta Hira Lal, we are not of opinion that we should direct further enquiry in the present case. We, therefore, dismiss this appeal.

19. Lastly, we should say that in our consideration of this case we have been greatly embarrassed by the verbosity and bombast indulged in by the trying Magistrate. The use of such language can only throw doubt on the soundness of the Magistrate"s judgment and we trust that he will hereafter endeavour to express himself in plain terms and with becoming restraint.