

Indu Bhushan Ghosh And Anr. vs The State on 30 May, 1950

Equivalent citations: AIR1950ALL639, AIR 1950 ALLAHABAD 639

ORDER

Kidwai, J.

1. The railway track of the O. T. R. between miles 1 to 7/4 and 10 to 15 on the Gonda. Bishesharganj branch required repairs and estimates were prepared and work orders placed in August 1947, The estimated coat of the two pieces of work was Rs. 1093/- (vide. Exs. 5 and 7) and Rs. 857 (vide EXS. 4 and 6) respectively. Ram Sewak was given the contract. At that time J.N. Sanyal was the overseer in that section and it was his business to supervise the work. On 25th September 1947, Mr, Indu Bhushan Ghosh was posted as Assistant Engineer at Bahraich and the work then came under his control.

2. The work began on 21st December 1947, and was finished on 24th March 1948. It was measured on the 1st, the nth and the 14th April 1948. Since the work was of a patch work nature, the only way to determine how much earth work had been done was to measure the pits that had been dug at the site to extract the earth. The contract exceeded Rs. 500/- and so the measurements ought to have been done by the Assistant Engineer himself under the rules and we find that the entries of the measurements were entered in Ex. 8, the measurement book, in the handwriting of Mr, Ghosh. Thereafter, again as required by the rules, Mr. Ghosh prepared two bills for the two pieces of work, both of which were also signed by Sanyal and Ram Sewak. The bills were for Rs. 906/8-(EX. 3) and Rs. 897-11-0 (Ex. 2). They were sent to the Resident Engineer at Gonda, Sardar Bishan Singh, P. W. 3, for his signatures and for payment. Sardar Bishan Singh signed them in due course and passed them on for payment.

3. Before payment could be made, Mr. Shafi of the Anti-Corruption Department, received some information, the source of which is not disclosed that false bills had been prepared. He approached the District Magistrate of Bahraich, who deputed Mr. Kazmi, a Magistrate of the 1st clasp, to check. Sardar Bishan Singh, Resident Engineer of Gonda was also informed and he, Mr. Kazmi, Mr. Shafi and Mr. Indu Bhushan Ghosh, proceeded to the places where the repairs were said to have been carried out to verify the entries in the measurement book. Mr. Sanyal was on leave and so he was not present and Ram Sewak also was not present because he was not informed.

4. On checking the measurements, Sardar Bishan Singh found that many pits entered in the measurement book and marked-Exs. 8A to 8X, from which earth was said to have been extracted did not exist at all. Consequently the bills submitted by Mr. Ghosh showed a larger amount of work as having been done than was actually done. The difference was not of petty items but of large amounts. Sardar Bishan Singh's measurements showed that the bill for Rs. 906-8-0, should really have been for Rs. 314-2-0 and the bill for Rs. 867-11-0 should have been for Rs. 274-10-0. Thus in

the two bills the differences was Rs. 1215-7-0.

5. The case was then handed over to the Police who prosecuted Mr. Ghosh, Sanyal and Ram Sewak under Sections 420/511 and 420/120B, Penal Code inasmuch as they were all said to have conspired together to cheat the Railway to the extent of Rs. 623-1-0 and Rs. 592-6-0 by submitting false bills. Mr. Ghosh was further charged under Section 477A, for having falsified the measurement book by making entries 8A to 8X, The prosecution produced four witnesses, P. W. 1, Mr. Henry is Deputy Chief Engineer, O. T. R. He detailed the procedure which has to be followed for preparing and submitting bills for work done and the duties and responsibilities of the Assistant Engineer. P. W. 2, Mr. Tahir Kazmi and P. W. 3, Sardar Bishan Singh deposed to the actual measurements carried out by the latter and the difference which was found between them and those carried out by Mr. Ghosh, P. W. 4, Shri Nand Gopal, P. W. 5, Shri Chhail Behari and P. W. 6, Shri Nand Kishore are formal witnesses.

6. The prosecution also produced considerable number of documents to which reference will be made later.

7. Mr. Ghosh admitted that he prepared the two bills, Exs. 3 and 2 and that the entries at pp. 52 to 60 of measurement book Ex. 8 relating to the two pieces of work were in his handwriting. He also admitted that he made the entries in the Progress reports, EXS. P/21A and P/21B, which showed that the repair work in question had been completed. He pleaded, however, in a written statement, which he filed on the day of the arguments, at a very late stage, that the work had finished at the end of the financial year when he was very busy. He accordingly asked Sanyal to give him the measurements. He checked some of the measurements and, finding them to be correct, he did not check the rest and, since the total did not exceed the estimate, he copied all these measurements into his measurement book in good faith reposing full confidence in Sanyal. He prepared the bills from these measurements and had made no attempt to cheat nor had he falsified his measurements.

8. Since Sanyal has been acquitted, it is not necessary to examine his defence. Bam Sewak pleaded that, as a matter of fact, the work was actually completed by him but that, as he was not taken to the spot, either by Ghosh or by Sardar Bishan Singh, he could not point out the work which he had actually done, but which the latter had failed to measure. His learned counsel further contended in this Court that his part had only been the signing of the bills which were actually prepared by Ghosh and verified by Sanyal and consequently he acted in good faith in signing those bills and cannot be held guilty of any criminal intent.

9. Bam Sewak produced Mata Prasad, D. W. 1 who had made measurements at his instance, to prove that the entire work billed for had been done. This witness produced EX. D. W. 1/1 to 6 to indicate his measurements but these documents give no indications as to which miles they related to.

10. Mr. Ghosh produced Shri Damodar Dass Chaturvedi, Assistant Superintendent, Way and Works, E. I. R. and Shri Mitra retired I. W. W., E. I. R. to prove some matters of accounting with regard to completion of work during the financial year. Since this is no longer a point involved in this revision application their evidence is immaterial.

11. The learned Magistrate, after a consideration of the entire evidence in the case, came to the conclusion that all the charges had been substantiated against Mr. Ghosh and Ram Sewak but that there was room for reasonable doubt in so far as Sanyal was concerned. He accordingly acquitted Sanyal but convicted the other two accused persons. He sentenced Ghosh to undergo rigorous imprisonment for 1 year and pay a fine of Rs. 700/- under Sections 420/511, Penal Code, and rigorous imprisonment, for 6 months under each of the Sections 420/120B and 477A, Penal Code. All the sentences were ordered to run concurrently. He sentenced Ram Sewak to undergo rigorous imprisonment for 1 year and to pay a fine of Rs. 700/- under Sections 420/511, Penal Code, and to undergo rigorous imprisonment for 6 months under Sections 420/120B, Penal Code.

12. Both Mr. Ghosh and Ram Sewak appealed but the learned Additional Sessions Judge of Bahraich upheld all the findings of the learned Magistrate and dismissed both the appeals. Both the convicted persons have now come up in revision. Mr. Ghosh was represented by Mr. Chatterji and Ram Sewak by Mr. Bahadurji and the cases of both the applicants were argued separately, though much of the argument was common.

13. The contentions urged were (1) that, by framing charges under Section 477A against Mr. Ghosh in respect of more than three items of the entries in Ex. S, the provisions of Sections 233 and 234, Criminal P. C., had been infringed and the trial was illegal ; (2) that the sanction of the authorities concerned for the prosecution of Mr. Ghosh, who was a gazetted employee of the Railway, was required by reason of the provisions of Section 197, Criminal P. C.; (3) that the offence of cheating for which both Mr. Ghosh and Ram Sewak could have been charged was the one punishable under Section 417 and not under Section 420 and consequently, before a prosecution could be launched for conspiracy to commit such an offence, permission should have been obtained under Section 196, Criminal P. C.; (4) that the examination of the accused under Section 342, Criminal P. C., was defective and had caused prejudice; and (5) that the evidence of Mr. Kazmi, P. W. 2, and Sardar Bishan Singh, P. W. 3, did not establish the case against the two appellants beyond reasonable doubt. "

14. The first question which has, therefore, to be determined in this case is whether there is any such legal defect as to vitiate the trial.

15. The charge under Section 477A, Penal Code, relates to two series of entries, one 11 in number and the other 13. If each of these entries was a separate offence not more than three could have been combined in one charge by reason of Section 234, Criminal P. C., and the trial would be vitiated. It was contended by Mr. Trivedi, on behalf of the State, that each entry was not a separate offence but the combined effect of each series was to constitute one offence. Moreover, he urged that in this case Section 235, Criminal P. C., was applicable since there were only two transactions in respect of which the charge was framed, so even if each entry was a separate offence, it could be the subject-matter of a joint charge with more than three other entries provided the transactions did not exceed three.

16. Section 233, Criminal P. C., lays down the substantive rule with regard to joinder of charges. That section provides that, except in the cases mentioned in Section 234, 235, 236 and 239 Criminal

P. C., every distinct offence shall be the subject of a separate charge and that every separate charge shall be tried separately. The question to be determined first of all is whether each wrong entry in Ex. 8 is a distinct offence, or not. The applicants' learned counsel relied upon *Rex v. Daya Shankar*, A. I. R. (37) 1950 ALL. 167 : (51 Cr. L. J. 571) and *Dubri Misir v. King-Emperor*, 8 O. W. N. 92 ; A. I. R. (18) 1931 Oudh 86 : 32 Cr. L. J. 540), for the proposition that each entry made is a distinct offence. In *Rex v. Daya Shankar Jaitly*, A. I. R. (37) 1950 ALL. 167 : (51 Cr. L. J. 571), the accused had made 46 wrong entries in six different cash books over a period of a year and 7 months in order to commit embezzlement. In that case on each wrong entry being made, the offence of embezzlement--the defrauding--was complete. This is specifically so stated in the judgment.

17. In *Dubri Misir v. King-Emperor*, 8 O. W. N. 92: (A.I.R. (18) 1931 Oudh 86 : 32 Cr. L. J. 540), wrong entries were made in muster rolls with a view to showing that payment had been made to some particular individual of money which had in fact not been paid to him. It was held that each entry represented a completed offence and the various acts were not connected with each other to form one transaction. It was held accordingly that a charge relating to 25 entries was not justified either by Section 231 or by Section 235, Criminal P. C.

18. The case here is different because each entry in the measurement book did not complete any offence. It is not different from a case in which a person, on one occasion, steals eight articles, or makes many false statements in the course of one deposition on Oath. The stealing of each article is not a distinct offence and each false statement is not a distinct offence, although if the stealing of any one article or the making of any one false statement is proved, a conviction for theft or perjury would be justified. Similarly the making of any one wrong entry is not a distinct offence when other such entries are made at the same time and in connection with the same account. In such a case there has been one falsification of the book with intent to defraud. It might as well be argued that each entry by itself represents 1 falsifications of measurement since the length, the breadth, the depth and entire extracts are all wrong. Such an argument was, quite rightly not attempted. In the present case, therefore, Exs. 8A to 8X do not represent 24 distinct offences but are two, one being constituted by the series Exs. 8A to 8K and the other by the series Exs. 8L to SX. Thus, neither, the charges framed nor the trial infringed the provisions of Section 233 read with Section 234, Criminal P. C. and the trial was not bad on that ground.

19. The next question is whether the trial of Mr. Ghosh is vitiated by reason of the fact that, he being a gazetted servant of the O. T. R. not removable except by the Railway Board, sanction was required for his prosecution by reason of Section 197, Criminal P. C. Sub-section (1) of Section 197 reads :

" when any public servant who is not removable from his office save by or with the sanction of a Provincial Government or the Central Government is alleged to have committed an offence while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction, "

20. The Railway Board is neither the Provincial Government nor the Central Government; consequently the fact that the sanction of the Railway Board is required will not bring the case

within the purview of this section. Section 197 (1), Criminal P. C., therefore, did not prevent the Court from taking cognizance of the case without previous sanction.

21. The third question is whether the trial of the case against all the accused was barred by reason of Section 196A, Criminal P. C. That section provides :

"No Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B, Penal Code, (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or cognisable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Provincial Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Provincial Government, has, by order in writing, consented to the initiation of the proceedings."

In the present case the charge is of a conspiracy to cheat. The offence of cheating, as defined by Section 415, Penal Code, is punishable under several sections of the Code : Section 417 provides the penalty for simple cheating; Section 418, the punishment in a case of cheating by a person bound to protect the interests of the person cheated, Section 419, the penalty for cheating by personation and Section 420 the penalty for cheating and dishonestly inducing the person cheated to deliver property. It was agreed that in the circumstances of the present case either Section 417 or Section 420 applies.

22. If the case falls under Section 417, Penal Code, sanction under Section 196 (2) would be necessary because the maximum punishment provided by Section 417, Penal Code, is only one year. If, however, the case is punishable under Section 420, Penal Code, then permission would not be required because the punishment provided by that section may extend to 7 year?

23. It was contended that this was a case of simple cheating covered by Section 417 because no property had actually been delivered by any body to either of the applicants. The difference between Sections 417 and 420 has been very succinctly stated in the headnote to *Sher Singh v. Emperor*, 10 Lah. 513 : (A.I.R. (15) 1928 Lah 935 : 30 Cr. L. J. 480), in the following words :

"Section 417, Penal Code, is confined to cases of simple cheating An accused who obtains property by cheating is punishable under Section 420."

24. In the present case it is true that no property was actually delivered : that is why the charge is under Section 450 read with Section 511, Penal Code. Nevertheless the conspiracy that took place, if it took place at all, was one to obtain money (property) by cheating, that is to say to commit an offence punishable under Section 420, Penal Code. No permission under Section 196A (2), Criminal P. C., was, therefore, necessary and this contention must also be overruled.

25. The fourth objection, namely, failure of the Magistrate to make a proper examination of the accused under Section 342, Criminal P. C. would not have the effect of vitiating the trial but would only mean that the circumstances appearing against the accused which he had no opportunity to

explain cannot be relied upon and, in so far as any such circumstance has been relied upon by the lower Courts, their judgments require re-examining.

26. The examination of Mr. Ghosh is, as so often happens, not at all complete. Perhaps part of the responsibility for this is that of Mr. Ghosh since in reply to various questions he stated that he would file a written statement. Nevertheless all the relevant questions should have been put to him, even if he kept on repeating the same answer. The only matter of importance, however, that he was not asked to explain was his silence when Sardar Bishan Singh pointed out that the pits, Exs. 8A to 8X could not be traced on the spot. This failure has, however, not caused the slightest prejudice to Mr. Ghosh since he voluntarily offered an explanation of the matter in the written statement which he filed. He therein stated that he was so perturbed by the check since he thought that some one was seeking to implicate him in some crime that he did not realise what was happening. This is no explanation at all for his failure to point out additional pits which could correspond to the description given in the measurement book.

27. Even, however, if Mr. Ghosh's failure to indicate the pits is left out of consideration--as it must be in deciding the case of Ram Sewak since he was not present at the time of the measurement and he cannot be affected by Mr. Ghosh's conduct -- (here is ample evidence on the record to justify the conviction. (His Lordship referred to the relevant evidence and proceeded :) 28-38. As to the contention of Ram Sewak's learned counsel that he merely signed the bills because they had already been signed by Ghosh and Sanyal, it does not excuse Ram Sewak at all. If a person joins another in the commission of a crime by which he is to benefit and which it would not be possible to commit but for his aid, he is guilty of the commission of the crime. In the present case the bills could not have been passed for payment but for the signature of Ram Sewak. Ram Sewak was himself the contractor who had done the work. He must, therefore, have known whether he had in fact done the whole work or not. If the difference in figures had been a small one it might have been possible for Ram Sewak to say that he bona fide accepted the Assistant Engineer's figures. The difference, however, is very great: in each case the bill is for more than double the work done. Even allowing, therefore, for all possible inaccuracies of measurement owing to the use of a cloth tape and wrong leads etc., the bills were greatly in excess of the figure justified for the work done. Ram Sewak can, therefore, not escape responsibility on this ground.

39. The conviction of both the applicants must, therefore, be upheld. There remains only the question of sentence. It was contended that the sentence on Mr. Ghosh is too severe because he also loses his service. It is perfectly true that this factor is a relevant consideration in determining the sentence to be imposed but it is not the only one. Punishments are inflicted not to satisfy the desire for revenge in the human mind; the State has no desire for revenge. One of the principal reasons for inflicting punishments is to deter others from repeating the crime. If corrupt railway officials could get off merely with a dismissal from service after making money by unlawful means, that would be no punishment at all and there would be no deterrent effect in the punishment. If the Courts below have, therefore, imposed sentences of imprisonment it cannot be said that they have been too severe.

40. The result is that the applications both of Mr. Ghosh and of Ram Sewak fail and are dismissed. Both the applicants are on bail. Their bail bonds are cancelled and they will surrender before the District Magistrate of Bahraich to serve out the rest of their sentence.