(1918) 01 CAL CK 0007

Calcutta High Court

Case No: Apps. Nos 458 and 459 of 1917

Raghunath Lal and Another	APPELLANT
Vs	
The King-Emperor	RESPONDENT

Date of Decision: Jan. 2, 1918

Final Decision: Dismissed

Judgement

Richardson, J.

The case made by the prosecution against the Appellant, Raghu Nath Lal, is unusual in its character. The Appellant has or had a small shop in Calcutta in which he sold pan and it may also be that he is a money-lender in a small way. He has been tried and found guilty on three charges framed under sec. 209 of the Penal Code. The charges relate to three suits instituted by him against different persons in the Calcutta Court of Small Causes on the 26th and 27th August 1913. It is alleged that the claims which he made in those suits were false to his knowledge and that they were made fraudulently or dishonestly or with intent to injure or annoy the respective Defendants.

2. The Defendants are now in the position of complainants and the story told on their behalf is as follows :-They all come from the village of Parmara, in the District of Patna. The immediate landlord of the village is the Ijaradar Ram Hari Lal or his wife Zamurat Koeri. A dispute arose between Ram Hari Lal and Jagadish Narayan, the son of the Zemindar, in which the tenants became involved to some extent.

3. Land in the village appears to be held on the bata system and in January 1913, owing to some apprehension of a breach of the peace, proceedings were taken to divide the crops between the landlord and the tenants under sec. 69 of the Bengal Tenancy Act. The final order in these proceedings is dated the 23rd March 1913. There were further difficulties about the cost of executing the decree which was drawn up under sec. 70 of the same Act. That matter ultimately came before the District Judge and was decided favourably to the tenants by an order dated 9th September 1913.

4. On the 3rd May 1913, Jagadish Narayan instituted a suit against Zamurat Koeri and others in the Court of the District Judge of Patna, which was afterwards dismissed on the 8th September 1914.

5. The case for the prosecution is that upon the institution of that suit, Bam Hari Lal summoned the tenants to his cutchery and requested them to give evidence on his behalf which they refused to do. On this occasion the Appellant Raghunath Lal and one Budhu Lal, the Appellant in another similar case, were present, both men being connected by marriage with Bam Hari.

6. On the 5th August 1913, Budhu instituted seven suits in the Calcutta Small Cause Court against various tenants claiming from them sums ranging from Rs. 155-8 to Rs. 311.

7. Similarly, on the 26th and 27th August 1913, Raghunath instituted twenty-two suits against tenants claiming amounts from Rs. 26-5-0 to Rs. 15-12-0.

8. It also appears that on the 5th and 15th July 1913, Lachman Prasad, said to be a servant of Ram Hari, instituted eight suits against tenants in the Small Cause Court at Patna, claiming amounts from Rs. 475 to Rs. 63. These suits were dismissed, one on the 12th September 1913 and the remainder on the 15th September 1913.

9. The Calcutta suits had a somewhat longer history. In the first instance, Raghunath, in twelve of his suits, obtained ex parte decrees but on the 3rd December 1913, the tenants presented a petition to the District Magistrate of Patna, making certain allegations. This led to the matter being placed in the hands of the Criminal Investigation Department with whose assistance the tenants came to Calcutta and entered their defence. New trials were ordered in the twelve suits decreed ex parte and all the suits, those brought by Budhu as well as those brought by Raghunath, came on for trial on the 23rd March 1914. Raghunath and Budhu as Plaintiffs produced no evidence but each offered to abide by a special oath to be taken by the Defendants facing the Ganges. The Defendants, or the principal Defendants in each case, took the oath and denied their liability for the sums claimed. The learned Small Cause Court Judge, Mr. Panioty, accordingly dismissed the several suits and in each case ordered that compensation should be paid to the Defendants.

10. Sanction to prosecute Raghunath and Budhu was then applied for. It was at first refused but as the result of proceedings to which it is unnecessary to refer in detail, such sanction was subsequently, on the 8th February 1917, granted by the High Court in respect of three of the suits brought by Raghunath and three of the suits brought by Budhu. Two separate cases were then instituted which came before the 4th Presidency Magistrate, Mr. K. B. Das Gupta, for trial. The learned Magistrate has, as already indicated, convicted both men and we are now dealing with the case of the Appellant Raghunath.

11. At the hearing of the appeal we were taken through the whole of the evidence, which I have again considered, and on the merits I have no difficulty in agreeing with the learned Magistrate in his conclusion that the three charges against Raghunath are fully proved and established.

12. Raghunath''s story is that in 1912 the tenants of this remote village went in a body on pilgrimage to Puri. On their way back, in October of that year, they came to Calcutta and lodged at the Jain Dharmasala. It is said that on that occasion they borrowed the several sums for which the suits were subsequently brought. I am satisfied with the learned Magistrate that the evidence on which this story rests, oral and documentary, is worthless. This applies to the Puri Panda, a priest, and his pilgrim book, the entry in the Travel-lers'' Register kept at the Dharmasala and Raghunath''s own Hathchitta book. In 1912 the priest was only 16 years old and neither he nor his book found favour with the Magistrate. The entry in the Travellers'' Register purports to be in the handwriting of Nathnu Pandey. The latter was a witness for the prosecution but the entry was not put to him in cross-examination. As to the Hathchitta book the entries adduced relate only to the twelve suits which were decreed ex parte and it is impossible to suppose that the rest of the money was lent by Raghunath without any writing. Moreover, there is evidence showing that several of the tenants could not have been in Calcutta at the time. The whole story for the defence must be rejected as false.

13. Apart from the merits, however, the learned Pleader for the Appellant strongly urged the plea that the trial was vitiated by misreception of evidence. He argued:-

(1) That the evidence relating to the suits brought by the Appellant other than those specified in the charges was irrelevant,

(2) that at any rate the learned Magistrate erred in admitting evidence of the falsity of the suits brought by Budhu and Lachman Prasad.

14. As to the suits brought by the Appellant himself we are of opinion that the evidence relating to them was properly admitted under sees, 14 and 15 of the Evidence Act for the purpose of showing the ill-will or animus of the Appellant towards the Defendants in those suits as a body, for the purpose of showing a systematic course of fraud or a systematic series of fraudulent claims and for the purpose of rebutting the defence that the particular suits specified in the charges were brought in good faith or any suggestion that they were brought under some mistake or misapprehension. The principle is that while evidence which goes merely to the character or disposition of the accused as a person likely to have committed the offence charged is generally inadmissible (sec. 54, Evidence Act), evidence which is otherwise relevant does not become irrelevant or inadmissible merely because it discloses the commission by the accused of other offences [Makin v. Attorney-General [1894] A. C. 57 and E. v. Ball [1911] A. C. 47]. This principle is as applicable to evidence relevant under secs. 14 and 15 as to evidence relevant under

any other section of our Act. In their application to offences, sec. 14, no doubt, overlaps sec. 15, in so far as it covers either by itself, or in conjunction with other sections such as secs. 9 and 11, not only those cases when the state of mind of the accused is properly an element in proving the commission by the accused of the physical act charged [R. v. Ball [1911] A. C. 47] or in proving by way of his intention or state of mind that it was the accused who committed such act (Illustrations (o) and (p) of sec. 14] but also those cases where the physical act charged may be neutral in its character and may depend for its innocence or guilt on the state of mind of the accused at the time [Illustrations (a), (b) and (i) of sec. 14]. Cases of the latter description, where there is conduct indicating system, fall more particularly however under sec. 15 and the rule there enacted is illustrated by a number of English cases, the more recent beginning with Makin v. Attorney-General [1894] A. C. 57. Reference may be made to the cases cited in Queen-Empress v. Vojiram (3), Emperor v. Debendra I. L. R. 36 Cal. 578 : s. c. 13 C. W. N. 728 (1909) and Amrita Lal Hazra v. Emperor I. L. R. 42 Cal. 957 : s. c. 19 C, W, N. 676 (1915) to which may be added R. v. Boyle [1915] 3 K. B. 339. So far as sec. 14 applies to the present case, the evidence in question is clearly within Explanation (1) of the section, which is important, and as regards sec. 15 it is also clear that the suits are a series of " similar occurrences " as the expression is there used.

15. It has been held in England that the transactions indicating system may be previous or subsequent to the offence charged [R. v. Mason 10 Cr. App. Rep. 169] and there can be no doubt that sec. 15 covers both previous and subsequent similar occurrences. [Emperor v. Debendra I. L. R. 42 Cal. 957 : s. c. 19 C, W, N. 676 (1915)]. Nothing turns, therefore, on the order in which the different suits were filed.

16. Secs. 14 and 15 were more especially referred to in the argument but in our opinion the different suits instituted are so connected in point of time and circumstances as to form part of the res gesta or part of the same transaction within the meaning of sec. 6 of the Evidence Act.

17. The witnesses could hardly have told the story without mentioning all the suits. In an old case Lord Ellenborough said " If several offences do so intermix and blend themselves with each other, the detail of the party''s whole conduct must be pursued [R. v. Whiley 2 Leach C.C. 985].

18. As regards the cases instituted by Budhu and Lachman Prasad, there is much more to be said for the learned Pleader''s argument. No doubt the principle again applies that evidence otherwise relevant is not shut out merely because it discloses the commission by a third person of an offence and it makes no difference that such offence is similar to that for which the accused is being tried. But the evidence tendered must be shown to be relevant. Mr. Mitter, appearing for the Crown, referred in this connection to secs. 6, 7, 8 and 11 of the Act. But take sec. 6. The suits instituted by Budhu are not part of the same transaction as the suits instituted by the Appellant unless there is some nexus or connection between the two men or the

two sets of suits. The only connection that can be suggested is that the suits of both men were the result of a conspiracy between them. The difficulty is that no conspiracy was charged and from the materials before us, it does not appear that apart from the formal charges any case of conspiracy was definitely put forward at the trial, nor has any conspiracy been found.

19. Similar observations may be made as to the other sections relied upon for the prosecution. In my opinion, therefore, the evidence now in question ought to be excluded. But even if it be excluded, no great stress was laid upon it by the Magistrate and the remaining evidence against the Appellant is so overwhelming as to leave no doubt that he was properly convicted.

20. The appeal therefore, in my opinion, must be dismissed and the Appellant must undergo the remainder of the sentence imposed upon him.

Beachcroft, J.

21. I agree.

Appeal No. 459.

22. This appeal is preferred by Budhu. He, like Raghunath, has been convicted on three charges framed under sec. 209 of the Penal Code. The two cases bear a close resemblance. The facts are similar and in part identical, the two trials followed similar or parallel courses and the arguments addressed to us proceeded on similar lines. As regards the evidence admitted, the conclusion must be the same as in Raghunath''s case, that is to say, the learned Magistrate in trying Budhu was right in admitting evidence relating to the suits brought by Budhu himself, but as against him the evidence relating to the institution of suits by Raghunath and Lachman must be excluded.

23. In Budhu''s case however, the effect of this exclusion on the propriety of Budhu''s conviction has to be considered with special reference to certain documentary evidence which he adduced in defence and on which the learned Pleader appearing for him strongly relied.

24. Budhu instituted seven suits. He has now produced five promissory notes with the date 25th September 1911, purporting to bear the thumb impressions of the respective Defendants in five of those suits. It is not disputed that these thumb impressions are correct, in the sense that if not genuine they are copies of genuine thumb impressions. The question is whether these documents are genuine documents or forgeries as the learned Magistrate has found.

25. It is now notorious that thumb impressions can be reproduced by a simple mechanical process and the following considerations arise :-

26. There are seven suits and only five documents. It is said that the document on which two suits were based have been lost. These two suits are the suits to which

the first and third charges relate and in each of those suits there were two Defendants. In the five suits for which documents have been produced there was only one Defendant. The Magistrate makes the point that it would be easier to manufacture such documents in those cases where only one Defendant was concerned than in those cases where two Defendants were concerned.

27. No such documents were produced in the Small Cause Court either when the plaints were filed or subsequently, although in the course of the final hearing before the suits were finally dismissed in March 1914, Budhu was challenged to produce them.

28. If genuine documents of this description were in Budhu''s possession during the pendency of the suits in the Small Cause Court, it is difficult to suppose that he would not have pressed his claims and that he would have offered to abide by the special oath of the Defendants. The total amount involved in the seven suits was Ks. 1,409, a considerable sum to a man like Budhu or indeed to any body.

29. Not one of the five documents is signed although there is evidence accepted by the Magistrate that the Defendant Magni or Mangroo Barahi, whose thumb impression appears on one of them, can sign his name.

30. The learned Magistrate has found on the evidence that none of the Defendants were in Calcutta at the time these documents purport to have been made or ever visited Calcutta. We can see no reason for not accepting that finding and, if accepted, the finding is conclusive.

31. It was argued on Budhu''s behalf that the prosecution has not shown how he came to have access to any original thumb impressions of the five Defendants. But if regard be had to his connection with Ram Hari, no insuperable difficulty arises. The documents, it must be remembered, were not produced till the case came on for trial before the Magistrate.

32. If the documents are forgeries, as in the opinion of the learned Magistrate and in our opinion they are, the case against Budhu is as strong as, if not stronger than, the case against Raghunath. In neither case, it should be observed, has the Magistrate laid any particular stress on the evidence which, as it seems to us, should be excluded. In both cases the conclusion rests principally and substantially on evidence to which no exception can be taken. As we have said, the finding in Budhu''s case that the Defendants in his suits never came to Calcutta, either in September 1911 or at any other time, is a complete answer to the defence set up. We are satisfied that Budhu has been rightly convicted and that his appeal must be dismissed. He must surrender to his bail and undergo the remainder of the sentence imposed upon him.