

(1881) 02 CAL CK 0004

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

M.J. Vyapoory
Moodeliar

RESPONDENT

Date of Decision: Feb. 3, 1881

Acts Referred:

- Evidence Act, 1872 - Section 13, 14
- Penal Code, 1860 (IPC) - Section 161, 165

Citation: (1881) ILR (Cal) 655

Hon'ble Judges: Richard Garth, C.J; Mitter, J; Maclean, J

Bench: Full Bench

Judgement

Garth, C.J. and Maclean, J.

The prisoner in this case was tried before the Special Court at Rangoon upon three charges for receiving money illegally as a public servant, contrary to the provisions of Section 161 and 165 of the Indian Penal Code.

2. The transactions upon which the charges were based are all said to have occurred in the year 1876, and the nature of them was, that the prisoner, being then the managing clerk in the commissariat office of Tonghoo, where Messrs. Cohen Brothers carried on business as Commissariat contractors, accepted certain remuneration from Messrs. Cohen for services, which he is said to have rendered them in his official capacity.

3. The case for the prosecution was that these services were rendered, and the remuneration received, by the prisoner under some arrangement, which existed between the parties in the year 1876, but which came to an end in January 1877.

4. In the year 1877, the prisoner was transferred to the Commissariat office at Thayetmyo; and it was alleged by the prosecution, that in that year Messrs. Cohen,

who also carried on business as commissariat contractors at the latter place, made a similar arrangement there with the prisoner, and that certain sums were given to him as remuneration in that year for similar services.

5. Upon the trial evidence was adduced on the part of the prosecution, to show the receipt of these sums and the existence of this arrangement in 1877. But the learned Judges in the Special Court differed in opinion as to whether the evidence was admissible, and therefore, u/s 80 of the Burma Courts Act, they have referred the question to us in the following terms (reads the point referred).

6. It has been contended by Mr. Phillips for the Crown, that the evidence was admissible under some one or more of the sections from 5 to 14 of the Evidence Act, as showing the illegal nature of the transactions between Messrs. Cohen and the prisoner in 1877, and the probability that, if sums were received by the prisoner from them for an illegal consideration in that year, the sums which were received from them by the prisoner in the previous year were also for an illegal consideration.

7. I believe that we are all agreed that this evidence was not admissible under any of the sections from 5 to 13 of the Evidence Act; but my brother Mitter of opinion that it might be admissible, u/s 14, upon the grounds stated in his judgment.

8. After carefully considering this point and the authorities to which our attention was called by Mr. Phillips, I have come to the conclusion that the evidence was not admissible.

9. Section 14 seems to me to apply to that class of cases which is discussed: in Taylor on Evidence, 6th edition, Section 318 to 322,-that is to say, cases where a particular act is more or less criminal or culpable, according to the state of mind or feeling of the person who does it; as, for instance, in actions of slander or false imprisonment, or malicious prosecution, where malice is one of the main ingredients in the wrong which is charged, evidence is admissible to show that the defendant was actuated by spite or enmity against the plaintiff; or again, on a charge of uttering counterfeit coin, evidence is admissible to show that the prisoner knew the coin to be counterfeit, because he had other similar coin in his possession, or had passed such coin before or after the particular occasion which formed the subject of the charge. The illustrations to Section 14, as well as the authorities cited in Taylor, show with sufficient clearness the sort of cases in which this evidence is receivable.

10. But I think we must be very careful not to extend the operation of the section to other cases, where the question of guilt or innocence depends upon actual-facts, and not upon the state of a man's mind or feeling. We have no right to prove that a man committed theft or any other crime on one occasion, by showing that he committed similar crimes on other occasions.

11. Suppose, for example, that usury was a crime by the law of this country, and that a prisoner was charged with having taken usurious interest from A B in a transaction which occurred in 1870. It seems quite clear to me, that, for the purpose of proving the nature of this transaction in 1870, evidence could not be given of some other usurious transaction having taken place between the same parties in 1871. The question in such a case would be, not whether the prisoner had a mind prone to the commission of usury, or whether he was in the habit of making usurious contracts, but whether, in the particular instance, the prisoner had, in point of fact, been guilty of usury.

12. Now, as I understand, the argument for the Crown in the present case amounts to this. In the year 1876, Messrs. Cohen were commissariat contractors at Tonghoo, and the prisoner was the managing clerk in the Commissariat. In the year 1877, these parties were employed respectively in the same way at Thayetmyo. In the year 1876, the prisoner is charged with receiving certain sums of money as bribes from Messrs. Cohen for showing them some favour in his official capacity, and he is proved to have actually received those sums. Under these circumstances, Mr. Phillips argues, that evidence is admissible that in the year 1877 he received other sums from Messrs. Cohen as bribes, in order to prove that the sums which he received in 1876 he also received as bribes. But it seems to me that the question, whether he took the sums in 1876 as bribes for doing a favour to Messrs. Cohen, is in each case purely a question of fact. It is not, as it seems to me, a matter of intention, or feeling, or knowledge; and I think that, in such a case, evidence is no more admissible to show that he took bribes from Messrs. Cohen in 1877, than it would be to show that he stole some of the Government money in 1876, because he afterwards stole some in 1877.

13. I would, therefore, answer the question referred to us by saying that, in my opinion, the evidence is not admissible.

Mitter, J.

14. The facts of the case in which this reference has been made are briefly these:

15. The accused was committed for trial on twelve separate charges of receiving illegal gratification, as a public servant, under Sections 161 and 165, the receipt of these several sums of money extending over a space of three years,—1876, 1877, and 1878.

16. At the trial the prosecution elected to proceed on three charges. The transactions out of which they are alleged to have arisen all happened in the year 1876. The accused was the managing clerk in the Commissariat office at Tonghoo in the year 1876, where Cohens transacted business as commissariat contractors. The evidence for the prosecution is, that there was an understanding between Cohens and the accused, under which he had agreed for certain remuneration to show to them certain favour in the exercise of his official functions; that this agreement

came to an end in January 1877, when the accused was transferred to the Commissariat office at Thayetmyo; that in the month of June of that year the Cohens, who also transacted business as commissariat contractors- at the latter place, entered into a similar agreement with the accused, and the evidence of payments of money to him in 1877 and 1878 at Thayetmyo, under the last-mentioned agreement, was adduced in the bourse of the trial. The question of law that has been referred to us is as follows (reads the point referred).

17. I am of opinion that receipt of illegal gratification in the years 1877 and 1878 at Thayetmyo cannot be proved, in order to establish that the accused received the three sums of money mentioned in the charges for which he was tried. The two sets of transactions are not so connected as would make them relevant to one another within Sections 5 to 13 of the Evidence Act. Section 6 cannot apply, because the payments of 1877 and 1878 are not so connected with the facts in issue in this case as to form part of the same transaction. The alleged agreement of 1876, according to the case for the prosecution, came to an end in January 1877, and the alleged payments in 1877 and 1878 were said to have been made under a different understanding.

18. The next section, under which it was contended, in the lower Court, that the transactions in 1877 and 1878 were relevant, was Section 8. But it seems to me that it cannot be said that they show or constitute a motive or preparation for the facts in issue. Neither can the conduct of the accused, as shown in the alleged transactions 1877 and 1878 be said to have been influenced by the facts in issue in the sense in which these words are used in the section. No doubt, a person who commits a crime with impunity, may ordinarily be found more ready to commit another crime of a similar nature, and in that sense the second crime may be considered to have been influenced to a certain extent by the commission of the first crime. But it seems to me that that kind of connection is not contemplated by this section. If it did, then where a person is charged with an offence, the whole of the previous history of his life would be relevant, because, every event of his life that preceded the commission of the crime may be considered to have influenced it in some way. But that is not the meaning of the section. The influence referred to here must be direct and obvious; and in this sense I cannot say that the transactions of 1877 and 1878 were in any way influenced by the facts in issue. The same observation will apply to the contention based upon Section 11. There also the words "highly probable" point out that the connection between the facts in issue and the collateral facts sought to be proved must be so mediate as to render the co-existence of the two highly probable.

19. The only other section which it is necessary to notice is Section 14. Under that section collateral facts specified therein can be proved if the question be as to the existence of any state of mind. In this case if the receipt of the several sums of money mentioned in the charges be considered to have been proved to the satisfaction of the Court by other evidence, and if it be necessary to ascertain

whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 may, in that case, be relevant under this section. But they are not relevant for the purpose of establishing the fact of payment in the year 1876.