

(1919) 09 CAL CK 0001

Calcutta High Court

Case No: None

Emperor

APPELLANT

Vs

Pramatha Nath Bagchi and
Another

RESPONDENT

Date of Decision: Sept. 13, 1919

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 307
- Evidence Act, 1872 - Section 24

Citation: 55 Ind. Cas. 282

Hon'ble Judges: Syed Shamsul Huda, J; Rankin, J

Bench: Division Bench

Judgement

1. This is a reference u/s 307, Criminal Procedure Code.

2. The facts of the case are shortly these: On the 11th October 1918 there was a fire in the out-offices of the house of the Post Master of the Sub-Post Office at Rajbari. The fire was very soon extinguished. The Post Master's case is that at the time when the fire broke out, he was in his office and there were on his table 12 registered articles, that when he left the office, he asked the accused Promotho, who was a probationer in his office, to take care- of these articles and that he went to the place where the fire had occurred and came back within a very few minutes and found that the registered articles were all missing. He asked Promotho, who denied any knowledge of them. He then sent Promotho to lodge information at the Thana, though he says that he had his suspicions" that Promotho had taken possession of those articles. As against the accused Hemanta it is said that he was in the Post Office verandah shortly before the fire. This was nothing unusual, as Hemanta and Promotho live together and were friends.

3. On receipt of the information from Promotho, the Sub-Inspector of Police took up the enquiry. Hemanta made to him certain statements upon which he went to the

shop of one Shyama Charan and through an opening in the mat wall, Hemanta brought out five of the missing letters which were unopened and three bundles of currency notes with certain letters in them, but without the envelopes. The other four registered articles were not found and have not been traced since.

4. At about 11-30 p.m., Hemanta was taken to a Sub-Deputy Magistrate, where he is said to have made a confession which was duly recorded by that officer. After that, Promotho was also taken there at about 12-30 a.m., and he also made a confession. It appears that Promotho, when he was asked whether he would make a confession, answered in the negative, whereupon the Sub-Deputy Magistrate asked his orderly to call the constable and hearing this Promotho at once changed his mind and agreed to make a confession, and the confession was recorded. Hemanta in his confession admitted that he had gone to the Post Office in the evening, that when he was returning the fire broke out and hearing the cry he went back towards the Post Office, that he was called by Promotho who handed over to him certain registered articles with the direction that he should open them and take care of the contents, that he put them inside Shyama Charan's shop through an opening, that shortly after he was arrested and he brought out the articles from Shyama Charan's shop. Promotho in his confession stated that when the fire broke out he was present in the Post Office sorting some letters, that he and others all went out, that the Post Master asked him to guard the office room and that he made over a bundle of insured and registered letters to Hemanta. He said that when the Post Master came back and asked him about these articles, he at first denied all knowledge of them but afterwards gave out all the facts to the Police Sub-Inspector and the Post Master.

5. The principal evidence against the accused consists of the depositions of the Post Master Amritlal Mukerji, the investigating Police Officer Bazlur Rashid, bead post man Guru Charn, Bonomali Pal the mail peon and the second clerk Hiralal. There is also a considerable body of other evidence about the discovery of the articles from Shyama Charan's shop.

6. The charges framed against the accused were these: Promotho was charged u/s 52 of the Post Office Act for having dishonestly misappropriated six insured and registered letters containing currency notes and stamps and six uninsured registered letters while in the course of transit. He was also charged with theft u/s 380, Indian Penal Code. Hemanta was charged u/s 52 of the Post Office Act read with Section 70, which refers to abetment of Postal offences, and was also charged u/s 380 read with Section 114, Indian Penal Code, in respect of the said twelve articles. The learned Judge was apparently strongly impressed by the evidence in the case and his charge was a strongly worded one for a conviction.

7. The Jury, however, unanimously brought a verdict of not guilty against both the accused.

8. In cases of this nature, we are generally reluctant to interfere with an unanimous verdict and if that verdict is not unreasonable and can upon the evidence be supported, we think we ought to accept it, even though we may not wholly agree with it.

9. We propose to deal with the case briefly, as the facts are all set out in the charge. We will consider the case of Hemanta first.

10. His confession, in our opinion, cannot, upon the case made by the prosecution, be said to be voluntary. The evidence is that he was kept at a little distance from the Post Office in charge of a head constable and was being questioned by the Sub Inspector and that after being in that condition for 3 or 4 hours, to use the words of the learned Judge, "under the continued questioning to which he was subjected he finally broke down."

11. We are satisfied that he made the confession under circumstances that bring the case within the words of Section 24 of the Evidence Act. If the confession were voluntary and if the Sub-Inspector thought that it was so, there was no reason why he should have taken him to the Sub Deputy Magistrate at 11 o'clock at night, in spite of the recent Circular issued by this Court which lays down that as a rule confessions should be recorded in open Court. This appears to us to be a clear indication, apart from any other facts, that Hemanta's confession was not a voluntary one and that the Police Officer thought that as soon as his influence was removed, the confession would be retracted. We think the Sub-Deputy Collector was wrong in recording the confession at that hour of the night and failed to exercise a proper discretion in doing so. However, we may still take the confession into consideration as forming part of the statement of Hemanta before the Committing Magistrate. It was not in our opinion a confession of guilt at all. What Hemanta said would, at the most, go to show that he was a mere accessory after the fact, It does not in any way suggest that he went to the Post Office in order to help Promotha to commit theft, and there is no evidence from which such an inference can be drawn. The suggestion regarding a conspiracy between the two accused has failed and we have no doubt that the fire was accidental. If Promotha took out the registered letters and handed them over to Hemanta, the latter could only be charged with an offence u/s 411, Indian Penal Code, but the learned Judge deliberately refused to charge Hemanta under that section because he thought that would complicate matters. For these reasons we think Hemanta could not be said to have abetted the commission of any offence by Promotha; and the charges against Hemanta must, therefore, fail.

12. As regards Promotha, the case stands on a somewhat different footing; but yet we are not satisfied that even in his case we should differ from the unanimous verdict of the Jury. It is difficult to believe the story told by the Post Master that he left Promotha in charge of the registered articles. If Promotha had been left in such charge, it is extremely unlikely that he, a young probationer in the Post Office aged

about 20 or 21 years, would have dared to deny any knowledge of them or to remove them knowing, as he did, that, he would be held responsible for them. It seems more reasonable to believe that, when the fire broke out in the kitchen, the Post Master-whose wife and children were in the house-ran in haste to the place and, as suggested by the defence, Promotha also followed him and that immediately after, it occurred to the Post Master that he had left the registered articles without placing any body in charge of them and asked Promotha to return to the Post Office to take care of them. It is extremely suspicious that this story of Promotha having been placed in charge of the stolen articles has been sought to be supported by evidence which cannot be relied upon. Some of the witnesses who depose to it, in our opinion, could not have any knowledge of it. One of such witnesses is Guru Charan who must have left immediately after the fire broke out (Bonomali said: they all went together), and yet he says he heard the Post Master asking Promotha to take charge of the articles, and the other witness is the Post Master's daughter, who in her evidence at the first trial deposed to the same fact but was not examined in the present trial. The learned Judge rightly asked the Jury to ignore her evidence.

13. Now we come to Promotha's confession. We think that that confession also was not voluntary. In our opinion having at first refused to make a confession, he got frightened at the Sub Deputy Magistrate asking his orderly to call the constable and apprehending ill treatment if he were handed back to the Police, who would naturally be annoyed at his refusal to make a confession for which he was brought to the Sub-Deputy Magistrate, he agreed to make a confession.

14. We may here add that we are not at all satisfied with the statement made by the Sub-Deputy Magistrate in his evidence that he did not think that the calling of the constable made Promotha afraid.

15. On this and on some of the other grounds adverted to by us in connection with Hemanta's confession, we think we cannot rely upon the confession of Promotha.

16. As regards the evidence, we have already said that a part of it is difficult to believe. The matter then stands thus: The registered articles were in the Post Office, The Post Master had left the office; Promotha had also left with him; he was sent back and then when the Post Master returned, he found the articles missing. There is no doubt a strong suspicion attaches to Promotha, as he had a better opportunity of taking possession of those articles than any one else. It may be a strong suspicion, but it is nothing more than a suspicion, Hemanta's statement cannot be taken into account against Promotha, it being to a great extent self exculpatory; and upon mere suspicion we are not prepared to convict him of an offence so serious as the one with which he is charged. There remains then the evidence about the discovery of the registered articles in Shyama Charan's shop. That evidence does not touch Promotha, We cannot, therefore, say that we are satisfied beyond reasonable doubt that it was Promotha that removed the articles from the Post

Office and we think it would be unsafe to convict him also.

17. For these reasons, we think that we should not disturb the unanimous verdict of the Jury. We do not say that the learned Judge had no good grounds for referring the case to us; but we think that he took a stronger view of the case than he should have taken and his charge to the Jury would have conformed better to the spirit of the law if he had used less strong language. It is true that he put the facts before the Jury in great detail and explained to them the law quite clearly and correctly, but our remark refers to the general tenor of his charge.

18. For these reasons we acquit both the accused and direct that they be set at liberty.