Privy Council Appeal No. 15 *oj* 1942
Patna Appeal No. 16 *of* 1941

Thakur Shah - - - - - - - - *Appellant*

v.

The King-Emperor - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JUNE, 1943

Present at the Hearing:
LORD MACMILLAN
LORD PORTER
LORD CLAUSON
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by* LORD PORTER]

This is an appeal against a conviction for abetment of forgery under section 466 combined with section 109 of the Indian Penal Code.

The appellant was charged with abetting one Jagannath Singh and one Matuk Chandra Das in forging a certain decree sheet and compromise petition, which are Court records and was found guilty by the Sessions Judge of the Santal Parganas. This conviction was upheld by the High Court at Patna.

The history of the case has been fully and accurately stated in the judgment of Chatterji J. in the High Court and need not be repeated at length here. It is only necessary to set out sufficient facts to make this judgment comprehensible.

In 1934, the appellant, one Buchai, and his son Khudi were parties to a suit for the partition of their joint family property, a suit which was eventually compromised. In order to effect their purpose the parties on the 13th December, 1935, filed a compromise petition in accordance with which a decree of the Court was drawn up and signed on the 23rd of the same month. It is common ground that a certain plot of land situate in Jasidih Bazar and numbered 67 was not part of the joint family property but was purchased by Khudi during the pendency of the suit, and that a registered sale deed assigning the property to him was drawn up dated the 22nd January, 1935. This plot therefore was not included in the compromise petition or the decree: it was and remained in the possession of Khudi in the sense that he received rent from its tenants.

By an interpolation in each document this piece of property has now been added to the share assigned to Thakur in both the petition and decree. The prosecution's case was and is that the appellant procured this insertion in these two places and abetted the forgery. By the charge they asserted and in evidence they sought to prove that the forgery was carried out as to the decree sheet by Jagannath abetted by Matuk and as to the petition

by Matuk abetted by Jagannath. The appellant was accused of abetting both these persons in the offence of forging the two documents. Direct evidence of the commission of the substantive offence by Jagannath and Matuk was given by one Chandrama Singh whose story was to some extent corroborated and was accepted by the Sessions Judge in spite of the view that the witness must be regarded as an accomplice. The High Court also thought him to be in the position of an accomplice but contrary to the view of the trial Judge thought him to be insufficiently corroborated to justify a conviction for forgery against either of the two persons accused of that crime.

Accordingly the High Court acquitted Matuk and Jagannath of the crime of forgery. Nevertheless they went on to consider whether the facts established would justify a conviction of each of the three accused for abetment of forgery and held (1) that those facts were not sufficient to prove beyond reasonable doubt that Matuk was guilty, but (2) were sufficient to incriminate the appellant and Jagannath, whose convictions of abetment were accordingly upheld. A further co-accused, one Jai Prasad Misraa, who had been convicted by the Sessions Judge, was acquitted on all charges and their Lordships are not concerned with his case.

Jagannath has not appealed and in their Lordships' view there was ample evidence to convict him of abetting a person or persons unknown in committing either of the forgeries charged, provided it was permissible for the Court so to charge and convict him.

Similarly their Lordships in agreement with the High Court of Patna consider that the evidence establishes the commission of the crime of forgery by some person or persons and its abetment by the appellant. They need only refer to the following facts proved in evidence.

Two copies of the original decree had been obtained before the alteration took place. If these copies had been compared with the altered version it would have been clear that a forgery had been committed. One had been issued to Khudi. This copy was obtained from Khudi by the appellant by means of a palpable trick. The second had been lodged by the appellant with the Post Office Savings Bank in order to establish his claim to some money which his father had deposited there. This document he was diligent and urgent to have returned to him and he finally obtained it back on the 5th May, 1938, with the result that the only two copies extant of the decree in its original form had reached the hands of the appellant.

Meanwhile, having obtained a copy of the sale deed of plot 67 on the 31st March, 1938, he on the 11th April applied in the landlord's office for mutation of his name for that of the original owner, using on this occasion a copy of the forged compromise petition.

Having succeeded in effecting this object he attempted to take possession of the plot and on the same day tried to bribe the Bench Clerk of the Court at Deoghar where the decree was written to say that the whole of the decree including the words interpolated were in his handwriting.

Finally it was clear that there was no one other than the appellant who could have had any motive for desiring the insertion of the extra piece of land amongst those given to the appellant under the decree.

But these are matters of the weight to be attributed to the evidence given and not considerations such as would influence their Lordships acting upon the principles which guide them in considering whether an appeal in a criminal matter should be allowed. So also the question whether the appellant's evidence and explanation should be accepted is one solely for the Courts in India and is not a matter with which their Lordships would interfere. Moreover apart from mere denials of the evidence given on behalf of the prosecution the appellant's only suggestion is that plot 67 was purchased with joint family funds, that he himself had a share in it and that, because he got less basauri land, it was given to him by Buchai and Khudi, so that he had no motive to plot any forgery. Upon this question the finding of the High Court is clear and conclusive. "All these facts," they say, "taken together,

lead to the inevitable conclusion that whoever might have actually forged the documents, they must have done so at the instance of Thakur and in conspiracy with him. Clearly therefore he is guilty of abetment."

If therefore the conviction of either Matuk or Jagannath for forgery had been upheld, no possible ground for interference by their Lordships' Board with the conviction could have been suggested nor could any valid objection have been taken if a charge of abetting a person or persons unknown had been added to that of abetting the named persons. Indeed as their Lordships think a charge of using as genuine a forged document under section 471 or of having possession of a document described in section 466 knowing it to be forged and intending to use it as genuine could, in the circumstances proved, have also been sustained.

The only questions therefore are the technical ones whether (*a*) the Court could alter the charge to abetment of forgery by a person or persons unknown or could convict of such an offence without amending the charge and (*b*) whether in the circumstances such a change should have been made.

Under English law it would have been more difficult and it may be impossible to justify such a variation of the charge. The history of the growth of criminal law in this country, its lines of development and the technicalities consequent thereon all militate against such a course. Indian law is subject to no such limitation but is governed solely by the Indian Criminal Code and the Code of Criminal Procedure, always of course subject to the limitation that no course should be taken by reason of which the accused may be prejudiced either because he is not fully aware of the charge made or is not given a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred.

As to the first question their Lordships are of opinion that the High Court had power to amend the charge so as to turn it into a charge of abetment of a person or persons unknown or, having justifiably found Jagannath guilty of abetment of forgery to accept a charge against the appellant of abetting that abetment under explanation 4 of section 108 of the Indian Penal Code.

Section 423 of the Code of Criminal Procedure and in particular subsection (1) (*d*) of that section gives wide powers of amendment in a criminal appeal and in their Lordships' view the amendment sanctioned by the High Court falls within the terms of that section.

The High Court in India approached the matter from a somewhat different angle. "Abetment," they said, "as defined in the Indian Penal Code, relates not to an offender but to an offence. Here the prosecution case is that the abetment was by conspiracy as defined in the clause 'Secondly' of section 107 of the Code." They went on to hold that the essential part of the charge was that Thakur abetted the commission of the offence and that it was immaterial that the offence was not committed by the persons named in the charge provided at any rate that the appellant engaged in a conspiracy with one of the named persons for the purpose of effecting the forgery. In their opinion the substance of the charge is the abetment of the particular offence and the persons by whom it is committed is a secondary consideration. Their Lordships think this view right in so far as it decides that an amendment in the persons alleged to have committed the offence is an amendment within section 423 of the Criminal Code and not the charging of a fresh offence.

But the High Court goes on to hold their action justified under section 237 of the Code of Criminal Procedure and to support that view by citing the decision of the Board in *Begu* v. *The King-Emperor* (1925) 52 I.A. 191.

That case undoubtedly recognizes a wide power in a Court trying a criminal case to convict of a crime not the subject of the charge provided (*a*) that the crime of which the accused are found guilty is established by the evidence and (*b*) that having regard to the information available to the prosecuting authorities it was doubtful which of one or more offences would be established by the evidence at the trial. The charge in that case

was against five persons for murder, and two of them were found guilty. The other three were found not guilty of murder, but without any further charge being made were convicted of causing the disappearance of evidence by removing the body of the murdered man.

In India, in a case not dissimilar to this, it has been held that where a charge was preferred against a prisoner of (1) murder and (2) abetting a named person to commit murder, not only might a conviction be upheld of abetting a person unknown under section 227 of the Criminal Procedure Code, but that under sections 236 and 237 of that Code the accused might be convicted of the offence which he had actually committed, i.e., of abetting a person unknown.

> " In the present case " said Sargent C.J. " it was doubtful whether the evidence connecting the prisoner with the offence would establish the offence of murder, abetment of murder by the second prisoner or of murder committed by some one unknown. He might have been charged with committing all or any of these offences as indeed he was of two of them and therefore even assuming there was no charge properly framed, the learned Judge might under sect. 237 have accepted the verdict returned by the jury and entered it on the record." See *Queen Empress* v. *Appa' Subha'na Mendre* (1884) I.L.R. 8 Bombay 200.

Upon this latter point their Lordships do not think it necessary to come to a conclusion in the present case, since as already indicated they think that an amendment of the charge could properly be made under section 423 of the Criminal Procedure Code and they prefer to rest their decision upon the powers of amendment so given.

There remains the question whether it was proper to make such an amendment having regard to the finding which the High Court reached. No doubt the power must be used with discretion. If there is any chance of injustice being done or of the accused having been prevented from giving or of his having failed to give evidence material to his defence by reason of the amendment of the charge, the Court should at least make him the offer which was made in the case in 8 Bombay, i.e., offer a new trial on the charge as amended. But it is not always necessary to do so. See the decision already referred to in 52 I.A.

More particularly it is not necessary where it does not appear that any fresh case could be made or fresh evidence given on behalf of the person convicted.

In the present case their Lordships cannot see that any further evidence would have assisted the appellant or that without stultifying himself he could have set up any further defence.

They agree with Chatterji J. when he said in the High Court " Upon these proved facts there can be no doubt that Thakur is guilty of abetment of forgery. . . . It cannot be said that he had no notice of these proved facts or that he was misled by the form of the charge."

Taking this view of the substance and technicalities of the case they will humbly advise His Majesty that the appeal should be dismissed.

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In the Privy Council

THAKUR SHAH

v.

THE KING-EMPEROR

DELIVERED BY LORD PORTER

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