BOMBAY HIGH COURT

Emperor

Vs

Gopal Raghunath

(Madgavkar and Baker, .J.J.)

06.11.1928

JUDGMENT

Madgavkar, J.

1. This is an appeal by accused No. 1, Gopal, against his conviction and sentence of five years' rigorous imprisonment under Section 439B, Indian Penal Code, by the Sessions Judge of Nasik. The first point of law raised before us on his behalf is that the joinder of the charge of which he has been convicted, with the other charges, was illegal, and is not covered by Section 239 of the Code of Criminal Procedure.

2. The case for the prosecution was that the appellant accused No 1, with two others, accused Nos. 2 and 3, acquitted in the lower Court, were all privy to the counterfeiting and passing of false currency notes, and committed offences under Sections 489A, 489B and 489D of the Indian Penal Code. The Committing Magistrate had charged all three of them with offences under these three sections. Before the trial commenced in the Court of Session, the learned Sessions Judge elaborated the charges into, first, a conspiracy under these three sections, alternatively with offences in the course of the same transaction under Section 489D. He further charged accused Nos. 1 and 2 with offences under s.489A, and lastly accused No. 1 alone with, an offence under Section 489B. In the result, excepting the conviction of the appellant, accused No. 1, on the last charge, the trial resulted in the acquittal of all the accused on all the other charges.

3. It is argued for the appellant that the joinder was illegal, the offences charged numbering more than three, and in any case they caused serious prejudice to the appellant by letting in evidence which would not have been admissible, had the present charge under appeal, under which alone he was convicted, been tried separately. For the Crown it is contended these charges form part of the same transaction, and are, therefore, covered by Section 239, cl.(d), of the Code of Criminal Procedure, as well as by Section 235.

4. As is often the case with a number of elaborate charges, it is difficult to lay down any single

test or criterion. The cases, in my opinion, divide themselves into three. First, a case such as the one *in Subrahmania Ayyar v. King-Emperor*[1] not covered by Section 235 or 239, in which case, prejudice, or no prejudice, the illegality entitles the appellant to an acquittal. The second case is where without such illegality, prejudice might nevertheless be caused to the accused so that even though the Crown may have the power of joinder, it might be fairer not to exercise that power. The third class of cases is where there is such a common thread or purpose underlying the alleged offences of the accused, even though separated by time and space, that they form part of the same transaction, and are difficult to present separately, in which case the law permits, and the Crown usually adopts, a joint trial with numerous accused and numerous charges. The question in each particular instance is as to which of these three classes of cases the particular case for decision falls. In the present instance the question turns upon whether the offence now under appeal is part of the same transaction as the offences in the other charges. The only transaction, if any, is the alleged conspiracy. True, the prosecution in the result failed to prove it, but that of itself does not necessarily make the trial illegal, the test being, not what the prosecution has proved in the end, but what they alleged at the beginning in the charges. On the actual facts of this case it is not clear to me that all these charges were necessary, and, so far as I can judge, it might have been simpler perhaps to have charged all three with conspiracy, and perhaps with abetment in respect of the particular offence which the prosecution sought to prove against the appellant in respect of the counterfeit note found originally on the person of Rajaram. But taking the charges as they are, the case for the prosecution was throughout clear that the three accused were engaged in collecting materials for counterfeiting notes, in counterfeiting them, and in uttering them, and that one of the transactions which was the result of this conspiracy and the common efforts of the three was this particular note, which was passed on to Rajaram. In fact it appears that Rajaram himself was prosecuted separately in respect of this note, but was acquitted. As Rajaram was not alleged to have taken part in the conspiracy, he was rightly not included in the present trial, but was separately tried. The question is whether, although the appellant was alleged to have been one of the conspirators, he was entitled to a separate trial on the last charge, or whether that charge could in law have been joined with the other charges, as it actually was, That question must be answered, whether prejudice has or has not been caused, on a consideration only of the question whether this last act was so connected with the subject- matter of the previous charges as to form a single transaction.

5. Difficult as the definition of "transaction" is, accepting it as laid down by Batty, J., in *Emperor v. Datto Hanmant*[2] we are of opinion that this may reasonably be said to be a part of the same transaction in the sense that it was the working, the fruits and the result of the alleged conspiracy and if so, the separate act done by any of the conspirators in pursuance of that conspiracy could be joined in the same trial. See the remarks of Mookerji, J., in *Amritalal Hazra v. Emperor* [3]

6. Therefore, the contention for the appellant, in my opinion, fails.

7. Strictly speaking, it is not, therefore, necessary to enter into the question of prejudice. Nevertheless I agree entirely with the remarks of Birdwood, J., in Queen-Empress v. Fakirapa 15 B. 491 that such prejudice is, as fares possible, to be avoided. That a large part of the evidence turned out not very material is possible. But in regard to the main pieces of evidence, I am of opinion that though they might have been more directly relevant to the charge perhaps of preparing counterfeit notes rather than of uttering this particular note, even had this charge been tried by itself, on the question of intention most of that evidence would have been admissible under Sections 13 and 14 of the Indian Evidence Act. The fact, for instance, that a genuine note for Rs. 100 bearing the same number as the counterfeit note found on the person of Rajaram, the subject-matter of the charge, or that the honeycomb picture, Ex. H-3, was found in the house of the appellant would be admissible. The question whether the note Z-3, found on the person of Shankar and traced to Yeola but not to the appellant, would be admissible is perhaps more doubtful. Taking the evidence as a whole, we are not convinced there has been such serious prejudice to the appellant as to necessitate a re-trial if his guilt is proved. On the question whether his guilt is proved, I agree with the judgment of my learned brother dealing with the material facts of the case. I am of opinion, therefore, that the appeal fails, and must be dismissed and the conviction and sentence confirmed.

Baker, J.

8. So far as regards the point of law raised by the learned Counsel for the appellant is concerned, namely, that this accused has been prejudiced by his trial along with accused Nos. 2 and 3 who were originally charged with conspiracy along with him, I am of the same opinion as my learned brother. Under Section 239, Clause (d), Criminal Procedure Code, persons accused of different offences committed in the course of the same transaction may be charged and tried together. The main question would be whether the proceeding with which we are concerned in the present case formed one and the same transaction. Now, the original case for the prosecution was that the accused Nos. 1, 2 and 3 had together entered into a conspiracy for the purpose of forging currency notes and uttering them when so forged. The prosecution failed to establish any conspiracy in this case. There was no evidence against accused Nos, 2 and 3 from which any conspiracy could be held proved, and, therefore, the charge of conspiracy as regards accused No. 1 failed also, for as the Judge says, he could not conspire with himself. The question then would arise whether the accused could have been tried along with accused Nos. 2 and 3 on a separate charge for the offence of uttering a forged currency note, with which accused Nos.2 and 3 had nothing directly to do, except in so far as conspirators or members of the conspiracy they might be held to be guilty of that offence under Section 120B. The real question involved in this case is

what is meant by the same transaction. The learned Counsel for the appellant has referred to several cases in the course of his argument, but these cases are not quite on all fours with the present case. In *Emperor v. Datto Hanmant*[4] we have a definition of the word 'transaction' (page 55 Pages of 30 B.-- Ed.): "A series of acts separated by intervals of time are not... excluded, provided that those jointly tried have throughout been directed to one and the same objective. If the accused started together for the same goal this suffices to justify the joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible," and 'transaction' means "carrying through and suggests, we think, not necessarily proximity in time--so much as continuity of action and.purpose" (page 54 Pages of 30 B.-- Ed.). The case on which the learned Counsel has relied, Queen Empress v. Fakirapa 15 B. 491 is a case of a very extreme character in which four accused persona were all charged with an offence against one person only on one date, against the same person on another date, and various of the accused were charged with offences against other persona on different dates, and they ware ultimately all tried together although there were in all seven charges against some or all of the accused relating to seven offences committed against three persons on different dates. It is obvious that the joinder of so many charges relating to different dates and different parsons would tend to prejudice the defence of the accused and to cause contusion in the mind of the Court. In *Subrahmania Ayyar v. King-Emperor*[5] the accused, who were two in number, were jointly tried for a large number of offences, more than were allowed to be tried together by the provisions of the Code of Criminal Procedure. The appellant, as the Lord Chancellor pointed out, was tried on an indictment in which he was charged with no less than forty-one acts extending over a period of two years, and the facts of the present case have no relation to a charge open to such an objection as that. Under Section 239, as it stood before amendment the illustrations show that if A and B are accused of robbery in the course of which A commits a murder with which B has nothing to do, A and B may be tried together on a charge charging both of them with robbery, and A with murder. If the charge of conspiracy has been brought home to accused Nos. 2 and 3, then it would have been open to the Court to charge and convict the present appellant of the offence under Section 489B, viz., uttering a forged note, and the fact that the evidence fell short of bringing home the charge of conspiracy does not, in my opinion, make the joint trial of the accused illegal. So long as the accusation against all the accused persons is that they carried out a single scheme by successive acts, the necessary ingredients of a charge regarding the one transaction would be fulfilled, and the fact that the conspiracy was not established would not vitiate the trial as regards those acts for which the evidence was sufficient for proof. The question of prejudice does not really arise in the present case, because we are not here dealing with evidence which would only be relevant in a charge of conspiracy. It would be a different matter if the bulk of the evidence in the case consisted of words spoken by or actions done by accused Nos. 2 and 3 which was sought to be used against accused No. 1. It may be argued that even

though his trial was not illegal, prejudice has been caused to him by the joint trial but that, however, is not the case in the present case.

9. Turning to the facts, the prosecution case is that accused No. 1 purchased certain cloth in the shop of Rajaram, who was a trader at Yeola, and paid for it with a forged currency note of Rs. 100 which is before the Court. The fact that this note was forged does not appear to have attracted the attention of Rajaram and his Gumasta Narayan until they offered it in change to a Marwadi who refused it. On the following morning at half-past nine, the Sub-Inspector, who had received information that Rajaram was in possession of a forged currency note, came to the shop of Rajaram and took possession of the note from him. Although it is not on record, it seems to me very probable that the information received by the Inspector came from the Marwadi, as Narayan admits that the Marwadi after examining the note refused to accept it. Up to this point the name of the accused had not been mentioned at all. But the Sub-Inspector says, and there is no reason to disbelieve him, that Narayan informed him that the note had been received from accused No. 1, and in consequence of that information the Sub-Inspector proceeded immediately to the house of accused No. 1, and held a search. The story of Narayan that he informed the Sub-Inspector that the note had been received from the accused is supported by the fact that there was no Previous suspicion against the accused and is house was searched on the following morning. In the search of the house certain chemicals and photographic articles were found, but the learned Sessions Judge has given his opinion that these articles are not sufficient to show that the accused was making any preparation for counterfeiting currency notes. There are, however, two important articles which were found in his house. One of these is a genuine currency note, Ex. A, which bears the same number as the forged note, and the other is a piece of paper on which some person has made a tracing of a honey-comb pattern similar to that which appears on the forged note in green ink. Another fact which has come out in this case is that another forged note of Rs. 100, Ex. Z 3, has been traced to Yeola, but not to the possession of the appellant, who is not shown to have had anything to do with it. That note also bears the same number as the genuine note, and the forged notes which were found in the house of the accused. In order that there should be a conviction under Section 489-B, it must be proved, first, that the accused sold or otherwise trafficked in or used as genuine a forged or counterfeit currency note, and, secondly, that he knew or had reason to believe that it was forged. As regards the first-point, we have the evidence of Narayan, the Gumasta of Rajaram. Rajaram himself lives over the shop, but was not present at the time when the accused purchased the articles. We have also the evidence of Gangaram, Ex. 7, page 16, Bala Bapu, Ex. 8, page 18, and Yemaji Shivram, Ex. 14, page 24, as to the note in question having been given by the accused to Narayan, the Gumasta of Rajaram, in payment for cloth purchased by him. The learned Sessions Judge has believed these witnesses, who are not shown to have any animus against the accused, and there is no reason why their

evidence should not be accepted. I may point out that their evidence is supported by circumstantial evidence. As I have already said, it was on the information given by Narayan that the Sub-Inspector proceeded immediately to the house of accused No. 1 and searched it although there was no previous suspicion against accused No. 1. Further, the goods which were sold by Narayan to the accused were found, some of them, in the house of accused No. 1. They were identified by Narayan as bearing the mark of his shop. A pair of dhotars were found in the house of accused No. 2, to whom they were given by Shankar, Ex. 47, who says he received them from the accused No. 1's father in payment of work done. There does not, therefore, appear to be any reason for holding that Narayan did not receive this forged currency note from the accused. It has been contended that Rajaram's conduct is not that of a person acting bona fide, for although this note had been in his possession about a week, he had not made any complaint to the accused about its not being a genuine note. The evidence of Narayan, however, is that the note was put in the cash box and was not utilised until the date when it was refused by the Marwadi after he had handled it and inspected it. This happened in the afternoon. On the following morning the shop was searched by the Police so that Rajaram and Narayan had not much time to make up their minds as to what they should do in connection with this note. The other point that Rajaram denied the possession of the forged currency note or at any rate that he was reluctant in presenting it to the Police is not surprising or in itself indicative of a guilty conscience as he must have known that the consequences to himself Would undoubtedly be unpleasant. As a matter of fact he was prosecuted and tried for possession of a counterfeit note, though he was ultimately acquitted. Another argument which has been raised is that Ex. 18, which is a cash memo from the shop of one Garge in Nasik, indicates that the accused No. 1 was at Nasik on February 7, 1928, that is, the day of the delivery of the false note to Rajaram and, therefore, he could not have gone to Rajaram's shop on that day. This point does not deserve much consideration for two reasons. In the first place if it was the case of the accused that he was at Nasik on that day, we would expect it would have been put forward very much more clearly in the lower Court in fact as his principal defence. But we find a mere hint of that in the accused's statement before the Sessions Court. The second point is that on examining the date on Ex. 18 through a microscope, I am of opinion that no reliance can be placed upon it as it appears to have been altered. I see no reason, therefore, to differ from the view which has been taken by the lower Court as to the actual uttering of the note by accused No. 1.

10. We now proceed to the second part of the section that is to the knowledge of the accused. And here we have a very important circumstance which leaves a strong impression on my mind. That is this, that the genuine note bearing the same number was found in the house of this accused. Now it is true that the other forged note also bearing the same number, viz., Ex. Z-3, was traced to Yeola, but there is no evidence that it was ever in the possession of accused, the

appellant in this case. But from this fast we come to the very curious position that about the same time in a comparatively small town there were three notes all bearing the same number, one genuine, and two forged. And it is a reasonable inference that the forged notes must have been copied from the genuine note. This would appear from the evidence of the Deputy Master of the Security Press at Nasik, Ex. 51, that the forgeries were prepared by some photographic process from the original, and even if there were no evidence to that effect, it would naturally occur to anybody that in forging a note the original must necessarily be before the eyes of the forger in order to avoid any difference, however slight, between the original figures or the number and those on the counterfeit. Now it has been argued that it is not shown that the accused was in possession either of this forged note or of the genuine note. I hold it proved on the evidence of Narayan and the other witnesses already referred to that the accused was in possession of the counterfeit note in this case. The genuine note was found in his house.

11. Now the accused is not a boy. His father and his brothers live in his house. He is himself a man of forty years old and he was a sanitary supervisor or something of the kind in the Municipality of Yeola. I have referred above to the fact of Art. H- 3, a piece of paper containing a honey-comb pattern in green ink, also being found in his house. A comparison of this piece of paper with the forged note will show that it resembles the pattern on the note, and it has obviously been drawn by somebody who was practising the art of sketching a honey-comb pattern similar to that which was found on the forged note. There is no evidence that the accused made this pattern, but it was found in the house in which he lives with his father and brothers, and it is a very fair inference that this pattern must have been made by somebody in that house and that the forged note was copied from the original note, No. 44111, which was also in the same house. When, therefore, we find an inmate of the house of mature age bringing from the house in which the genuine note is, a copy of that genuine note, and disposing of it to a shop-keeper, I do not think any inference is possible, but that it was done with the knowledge that the note was forged. Knowledge is a state of mind which cannot always be proved by direct evidence, but must be inferred from the surrounding circumstances. In the present case the circumstances are strongly against the innocence of the accused, and I entirely agree with the view which the learned Sessions Judge and two of the assessors have taken that he is guilty of an offence under Section 489B of the Indian Penal Code. I would, therefore, confirm the conviction and sentence, and dismiss the appeal.

12. There is, however, one slight alteration which requires to be made. In the final order the learned Sessions Judge has ordered Ex. A, which is the genuine currency note, to be confiscated and sent to the Collector of Nasik for cancellation. That order, I suppose, is made under Section 517. There is, however, no direct evidence that any offence has been committed in respect of this note. Section 517, Sub-section (1) of the Criminal Procedure Code, runs:When an inquiry or a

trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

13. Most probably the learned Sessions Judge regarded this note as being the original from which counterfeits were prepared, and, therefore, as having been used for the commission of an offence. I think, on the whole, that this order should be modified by directing the restoration of Ex. A to accused No. 1, the appellant in the present case.

14. There also appears to be a mistake in the judgment as regards Articles Z, Z-l, Z-2, Z-5, Z-6, Z-7, Z-8, Z-9, Z-1S, which are ordered to be returned to accused No. 2. These were attached in the house of accused No. 1, and should be returned to him. "Accused No. 2" appears to be a mistake for "Accused No. 1."

15. The above order regarding the restoration of the property to be carried out by giving it to the father of the appellant, Raghunath Narayan, as the appellant himself will be in Jail for a lengthy period.

Cases Referred.

125 M. 61 : 3 Bom. L.R. 540 : 11 M. L.J. 233 : 28 I.A. 257 : 5 C.W.N. 866 : 2 Weir 271 : 8 Sar. P.C.J. 160 (P.C.)
230 B. 49 : 7 Bom. L.R. 633 : 2 Cr. L.J. 578
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