

# BOMBAY HIGH COURT

Emperor

Vs

G.V. Vaishampayan

(Barlee,J.)

07.04.1931

## JUDGMENT

### **Barlee, J.**

1. An objection has been raised to the proof by the approver of some of the statements made to him by a man called Swamirao, who is alleged to have been a co-conspirator but is not an accused before this Court. The statements had reference to the alleged attack on the Lamington Road police station and were alleged to have been made after the return of the attacking party to the approver at his residence. The objection is that such statements made after the completion of the attack do not come within Section 10 of the Indian Evidence Act, inasmuch as they were not made in reference to the common intention of the con-spirators. For the Crown Mr. Velinker argues that any statement made by any one of the conspirators is a relevant fact so long as it is made after the time when the intention of the conspirators was first entertained by any one of them.

2. Reading Section 10 it appears to me that narratives coming from the conspirators as to their past acts cannot be said to have a reference to their common intention. The word 'intention' implies that the act intended is in the future and the section makes relevant statements made by a conspirator with reference to the future. I interpret the words "in reference to their common intention" to mean in reference to what at the time of statement was intended in the future. This appears to me the ratio decidendi of the Calcutta cases, *Emperor v. Abani Bhushan Chuckerbutty<sup>1</sup>* and *Sital Singh v. Emperor<sup>2</sup>*, though the full argument is not contained in the judgments of their Lordships. On principle this interpretation seems to be correct. The principle on which Section 10 is based is that of agency-see the extract from the judgment of Mr. Justice Crump at p. 519 in *Emperor v. Shafi Ahmed<sup>3</sup>*:-

when concert has once been proved, each party is the agent of all the others, and acts done by him in pursuance of the common design are admissible against his fellow conspirators.

3. It can scarcely be said, however, that one conspirator has any implied authority to make a confession after his arrest as in the case of Emperor v. Abani Bhushan Chuckerbutty, or even as in this case to give a description of past events to his co-conspirator.

4. But this ruling does not suffice for a decision as to all the portions of the record of the committing Magistrate to which the learned counsel for the defence object. It is not the case for the Crown that the object of the conspiracy was achieved by the attack on the police-station. That, it is said, was merely an incident. I find the following passage in the record of the committing Magistrate:-

Bapat told Swami to continue this for eight days and then to lie low.

5. And later on Swamirao said:-It is essential that a pamphlet should be written about this and be distributed.

6. From this it appears that Swamirao proposed to start propaganda in furtherance of the objects of the conspiracy. It is permissible under Section 10 to prove what that propaganda was to be; and if the pamphlet was to contain an account of the attack on the Lamington Road police-station, the prosecution must be entitled to prove what that version was, not as a mere narrative of past events but as a statement which Swami intended to publish in the future in reference to the common intention.

#### Cases Referred.

1(1910) I.L.R. 38 Cal. 169, S.B

2(1918) I.L.R. 46 Cal. 700

3(1925) 31 Bom. L.R. 515