

APPELLATE CRIMINAL.

Before *Suhrawardy and Malik JJ.*

EMPEROR

v.

DASTARALI.*

1930
Aug. 25.

Conviction—Conviction of the substantive offence, if legal when charged with s. 34, Indian Penal Code—S. 34, Indian Penal Code, if creates a new offence—Indian Penal Code (Act XLV of 1860), ss. 34, 193, 467.

Section 34 of the Indian Penal Code does not create a new offence, but is a rule of law and applies when a criminal act is done by several persons including the accused charged.

Emperor v. Profulla Kumar Mazumdar (1) referred to.

When several persons are charged with any offence read with section 34, the conviction of one only of the offence itself, apart from section 34, is legal, even when all the rest are acquitted.

CRIMINAL APPEAL by the accused.

The material facts appear from the judgment.

Fazlul Huq and Bhupendrakishore Ghosh for the appellant.

The Officiating Deputy Legal Remembrancer, B. M. Sen and Anilchandra Ray Chaudhuri for the Crown.

SUHRAWARDY J. The accused Dastarali was tried with six others, charged under sections 467/34, 193/34 and 471, Indian Penal Code. The case for the prosecution was that the deed in question was fabricated by all these persons. It was executed in favour of the first three accused Dastarali, Wafiz Sheikh and Bhadurali and written and witnessed by the other accused. In the course of the

*Criminal Appeal, No. 170 of 1930, against the order of K. N. Datta, Additional Sessions Judge of Mymensingh, dated Feb. 15, 1930.

trial the learned Judge found that nothing had been proved against the accused Nos. 2 and 3, Wafiz Sheikh and Bhadurali, and directed the jury, under section 289 of the Code of Criminal Procedure, to return a verdict of acquittal in respect of them. As regards the remaining accused, the jury brought in a verdict of guilty under sections 467 and 193, Second Part, Indian Penal Code, against the appellant Dastarali and acquitted the other accused persons. The learned Judge accepted the verdict and sentenced the accused to two years' rigorous imprisonment under each head, sentences to run concurrently.

The only point worth considering in this appeal is, whether the convictions under sections 467 and 193 of the Indian Penal Code are correct in law in view of the fact that they were charged with offences under those sections read with section 34.

It has been argued that if a person is charged with an offence read with section 34, he could not be convicted of the "substantive" offence. The view does not appear to be correct. By using the word substantive offence, it is suggested that the offence under section 34 is a constructive offence. Under section 34, a person is charged with having committed the offence along with other persons. If it is proved that the other persons had no hand in committing the offence, but it was committed by the accused himself, or if the prosecution fails to prove that the other persons committed the offence, but succeeds in proving that one of the accused did it or had a part in committing it, there does not seem to be any reason why he cannot be convicted for committing the offence himself. As has been observed in the case of *Emperor v. Profulla Kumar Mazumdar* (1), section 34 does not create a new offence but is a rule of law and applies only when a criminal act is done by several persons of whom the accused charged thereunder was one. A person is charged with committing an offence read with section 34, when he himself commits the offence

1930

Emperor

v.

*Dastarali.**Suhrawardy J.*

1930

Emperor

v.

*Dastarali.**Suhrawardy J.*

along with others. In this particular case, the charge ran in these words. "That you, on or about the month of *Pous* 1333 B.S., forged a certain document "purporting to be a valuable security, *etc.*" The charge of forgery was made against all the persons and section 34 was added because the offence was said to have been committed by all of them jointly. If section 34 creates a different offence, the accused may still be convicted of an offence when charged with that offence read with section 34 (*vide* section 236 read with section 237 of the Criminal Procedure Code).

In our opinion, this appeal fails and is accordingly dismissed.

MALLIK J. I agree.

Appeal dismissed.

A. C. R. C.