

PALANI
GOUNDAN
v.
EMPEROR.
WALLIS, O.J.

directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction as in *Queen-Empress v. Khandu*(1) or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in *Gour Gobindo's case*(2). The facts as found here eliminate both these possibilities, and are practically the same as those found in *The Emperor v. Dalu Sardar*(3). We agree with the decision of the learned Judges in that case and with clear intimation of opinion by SERGEANT, C.J., in *Queen-Empress v. Khandu*(1).

Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can of course be punished both for his original assault on his wife and for his attempt to create false evidence by hanging her. These, however, are matters for the consideration and determination of the referring Bench.

[When the case came on again for hearing before the Division Bench, their Lordships convicted the accused of grievous hurt under section 326, Indian Penal Code.—Ed.]

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

KAMATCHINATHA PILLAI (ACCUSED), APPELLANT,

v.

EMPEROR.*

1918,
November
11, and 1919,
January, 7.

Penal Code, Indian (Act XLV of 1860)—Forgery, sec. 464—Document made to screen a previous offence, whether made fraudulently.

An attakshi made by a process-server with false signatures in order to defraud a District Munsif into excusing his delay in returning process and his absence from duty is made fraudulently and is a forged document within section 464 of the Indian Penal Code.

(1) (1891) I.L.B., 5 Bom., 194.

(2) (1868) 6 W.R. (Cr.R.), 55.

(3) (1914) 18 C.W.N., 1279.

* Criminal Appeal No. 707 of 1918.

Empress v. Subapathi (1888) I.L.R., 11 Mad., 411, *Emperor v. Rash Behari Das* (1908) I.L.R., 35 Cal., 450, and *Kotamraju Venkatarajulu v. Emperor* (1905) I.L.R., 28 Mad., 90 (F.B.), followed.

Empress of India v. Jiwanand (1883) I.L.R., 5 All., 221, and *Queen-Empress v. Girthari Lal* (1886) I.L.R., 8 All., 653, doubted.

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CRIMINAL APPEAL against the conviction of the appellant by the Sessions Judge of Rāmnād in Sessions Case No. 28 of 1918 of the Rāmnād division.

The facts are given in the judgment.

Accused was not represented.

Public Prosecutor (E. R. Osborne) for the Crown.

The JUDGMENT of the Court was delivered by

SADASIVA AYYAR, J.—This is an appeal by a process-server of the Court of the District Munsif of Dindigul who was convicted of forgery for the purpose of cheating and using as genuine a forged document and sentenced to six months' rigorous imprisonment under sections 468 and 471 of the Indian Penal Code.

SADASIVA
AYYAR, J.

The document in question is the attakshi, exhibit H, purporting to have been signed by the two karnams Sivagurunatha Pillai (prosecution fifth witness) and Athinarayana Mudali (prosecution sixth witness), certifying that the appellant was ill of fever and cholera in prosecution fifth witness' village and was between 23rd and 30th November 1917 and that the two karnams had him treated with medicines. The body of attakshi is in the appellant's writing. The evidence (including the depositions of prosecution fifth and sixth witnesses) clearly establishes that prosecution fifth and sixth witnesses did not sign the attakshi (exhibit H) that the peon was not in prosecution fifth witness's village between the 23rd and 30th November 1917 and that he was not treated with medicines by prosecution fifth and sixth witnesses in that village. Seeing that the appellant has not adduced any evidence (except the worthless testimony of defence second witness, a 'resigned' head constable, who says appellant told him one day ten months before the witness gave evidence that appellant was suffering from fever) to establish that he suffered from cholera and fever between 23rd and 30th November 1917, it is a very fair inference that the whole story of his opportune illness for just the one week's time that he overstayed the period allowed to him to return his process is all a myth. There can be no question that the attakshi (exhibit H) was prepared by the appellant with the false signatures

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of prosecution fifth and sixth witnesses in order to defraud the District Munsif into excusing his delay in returning processes and the absence of the appellant from duty between the 24th and 30th November 1917. The decisions in *Empress of India v. Jivanand*(1) and *Queen-Empress v. Girkhari Lal*(2) and other similar cases where false entries made to screen the accused from punishment for an offence already committed were held not to be offences are distinguishable and the soundness of those decisions is also doubtful, there being other decisions tending to support a contrary conclusion ; see *Queen-Empress v. Sabapathi* (3) and *Emperor v. Rash Behari Das*(4).

The question whether the false signatures were placed in exhibit H also 'dishonestly' need not be considered as they were clearly placed in exhibit H 'fraudulently' according to the rule laid down by the majority of the Full Bench of this Court in *Kotam Razu Venktarayulu v. Emperor*(5) and hence exhibit H was a forgery intended to cheat the District Munsif and was used by the appellant as a genuine document.

We affirm the conviction and sentence and dismiss the appeal.

N.R.

(1) (1833) I.L.R., 5 All., 221.

(2) (1833) I.L.R., 8 All., 653.

(3) (1888) I.L.R., 11 Mad., 411.

(4) (1908) I.L.R., 35 Cal., 450.

(5) (1905) I.L.R., 23 Mad., 90.