

REVISIONAL CRIMINAL.

1928
February,
25.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

MUHAMMAD HADI HUSAIN, MIRZA (ACCUSED-APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT).*

Criminal conspiracy—A person misappropriating jewellery given to him for deposit in a Bank—Another person aware of it but not informing the owner—Both persons, whether guilty of criminal conspiracy—Recovery of misappropriated jewellery—Jewellery whether to be returned to its owner—Jury's verdict—High Court's power to interfere with jury's verdict.

Property in respect of which criminal breach of trust is committed is as much stolen property as property the possession whereof has been transferred by theft according to the provisions of section 410 of the Indian Penal Code. Such property should be handed by the Criminal Court back to the possession of the real owner unconditionally.

It is not the practice of the High Court to interfere with a jury verdict if it is in any way a reasonable verdict, but where the verdict of the majority in a case is both unreasonable and perverse, the High Court should not have the slightest hesitation in setting it aside.

Where a person is aware of the fact that a large amount of jewellery has been handed over by a lady to another person in order that he might deposit it for safe custody in a Bank and of the fact that that person has pawned that jewellery and kept the proceeds, but not only does the person, who is aware, not inform the lady whose property has been misappropriated of the fact, although he is married to her grand-daughter but he tells her deliberate untruths upon the subject, the correct finding to be arrived at in these circumstances is that both those men were engaged in a criminal conspiracy.

*July Reference No. 1 of 1926.

Messrs. *St. G. Jackson* and *Iqbal Narain*, for the
appellant.

The Government Pleader (Mr. *H. K. Ghose*),
Messrs. *Brij Nath Shargha* and *Muhammad Zafar-ul-
Hasan*, for the Crown.

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STUART, C. J. and RAZA, J. :—The circumstances which have given rise to these appeal, reference and application are as follows. Nawab Qudsia Begam is a lady directly connected with the ex-Royal family of Oudh. She is a daughter of the late Prince Suleman Qadar, who was the younger brother of King Wajid Ali Shah. She is a very old lady, more than seventy years of age. She resides in Molviganj, Lucknow City, but has of late years spent a considerable portion of her time in visiting sacred places. She is possessed of considerable property. Amongst her numerous relations is the appellant Mirza Muhammad Hadi Husain, who is married to one of her grand-daughters. He has lived with her or near her for a considerable number of years. We have it in evidence (and the fact is admitted both by Mirza Muhammad Hadi Husain and by the other appellant Anandi Prasad) that Anandi Prasad, who is a Kayasth apparently of no means, entered into a partnership in 1917 with Muhammad Hadi Husain, and that they together opened a business in Lucknow for the sale of hosiery and wood. According to the lady's deposition she was not acquainted with the fact that her grand-daughter's husband Muhammad Hadi Husain, who is himself a member of the ex-Royal family, was engaged in a partnership with Anandi Prasad. In 1921 the lady took Anandi Prasad into her employment as her confidential servant and manager on a salary of Rs. 15 a month, which was subsequently raised to Rs. 30 a month. The partnership business admittedly was not successful after 1919. The

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business has now come to an end and there has been a considerable loss over it. According to the evidence, which is admitted as correct, the lady proceeded in July, 1924, from Lucknow first on a pilgrimage to Meshed to which she went *via* Lahore. She returned from Meshed to Lahore and thence went to Karachi whence she proceeded to Karbala. She returned to Lucknow in July, 1925. During her travels Muhammad Hadi Husain was usually with her. Anandi Prasad was occasionally with her. The case against these two men is as follows. According to the lady when she left Lucknow she handed over to Anandi Prasad through the hands of Muhammad Hadi Husain a box containing clothes and a box containing a large amount of jewellery. Anandi Prasad was instructed through Muhammad Hadi Husain to deposit the boxes for safe custody in a Bank. On the same day, according to the lady, she handed over to Anandi Prasad through Muhammad Hadi Husain thirty thousand rupees in Government currency notes with instructions that he was to retain the money at her disposal and despatch her such sums as she might require while she was on her travels. Admittedly a considerable portion of this jewellery was pawned with the firm of Khem Chand Gyan Chand in Sondhi Tola, Lucknow; some jewellery was pawned on the 6th of March, 1925, for Rs. 17,000; some more was pawned on the 31st of May, 1925, for Rs. 3,500 and some more was pawned on the 13th of June, 1925, for Rs. 6,000. Thus a total amount of Rs. 26,500 was raised upon this jewellery. It is admitted that Anandi Prasad pawned the jewellery and received the money. In the accounts of Khem Chand and Gyan Chand the transaction is entered as having been with Anandi Prasad personally; and it is further to be noted that as the interest on the advance fell due Anandi Prasad executed on more than one occasion promissory notes in favour

of the firm representing the amount so due. In respect of the thirty thousand rupees alleged to have been deposited with Anandi Prasad, the case for the prosecution is that Anandi Prasad remitted to the lady while she was on her travels some ten thousand rupees and that he has to this day not accounted for the balance. The lady returned to Lucknow, as we have said, in July, 1925, but she did not at once make inquiries in respect of the clothes or jewellery and she seems to have been equally remiss in obtaining an account from Anandi Prasad as to what had become of the balance of the thirty thousand. She got the clothes back at a comparatively early date; but according to her deposition she did not ask for the jewellery that had been deposited with the Bank for safe custody until April, 1927, when she required it. When Anandi Prasad was taxed in respect of the jewellery he admittedly wrote to the lady a letter (exhibit A), dated the 23rd of April, 1927, in which he said that during the lady's absence he had been implicated in a serious criminal case, that in that case he had to spend a large amount and that in order to save his life he had pawned her ornaments, and used the money for his own purposes. He asked to be forgiven. As a result, criminal proceedings followed. The lady directed these proceedings against Anandi Prasad, but in the course of the proceedings Muhammad Hadi Husain was also prosecuted. We have it that the lady, although she gave damaging evidence against Muhammad Hadi Husain in the course of the proceedings, has shown herself averse to his prosecution. In fact she has tried to shield him. In the result Anandi Prasad and Muhammad Hadi Husain were committed to Sessions at Lucknow jointly on a charge of conspiracy under section 120B and 409 of the Indian Penal Code. Anandi Prasad was tried separately on exactly similar charges under section 409 of the Indian Penal Code.

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According to the procedure which prevails in Lucknow, Anandi Prasad was tried by a jury in the case against him alone and he and Muhammad Hadi Husain were tried by assessors in the case against them. The jury acquitted Anandi Prasad by a majority of 3 to 2 and the same jurymen sitting as assessors gave a verdict of not guilty as against the two men in the other case. The learned Sessions Judge has convicted them both in the case which was jointly against them and has referred the verdict of the jury to us under the provisions of section 307 of the Code of Criminal Procedure. The hearing of the case in the Sessions Court was very protracted and we are constrained to observe that the Counsel who appeared for the defence devoted an altogether unnecessary amount of time to the cross-examination of witnesses. There was a most unnecessary delay caused by their action; for the most part as the cross-examination was valueless. In the case of the cross-examination of Nawab Qudsia Begam there is in addition the fact that it was protracted to a merciless extent, considering the fact that Nawab Qudsia Begam is a very old lady whose feelings the learned Counsel might have been expected to consider. As, according to the defence, she was a person who should have been commiserated, their action in subjecting her to such a cross-examination stands out as unjustified. The defence was as follows. Both the learned Counsel representing Anandi Prasad and the learned Counsel representing Muhammad Hadi Husain admitted that the lady had lost a large quantity of property owing to the shameless dishonesty of some person in whom she had every right to repose her confidence. Anandi Prasad, however, maintained that that person was Muhammad Hadi Husain and that he was an innocent victim. Muhammad Hadi Husain maintained that the person was Anandi Prasad and that he

was a victim of a false charge. On each side the defence endeavoured to show that its particular client was a simple unsophisticated person, unspotted by the world, who had been made the victim of the other man accused who in each case was represented to be a designing villain. On this general point it is sufficient to say that both men are between thirty and forty years of age, that on their own showing they were engaged together in conducting a business establishment in Lucknow, and that they were both well acquainted with money matters, the procedure in Banks and the like. The first question to decide is the amount of credence to be attached to the evidence of Nawab Qudsia Begam. We have been taken at length through portions of her deposition. We are satisfied that the old lady is by no means unintelligent. Though she is very old, her mind is clearly well preserved. She appears to us to be truthful on all main points. She undoubtedly is a woman of very little capability of looking after herself, and inclined to place implicit reliance in her servants and relations. We see no reason to doubt the absolute accuracy of her statement that she handed over this box of jewellery to Muhammad Hadi Husain in order that he should give it to Anandi Prasad and that she handed over thirty thousand rupees to Muhammad Hadi Husain also to deliver to Anandi Prasad with certain instructions. The first responsibility was thus with Muhammad Hadi Husain, but the guilt of Anandi Prasad in respect of the jewellery is established absolutely by the admissions which he made in exhibit A. There, as we have said, he stated that he had pledged the jewellery and utilized the money for his own purposes; but while admitting this he made a statement which was false. He said that he had been implicated in a serious railway criminal case and had used the money for his defence. It is now admitted that, although he was suspected of having been

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a participant in some elaborate frauds, which were perpetrated upon a railway company in Lucknow and formed the subject of a somewhat sensational case, which was decided a few years ago, he was never actually prosecuted. The fact remains that, although he gave a false account as to how he had expended the money obtained by pawning the ornaments; he admitted that he did pawn the ornaments and kept the proceeds. Further in respect of the thirty thousand rupees there is on the record a memorandum (exhibit C), dated the 24th of July, 1925, in Anandi Prasad's handwriting and signed by him. This is not exactly a receipt and does not require a stamp. It is an acknowledgement that he has received thirty thousand rupees from the lady for the purpose of utilizing the amount in making remittances to her while she was on her travels.

Unless exhibit A and exhibit C can be explained away, it is difficult to see how the case as against Anandi Prasad of having committed criminal breach of trust is not proved absolutely. According to him now he never received the jewellery and he never received thirty thousand rupees. He says that the jewellery was handed over to him by Muhammad Hadi Husain with instructions that he was to pawn it, and despatch out of the proceeds money which the lady required. It is to be noted that this was not what he said to the lady in exhibit A. Further it is admitted now that if he received thirty thousand rupees from the lady on the 24th of July, 1925, he certainly has not been able to account for the whole of that amount. He says that he sent her more than ten thousand rupees. We find upon the facts that he did not do so, but on his own showing he did not send as much as thirty thousand. What is his explanation? The explanation which he advances is that he was so much under the domination of Muhammad Hadi Husain that he was ready to sign anything or to

do anything which Muhammad Hadi Husain directed him to do and that he accordingly wrote and signed exhibit A, which he admits is in his handwriting, to oblige Muhammad Hadi Husain. According to him he was ready to incriminate himself because he was terrified of Muhammad Hadi Husain. In respect to exhibit C he says that he also wrote that, but not till 1927, because he was terrified and under the domination of Muhammad Hadi Husain. There is no evidence to support the statements. We have only Anandi Prasad's bare word upon the subject. His statements throughout the case appear to us to be completely false. It would be difficult in our opinion to find a more untruthful man than he is. We find that he has been completely unable to explain away his admissions in exhibit A and exhibit C, and that the case is fully proved against him. It is not the practice of this Court to interfere with a jury verdict, if it is in any way a reasonable verdict, but the verdict of the majority in this case was both unreasonable and perverse, and we have not the slightest hesitation in setting it aside. This conclusion disposes of the reference. But in order to bring the case of conspiracy home against Anandi Prasad it is necessary to prove the guilt of Muhammad Hadi Husain, for if the case against Muhammad Hadi Husain is not made out there could have been no conspiracy. As against Muhammad Hadi Husain we have the following facts. On our finding Anandi Prasad committed criminal breach of trust as an agent in respect both of the jewellery and of the money. It was a gross case of breach of trust. Anandi Prasad was so much in the confidence of Muhammad Hadi Husain that Muhammad Hadi Husain had taken him into partnership in 1917. There are letters proved between the parties which show that Muhammad Hadi Husain and Anandi Prasad were on the terms of the greatest intimacy. On our finding both the jewellery

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and the money passed to Anandi Prasad through the hands of Muhammad Hadi Husain. We have it that on the 26th of June, 1926, Muhammad Hadi Husain wrote to Anandi Prasad a letter (exhibit P) which was produced from the custody of Anandi Prasad. We agree with the learned trial Judge that this letter was written to Anandi Prasad. In it Hadi Husain said that he had promised to get the jewellery, which had been pawned through Anandi Prasad, redeemed in the beginning of July, 1926, that he could not raise the money to redeem it and that the best thing to do would be to let the jewellery be sold. On this letter alone we find that the two men had conspired in respect of the jewellery. There is further a letter sent from Karbala by Muhammad Hadi Husain to Anandi Prasad. This is dated the 30th of April, 1925. The letter is a very long one. It contains some remarkable admissions. This letter was also found from Anandi Prasad. It is proved to have been written and was admittedly written by Muhammad Hadi Husain. We must consider the circumstances prevailing at the time that it was written. The hosiery and wood business was at that time practically bankrupt and there was no income accruing from it. Anandi Prasad had, however, received from Nawab Qudsia Begam a considerable amount of valuable jewellery and thirty thousand rupees. In this letter Hadi Husain tells Anandi Prasad to bring two thousand rupees for him while he is in Karachi. He also informs Anandi Prasad that out of four thousand rupees which Anandi Prasad had remitted to Nawab Qudsia Begam he (Hadi Husain) had abstracted one thousand for himself and had altered the figures in the letter sent by Anandi Prasad from four thousand to three thousand. There are other incriminating passages. This letter considerably strengthens the case against Muhammad Hadi Husain. When Nawab Qudsia Begam was trying to get the jewellery

back she asked Hadi Husain as to what had happened to it. Hadi Husain told her that Anandi Prasad had deposited the jewellery in a Bank. It is perfectly clear from exhibit P that Hadi Husain knew perfectly well that the jewellery had been pawned by Anandi Prasad; and we have further the evidence of Gyan Chand that after Hadi Husain had returned to Lucknow he saw Hadi Husain with Anandi Prasad and that Hadi Husain had told him not to trouble himself as to the return of his money as the matter was all right. As against this the learned Counsel, who has represented Hadi Husain, has pointed out that the jewellery was actually pawned on dates when Hadi Husain was not in India. That is so, but that circumstance does not materially alter the case. The learned Sessions Judge has tried the case with very great care. He has weighed the evidence most carefully and his conclusions are well-reasoned. In respect of such a charge as this one of conspiracy direct evidence is naturally difficult to obtain and such a charge must depend largely, as it does here, on circumstantial evidence. We find that in this case a man of high family and position has joined in business partnership a man of no family or position, and that they have conducted a business together which has ended in a total loss. Hadi Husain has since become an insolvent. We find that the smaller man has undoubtedly committed criminal breach of trust in respect of money entrusted to him by his principal who is the grandmother of his partner's wife and that out of the same money entrusted to the smaller man the high born man has embezzled a portion. We further find that, although Hadi Husain was aware of the fact that this large amount of jewellery had been handed over to Anandi Prasad in order that he might deposit it for safe custody in a Bank and of the fact that Anandi Prasad had pawned that jewellery and kept the proceeds; and we find not only did he not inform

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the lady, whose property had been misappropriated, of the fact, although he is married to her grand-daughter, but that he told her deliberate untruths upon the subject. In these circumstances we consider that the learned Judge has arrived at a correct finding when he has determined that both these men were engaged in a criminal conspiracy. We accordingly set aside the verdict of the jury and convict Anandi Prasad on charges under section 409, Indian Penal Code. We sentence him on each charge to a sentence of five years' rigorous imprisonment. The sentences will run concurrently. As he has already been convicted on the same charges in the other case his sentences in this case will run concurrently with his sentences in the other case. Thus in setting aside the jury reference we are not inflicting any further punishment on Anandi Prasad. We merely correct a perverse verdict. With regard to the sentences which have already been pronounced on Anandi Prasad and Hadi Husain by the learned Sessions Judge, we see no reason to reduce them. The sentences are heavy, but they are deservedly heavy. It would be difficult to find a more deliberate, cruel or ungrateful instance of criminal breach of trust. Nawab Qudsia Begam is a very old lady. She appears to have treated Anandi Prasad with unfailing consideration and kindness and she appears to have treated Hadi Husain with generosity. They have combined together to try and obtain dishonestly as much as they could possibly obtain from a defenceless old lady, whom they were under an obligation to protect, and we are not disposed to reduce their sentences. It is of course a matter for regret that a man, such as Hadi Husain of high family and high position should sink, as he has sunk, and has been found capable of committing such a dastardly offence. We sympathize with his family for the disgrace which he has brought on them, but we do not sympathize with

him. We consider that in the interests of the public his sentence should be carried out as it stands and that no consideration of his high birth or his previous position should operate for its reduction. We accordingly dismiss these appeals. We have still to determine one matter. The learned Sessions Judge has directed that such jewellery as was recovered from the possession of the firm Khem Chand and Gyan Chand should be restored to Nawab Qudsia Begam and the firm in the application, which we are now deciding, have asked us to set aside that order. We see no reason to set it aside. Property in respect of which criminal breach of trust has been committed is as much stolen property as property the possession whereof has been transferred by theft according to the provisions of section 410 of the Indian Penal Code. The learned Sessions Judge has applied the rule which governs a case such as this. Such property should be handed by the Criminal Court back to the possession of the real owner unconditionally. Where there is a *bona fide* dispute as to title the procedure may be different, but here there is no doubt as to the fact that the jewellery in question is the property of Nawab Qudsia Begam. She handed it over through Hadi Husain to Anandi Prasad in order that Anandi Prasad might deposit it for the safe custody with a Bank. Instead of so doing he retained it himself, and committed criminal breach of trust in respect of it. It has been rightly restored to her. We dismiss Criminal Miscellaneous Application No. 9 of 1928. This concludes the matters before us.

Appeal dismissed

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