

In the case of *Bahal Singh v. Emperor* (1) two persons armed with deadly weapons made an attack upon another and it was proved that death was caused by a blow inflicted by only one of them. Sir HENRY RATTIGAN, C. J. and ABDUL RAOOF, J. of the Punjab Chief Court held that the one who struck the blow was guilty of murder and the other who must have known that grievous hurt would in all probability be caused is guilty of having abetted an offence under section 325, read with section 109, I. P. C. Although in this case the learned Judges interpreted section 34 as meaning that the criminal act must be done by all the accused, a view with which with respect, we disagree, it is clear that the accused who did not strike the deceased was held to have abetted an offence under section 325 and not murder.

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We therefore dismiss the appeal of Raja Ram but accept that of Sheo Prasad and Sarda in so far that we alter their conviction from one under section 302/34, I. P. C. to one under section 325 read with section 109, I. P. C. and reduce their sentences to rigorous imprisonment for three years each.

Appeal partly allowed.

APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas, Chief Judge and
Mr. Justice Ziaul Hasan*

BABU RAJA MOHAN MANUCHA AND OTHERS (APPLICANTS)
v. BABU MANZUR AHMAD KHAN AND OTHERS
(OPPOSITE-PARTY)*

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October, 27

Civil Procedure Code (Act V of 1908), Order 45, rule 7—Privy Council Rules, rule 9—Court's power to extend time for filing security or making up deficiency in it.

Under rule 9 of the Privy Council Rules the Chief Court of Oudh has full discretion to extend the time for filing the security in a Privy Council Appeal or to extend the time to make good the deficiency in the security.

*Privy Council Appeal No. 16 of 1937, for leave to appeal to His Majesty in Council.

(1) (1919) 20 Cr. Law J., 711.

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Mr. *M. H. Kidwai*, for the appellants.Mr. *Abrar Husain*, for the respondents.

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THOMAS, C. J. and ZIAUL HASAN, J.:—The applicants were ordered to deposit security in the Privy Council Appeal No. 16 of 1937. They deposited 3 per cent. Government promissory bonds on the 16th September, 1938. The limitation for depositing this amount expired on the 19th September, 1938. The office on inquiry from the Imperial Bank of India, Ltd., Lucknow, as to the market rate of the bonds discovered that there was a deficiency of Rs.90 in the security money. A sum of Rs.60 was due as interest on these bonds, so strictly speaking there was only a deficiency of Rs.30. The learned counsel for the applicants was informed on the 19th September, 1938, of this deficiency, and on the 20th September, 1938, he deposited the deficit amount. The office now wants directions whether under the provisions of Order XLV, rule 7, the deficit deposit may be treated within time for the purposes of the appeal.

The learned counsel for the opposite party has no objection to this Court extending the time for depositing the deficit amount.

The contention of the learned counsel for the applicants is that under Order XLV, rule 7, this Court has discretion to extend the time for accepting the deficit amount, and in support of his contention he relies on the case of *Nilkanth Balwant Natu v. Shri Satchidanand Vidya Narsinha Bharati* (1). It was held in that case that there was no express penalty provided by Order XLV, rule 7, for failure to furnish security and to deposit the amount for expenses within the time therein mentioned. It was therefore in contrast with Order XLV, rules 10 and 11, which provide in rule 11 that if the further security required by rule 10 was not given then the proceedings would be

(1) (1927) I.L.R., 51 Bom., 430.

stayed and the appeal was not to proceed without an order of His Majesty in Council. Rule 9 of the Privy Council rules is as follows:

“Where an appellant having obtained a certificate for the admission of an appeal, fails to furnish the security or make the deposit required (or apply with due diligence to the Court for an order admitting the appeal) the Court may, on its own motion or on an application in that behalf made by the respondent, cancel the certificate for the admission of the appeal, and may give such directions as to the costs of the appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises, as in the opinion of the Court, the justice of the case requires.”

It was held in the Bombay case that the Privy Council Rules were passed as the preamble shows in pursuance of the English Act of Parliament, 4 William IV. It was therefore held that rule 9 should be given preference over Order XLV, rule 7. This case undoubtedly supports the contention of the learned counsel for the applicants. In our opinion under rule 9 of the Privy Council Rules we have full discretion to extend the time for filing the security or extend the time for ordering the applicants to make the deficiency good. The deficiency has already been made good by the applicants.

We accordingly order the office to accept it.

Application allowed.

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*Thomas,
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