

APPELLATE CRIMINAL.

Before Mr. Justice Shadi Lal, Chief Justice, and Mr. Justice
Dundas.

1920

PAHLAD—Appellant,

versus

June 14.

THE CROWN—Respondent.

Criminal Appeal No. 329 of 1920.

Criminal Procedure Code, Act V of 1898, sections 235(1) and 537
—misjoinder of charges at one trial—vitiates whole trial and is not a
mere irregularity—meaning of “same transaction.” explained.

Accused (appellant) was anxious to marry the daughter of one Jagan Nath, but her father objected and arranged to marry her to another man in February 1920 and on 31st January the ceremony of *lagan*, which precedes the actual marriage by a few days, was celebrated. On 2nd February, between noon and 1-30 P.M., accused gave some sweetmeat poisoned with arsenic to Amir Singh, aged 9 years, and on the same day about 5 P. M. he gave a similar sweetmeat to Dalip Singh, aged 12 years, both being sons of Jagan Nath. After eating the sweetmeats the 2 boys were taken ill. Dalip Singh recovered but Amir Singh died the next day. The Sessions Judge tried the accused at one trial for both offences, namely, the murder of Amir Singh and the attempt to murder Dalip Singh, and convicted him of both offences. On appeal to the High Court it was contended that the joint trial was contrary to law and therefore altogether illegal.

Held, that if the joint trial of two offences is contrary to the express provisions of the law, their joinder vitiates the whole trial, and the mere fact that the accused has not been prejudiced by the procedure is not a valid ground for condoning the defect.

Subrahmanya Ayyar v. King-Emperor (1), followed.

Held further, that no hard and fast rule can be laid down for determining the question whether the charges in a particular case constitute one “transaction.” The answer to the question depends, to a large extent, upon the peculiar circumstances of each case. The word “transaction” in section 235 (1) of the Code of Criminal Procedure suggests not necessarily proximity in time so much as continuity of action and purpose. It is not necessary that the acts constituting the crimes should have been committed on the same occasion; but it is sufficient that, though separated by a distinct interval of time, they are closely connected

by continuity of purpose and progressive action towards a single object.

Emperor v. Sherufalli Allibhoy (1), and *Emperor v. Datto Hanmant* (2), referred to.

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Held also, that upon the facts of the present case the trial did not transgress the rules as to the joinder of charges because the charges in this particular case did constitute one transaction.

Appeal from the order of J. Coldstream, Esquire, Sessions Judge, Delhi, dated the 19th April 1920, convicting the appellant.

DEVRAJ SAWHNEY, for Appellant.

ASSISTANT LEGAL REMEMBRANCER, for Respondent.

The judgment of the Court was delivered by—

SHADI LAL, C. J.—The Sessions judge of Delhi has convicted the appellant, Pahlad, of two offences, namely, the murder of a boy, Amir Singh, aged nine years, and an attempt to murder his (Amir Singh's) elder brother, Dalip Singh, aged about twelve years, and has sentenced the convict under section 302, Indian Penal Code, to death, but has not considered it necessary to inflict any sentence in respect of the latter offence. We have before us an appeal preferred by the convict through his counsel, Mr. Devraj Sawhney, and also a reference made by the Sessions Judge under section 374, Criminal Procedure Code, for confirmation of the capital sentence.

The story for the prosecution is simple and lies within a narrow compass. The appellant, Pahlad, is a *kalal* residing in the town of Delhi, and belongs to the same brotherhood as Jagan Nath, the father of the two boys. There is sufficient evidence upon the record that about two years ago there was a talk of marrying Jagan Nath's daughter, *Mussammatt Sheorani, alias Sorani*, to the appellant, but the idea was given up a few months before the occurrence in question, because the parents of the girl had learnt that the appellant was a young man of a loose character. They then betrothed the girl to a man at Gwalior and decided to solemnise the marriage in February 1920. The cere-

(1) (1902) I.L.R. 27 Bom. 185.

(2) (1905) I.L.R. 30 Bom. 49.

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mony of *lagan*, which precedes the actual marriage by a few days, was performed on the 31st January 1920, and this ceremony left no doubt that the girl was not going to be married to the appellant. The refusal of the parents to give their daughter in marriage to the appellant, and their determination to solemnise her marriage with another person caused resentment to the convict who apparently made up his mind to take his revenge.

On the 2nd of February 1920 Jagan Nath's eldest son, Hem Chandar, who kept a shop for selling *pan*, left the shop in charge of his brother, Amir Singh, at about noon, and went home to take his breakfast. Upon his return at about 1-30 p. m. Amir Singh told him that he had been vomiting. Hem Chandar thereupon sent his brother home, and the latter upon an inquiry by his mother, Amar Devi, told her that Pahlad had given him a cake of *sohan halwa* to eat when he was alone at the shop. The mother, however, attached no importance to this matter and thought that the boy's illness might be due to cold.

The other boy, Dalip Singh, who goes to school, returned home at about 3 p. m. and went to Hem Chandar's shop at about 5 p. m. After purchasing some tobacco for Hem Chandar, Dalip Singh left the shop at sunset, and was joined on his way home by two other boys, Kesho (P. W. 8) and Rajindar Singh (P. W. 9). The three had not gone very far, when they were called across the road by the appellant, Pahlad, who was then sitting under a *pipal* tree close to the road. Pahlad offered all three boys *halwa sohan*. Dalip Singh took a cake and ate it. Rajindar Singh also accepted a piece but threw it away because it appeared that somebody had been eating it. The third boy, Kesho, declined to accept the sweetmeat offered to him.

Dalip Singh did not fall ill at once, but went home and then brought Hem Chandar's dinner to his shop. While returning from the shop he vomitted and upon reaching his house he also purged.

There is ample evidence upon the record that both the boys were sick the whole night, vomiting and purging frequently. Their relatives requisitioned the services of a medical man, Dr. Ata Ullah (P. W. 12)

who found that the boys had symptoms of collapse—sweating and weak pulse—and was of opinion that they were suffering from the effects of poison. He accordingly advised the relatives that the victims should be sent to the Civil Hospital at once. This advice, was, however, not accepted ; and it was not until 11 A. M. the next morning that the boys were taken to the hospital where Amir Singh died shortly after his admission into it. The elder boy, Dalip Singh, recovered from his illness, and has appeared as a witness for the prosecution.

Now, the medical evidence shows that the death of Amir Singh was due to arsenical poisoning, and the report of the Chemical Examiner leaves no doubt that white arsenic was found in the intestines and stomach of the deceased, and arsenic in his liver and kidney. The Chemical Examiner detected white arsenic also in the vomit which was removed from the *kothri* in which Dalip Singh had been vomiting at night.

The learned Sessions Judge has tried the appellant at one trial for two offences, namely, the murder of Amir Singh and an attempt to murder Dalip Singh ; and this joinder of charges is objected to by the learned counsel for the appellant as contrary to the provisions of law. Now, it is clear that if the two offences could not be tried together, their joinder would vitiate the whole trial ; and the mere fact that the accused has not been prejudiced by this wrong procedure would not constitute a valid ground for condoning the defect. The attention of the learned Sessions Judge, who apparently relied upon the absence of prejudice in support of the procedure adopted by him, is drawn to the judgment of their Lordships of the Privy Council in *Subrahmaniam Ayyar v. King-Emperor* (1) which lays down the rule that the disregard of an express provision of law as to the mode of trial is not a mere irregularity such as could be remedied by section 537 of the Criminal Procedure Code, and that a trial conducted in a manner prohibited by law must be treated as altogether illegal.

We are, however, satisfied that this trial does not transgress the rules as to the joinder of charges laid

(1) (1901) L. L. R. 25 Mad. 61 (P. C.)

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down in the Criminal Procedure Code. Sub-section (1) of section 235, Criminal Procedure Code, prescribes that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence; and upon the facts of this case we are of opinion that both the offences, with which the appellant was charged, formed part of the same transaction. The Code does not define the word transaction, but it has been often pointed out that no hard and fast rule can be laid down for determining the question whether the charges in a particular case should be treated as constituting one transaction. The answer to the question must depend, to a large extent, upon the peculiar circumstances of each case. The word 'transaction' suggests not necessarily proximity in time so much as continuity of action and purpose, that is to say, it is not necessary that the acts constituting the crimes should have been committed, all on the same occasion, but it is sufficient that, though separated by a distinct interval of time, they are closely connected by continuity of purpose and progressive action towards a single object—*vide, inter alia, Emperor v. Sherufalli Allibhoy* (1) and *Emperor v. Datto Hanmant* (2).

Now in the case before us there can be no doubt that the appellant had no sort of grudge against the two boys personally, and that they were poisoned simply because they happened to be the sons of Jagan Nath who had offended the convict by declining to give him his daughter in marriage. It is clear that the culprit's object was to injure the father, and finding that he could not injure him directly, decided to take his revenge by poisoning his sons. He accordingly mixed arsenic in *sohan halwa* and gave one cake to the younger boy, when he was sitting alone at the shop, and then another to his elder brother a few hours afterwards. We consider that in both the acts there was a continuity of purpose and action and that the trial is not open to any valid objection.

[*The remainder of the judgment is not required for the purpose of this report.*]

A. N. C.

Appeal dismissed.