

condition under his betrothal within the stipulated time, his betrothal becomes void and the second betrothal can then take effect, although there is no bill of divorcement from the man who was first conditionally betrothed. It is clear from this text that there is no need for a bill of divorcement where a conditional betrothal has become null and void by failure on the part of the man to fulfil the conditions of the betrothal. Where a betrothal is declared by the Court to be null and void, as in the present case, it would be superfluous, in my opinion, to insist upon a bill of divorcement from the appellant.

I agree with the order proposed by the learned Chief Justice.

Attorneys for appellant: Messrs. *Solomon & Co.*

Attorneys for respondent: Messrs. *Thakordas & Madgarkar.*

*Decree varied.*

B. K. D.

## ORIGINAL CRIMINAL.

*Before Mr. Justice Barlee.*

EMPEROR v. GANESH RAGHUNATH VAISHAMPAYAN AND OTHERS.\*

*Indian Evidence Act (I of 1872), section 10—Conspiracy—"Intention"—Statements "in reference to their common intention"—Statements as to contemplated future action relevant—Statements as to past acts, not relevant.*

Statements coming from any of the conspirators as to their past acts cannot be said to have a reference to their common intention. The word "intention" implies that the act intended is in the future, and section 10 of the Indian Evidence Act makes relevant, statements made by a conspirator with reference to the future. The words "in reference to their common intention" in the section, mean in reference to what at the time of the statement was intended to be done in the future.

*Emperor v. Abani Bhushan Chuckerbutty*<sup>(1)</sup> and *Sital Singh v. Emperor*,<sup>(2)</sup> followed.

*Emperor v. Shaif Ahmed*,<sup>(3)</sup> referred to.

Several persons were prosecuted for forming a conspiracy to commit various criminal acts, *inter alia*, to murder, or attempt to murder police officers by means of firearms and other weapons. At the trial one of the accused, who

\*Second Criminal Sessions of 1931: Case No. 18.

<sup>(1)</sup> (1910) 83 C.L. 169.

<sup>(2)</sup> (1918) 46 Cal. 700.

<sup>(3)</sup> (1925) 81 Bom. L. R. 515 at p. 519.

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had turned an approver, in the course of his evidence, deposed to a statement made to him by another accused, who was absconding at the date of the trial, as to the shooting at a police officer and his wife. He further deposed to a statement made by the same accused as to starting a propaganda by publishing a pamphlet in furtherance of the common object of the conspiracy. That pamphlet was also to contain a narrative of the attack made on the police officer. On an objection being taken as to the admissibility of these statements :

*Held*, that, under section 10 of the Indian Evidence Act, the narrative as to the shooting incident was not admissible in evidence as it had no reference to the common *intention*. It was permissible to prove what the propaganda was to be. If the pamphlet was to contain an account of the attack already made, it would also be permissible to prove what the conspirators' version of the attack was, not as a narrative of past events, but as a statement of what one of the conspirators intended to publish in future in reference to their common intention.

#### LAMINGTON Road Shooting conspiracy case.

On October 9, 1930, a police officer and his wife were wounded by revolver shots near the Police station at Lamington Road in Bombay. These shots were fired by some persons who were in a motor car which was standing on the opposite side of the Road. As a result of the investigation into that incident several persons were arrested and placed on trial. The accused who were 7 in number were charged, *inter alia*, under section 120B of the Indian Penal Code. One of the charges against them was that they, between the months of March and October 1930, had formed a criminal conspiracy in Bombay by agreeing with each other and with (1) Moghe, (2) Budhiman, (3) Swamirao, (4) Sharda, (5) Vishwanath Rao and (6) Purshottam, to do various criminal acts, more particularly the following, viz. :

(a) to compose, publish and disseminate, seditious and revolutionary dialogues, songs, ballads, and other literature to incite the public to commit acts of violence and other offences;

(b) to collect firearms, ammunition and other weapons in violation of the provisions of the Indian Arms Act of 1878 and to give instructions for their use;

(c) to murder or attempt to murder or cause hurt to police officers by means of firearms and other weapons. Out of the above accused Moghe had become an approver, and those numbered 2 to 6 were absconding at the date of the trial.

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At the trial the prosecution proposed to prove through the approver, Moghe, certain statements made to him by Swamirao on October 9, 1930, at his place where Swamirao had gone with Budhiman after the shooting. Those statements referred to what they had done and as what they proposed to do in future by publishing a pamphlet about the incident.

*M. S. Pandit*, for accused No. 1, and *Chagla* for accused No. 7 objected to these statements being deposed to on the ground that they were not admissible in evidence.

*Pandit*, for accused No. 1 :—These statements are not admissible as they are in the nature of a confession. Any statement made by Swamirao, who is alleged to be one of the conspirators, and which is in the nature of a confession can only be relevant if he is being jointly tried along with the other accused: section 30 of the Indian Evidence Act. Swamirao, not being present at the trial, has no opportunity to cross-examine the approver.

*Chagla*, for accused No. 7 :—The statement made by Swamirao to Moghe cannot be proved as he is neither a witness nor is he being tried jointly with the others. The evidence would be merely hearsay and as such inadmissible. These statements cannot be rendered admissible under section 10 of the Indian Evidence Act because the conspiracy had already come to an end at the time when they were alleged to have been made. That section only makes admissible statements by the

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conspirators while the conspiracy is pending :  
*Emperor v. Abani Bhushan Chuckerbutty.*<sup>(1)</sup>

*S. G. Velinker* and *R. J. Mathalone*, for the Crown :—  
 The statement is admissible under section 10 of the Indian Evidence Act. The statement relates to one of the facts in issue and as such is relevant under section 5 of the Act. Under section 10 anything said, done or written by any conspirator in reference to their common intention after the time when the intention was first entertained by any one of them is a relevant fact. The statement sought to be deposed to satisfies the requirements of section 10. Indian law goes further on this point than English law which renders relevant only those statements which are made in furtherance of the conspiracy.

The case of *Emperor v. Abani Bhushan Chuckerbutty*<sup>(1)</sup> is distinguishable from the present case. In that case the statement was made by a conspirator after his arrest and after the conspiracy had come to an end. In the case before the Court, the conspiracy had not ended when the statement was made. The law laid down in that case is not correct and that decision not being binding on this Court should not be followed.

*Chagla*, in reply.

C. A. V.

BARLEE, J. :—An objection has been raised to the proof by the approver of some of the statements made to him by a man called Swamirao, who is alleged to have been a co-conspirator but is not an accused before this Court. The statements had reference to the alleged attack on the Lamington Road police station and were alleged to have been made after the return of the attacking party to the approver at his residence. The objection

<sup>(1)</sup> (1910) 38 Cal. 169.

is that such statements made after the completion of the attack do not come within section 10 of the Indian Evidence Act, inasmuch as they were not made in reference to the common intention of the conspirators. For the Crown Mr. Velinker argues that any statement made by any one of the conspirators is a relevant fact so long as it is made after the time when the intention of the conspirators was first entertained by any one of them.

Reading section 10 it appears to me that narratives coming from the conspirators as to their past acts cannot be said to have a reference to their common intention. The word "intention" implies that the act intended is in the future and the section makes relevant statements made by a conspirator with reference to the future. I interpret the words "in reference to their common intention" to mean in reference to what at the time of statement was intended in the future. This appears to me the *ratio decidendi* of the Calcutta cases, *Emperor v. Abani Bhushan Chuckerbutty*<sup>(1)</sup> and *Sital Singh v. Emperor*,<sup>(2)</sup> though the full argument is not contained in the judgments of their Lordships. On principle this interpretation seems to be correct. The principle on which section 10 is based is that of agency—see the extract from the judgment of Mr. Justice Crump at page 519 in *Emperor v. Shafi Ahmed*<sup>(3)</sup> :—

"when concert has once been proved, each party is the agent of all the others, and acts done by him in pursuance of the common design are admissible against his fellow conspirators."

It can scarcely be said, however, that one conspirator has any implied authority to make a confession after his arrest in the case of *Emperor v. Abani Bhushan Chuckerbutty*,<sup>(1)</sup> or even as in this case to give a description of past events to his co-conspirator.

<sup>(1)</sup> (1910) 38 Cal. 169.

<sup>(2)</sup> (1918) 46 Cal. 700.

<sup>(3)</sup> (1925) 31 Bom. L. R. 515.

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But this ruling does not suffice for a decision as to all the portions of the record of the committing Magistrate to which the learned counsel for the defence object. It is not the case for the Crown that the object of the conspiracy was achieved by the attack on the police-station. That, it is said, was merely an incident. I find the following passage in the record of the committing Magistrate :—

"Bapat told Swami to continue this for eight days and then to lie low."

And later on Swamirao said :—

"It is essential that a pamphlet should be written about this and be distributed."

From this it appears that Swamirao proposed to start propaganda in furtherance of the objects of the conspiracy. It is permissible under section 10 to prove what that propaganda was to be; and if the pamphlet was to contain an account of the attack on the Lamington Road police-station, the prosecution must be entitled to prove what that version was, not as a mere narrative of past events but as a statement which Swami intended to publish in the future in reference to the common intention.

B. K. D.

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## ORIGINAL CIVIL.

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*Before Sir John Beaumont, Chief Justice.*

IN RE RUDIBAI RUPJI SUNDERJI.\*

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*Court-fees Act (VII of 1870), Schedule I, Article 11, Schedule III, section 19 H—  
 Probate duty—Judgment-debt—Valuation of debt for purposes of probate duty  
 if its recovery is doubtful.*

Where the legal representative of a deceased person is of opinion that a judgment debt due to the estate of the deceased is not likely to be recovered in full, he is entitled to state what he considers to be the fair value of that debt and to apply for probate on that basis. If the revenue authority is not satisfied with that estimate he can deal with the matter under section 19 H of the Court-fees Act.

\*Petition No. 57 of 1931.