

## CRIMINAL REVISION.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Caspersz.

1909  
July 15.

RAJANI KANTA DUTT

v.

EMPEROR.\*

*Transfer of Criminal Case—Grounds of Transfer—Opinion arrived at in another but similar case on other evidence—Criminal Procedure Code (Act V of 1898) s. 526.*

The doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial is a sufficient ground for transfer is sound, but in applying it regard must be had to the circumstances of each case.

The mere fact that in another case, on other evidence, the Judge has come to a particular conclusion is not in itself a sufficient ground for transfer.

*Asimuddi v. Govinda Baidya* (1) referred to.

ONE Abhoy Charan Santra was alleged by the prosecution to be a professional forger who used to forge, or cause to be forged, hand-notes purporting to be executed in his favour by his enemies or the enemies of those who solicited his services for that purpose. His house was searched, and eight completed hand-notes, ostensibly executed by different persons in his favor, and several such documents in an unfinished state, were found. Among them were two notes purporting to be executed by one Khoda Bux for Rs. 50 and by Sital Prosad Ghose for Rs. 725, respectively, and three notes by Prahlad Das and his aunt, Teni Mayi, Jadu Pal and Mahendra Pal and his brother, Hriday, tenants of the petitioner, for various sums. A number of prosecutions was, thereupon, instituted on account of these notes. In the first of these cases Abhoy was committed with one Jogeswar, charged under sections 467 and 474, Indian Penal Code, in respect of the note (Ex. 2) bearing Sital Prosad's signature, and with Basanta Kumar Samanta, charged under sections 467,  $\frac{4}{1} \frac{0}{0} \frac{7}{9}$  and 474, Indian Penal Code, in respect of the

\* Criminal Revision No. 93 of 1909.

(1) (1897) 1 C. W. N. 426.

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note (Ex. 5) containing Khoda Bux's signature. The offences were tried separately by Mr. E. E. Forrester, Sessions Judge of Bankura, who convicted the respective accused in two judgments passed on the 12th June 1909, and sentenced them to five years' rigorous imprisonment. In both trials, he admitted in evidence the other hand-notes found in Abhoy's house and held them to be forgeries.

In *Emperor v. Jogeswar and Abhoy* he made the following observations :—

"As evidence of guilty knowledge and system I would refer to the cases of Jadu Pal, Prahlad Das and Mahendra Pal. Notes of hand purporting to be executed by these men were found in Abhoy's house (Exs. 7, 8 and 6). They all deny execution, and the surrounding circumstances established go to show that their statements are true. It is shown that they were all simultaneously involved in a dispute with the landlord, Rajani Kanta Dutt, naib-nazir of this Court, and it is proved by letters found both in Abhoy's and Dutt's houses that these men were friends, and were in correspondence with each other about some litigation. I hold that these three documents are all forgeries. I am satisfied that other notes of hand found in Abhoy's house were forgeries to Abhoy's knowledge, and it is, therefore, a fair inference based upon this circumstance and the other evidence in the case, that Abhoy knew that Ex. 2 was a forgery."

In his judgment in *Emperor v. Basanta Kumar Samanta and Abhoy Charan Santra* there was the following passage :—

"Should, however, the charge of forgery fail in the Appellate Court, I may say that I am satisfied upon the evidence produced that the notes of hand found in Abhoy's house, which purport to bear the signatures (i) of Prahlad and his aunt, Teni Mayi, (ii) of Jadu Pal, and (iii) of Mahendra Pal and his brother, Hriday, are forgeries; and, therefore, even if there were no other evidence, it is a just inference from the existence of these forgeries in Abhoy's possession that he knew that Ex. 5 was a forgery."

The petitioner was committed by the Additional District Magistrate of Bankura charged under sections  $\frac{467}{169}$  of the Penal Code with abetment of the forgery of a hand-note purporting to be executed by the said Prahlad Das and his aunt, Teni Mayi, in favour of Abhoy, and the case stood for hearing, in the file of Mr. Forrester, on the 28th June.

A Rule was issued by CASPERSZ and RYVES JJ. on the District Magistrate of Bankura to show cause why the case against the petitioner should not be transferred for trial to the Assistant Sessions Judge on the ground that the Sessions Judge,

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in delivering judgments in two other cases, on the 12th June, had expressed certain opinions unfavourable to the petitioner. The learned Judges further granted permission to the Sessions Judge to make the proposed transfer himself if he thought it expedient. The Rule now came on for hearing.

*Babu Atulya Charan Bose*, for the petitioner. The Sessions Judge, on the two trials in respect of the hand-notes in the names of Sital Prosad and Khoda Bux, admitted in evidence the other documents found in Abhoy's house, and among them the note which is the subject of the present case. He held them all to be forgeries, and dealt in his two judgments specifically with the present note, and expressed an opinion unfavourable to the petitioner.

JENKINS C.J. AND CASPERSZ J. Without in any way detracting from the doctrine, which we accept as sound, that a reasonable apprehension in the mind of the accused that he will not have a fair trial is a sufficient ground for transfer, we at the same time hold that in applying that doctrine regard must be had to the circumstances of each case. The mere fact that in another case, on other evidence, the Sessions Judge may have come to a particular conclusion is not in itself a sufficient ground for transfer : and that has been decided by a Division Bench of this Court in *Asimaddi v. Govinda Bailya* (1). On the facts of this case, we hold that there should not be a transfer. We feel confident that the learned Sessions Judge, in dealing with the case now under consideration, will not allow his mind to be in any way influenced by any evidence that was adduced before him in the previous case or by any opinion which he then formed on that evidence, and that he will deal with the case without any kind of bias by reason of his decision in the former case. We, therefore, on the facts of this case, discharge the Rule.

*Rule discharged.*

E. H. M.

(1) (1897) 1 C. W. N. 426.