

Before Mr. Justice Geidt and Mr. Justice Woodroffe.

1908

March 4.

EMPEROR

v.

RASH BEHARI DAS.*

Falsification of accounts—Intention to defraud—False entries made to conceal previous embezzlement—Penal Code (Act XLV of 1860) s. 477A.

The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477A of the Penal Code, inasmuch as the intention is to defraud.

Lotit Mohan Sarkar v. Queen-Empress (1), *In re Annasami Ayyangar* (2) followed.

Empress v. Jivanand (3), *Queen-Empress v. Girdhari Lal* (4) and *Abdul Hamid v. Empress* (5) dissented from.

THIS appeal was presented by the Government of East Bengal and Assam against an order of acquittal by the Sessions Judge of Sylhet.

The accused was an accountant in the Munsif's Court at Habiganj, and it was his duty as such to write up the *challan* Register of the Collectorate. In January 1907, owing to some irregularities on his part in the keeping of the Register, an enquiry was ordered by the District Judge into these matters, and it was then discovered that there were three false entries, which were alleged to have been made by him, in column 8 of the Register. These entries purported to have credited to the Collector three sums of money on certain dates, *viz.*, Rs. 177-12 on 23-3-06, Rs. 16-10 on 6-11-06, and Rs. 105 on 18-11-06. It was further alleged that these sums had not been paid into the Treasury, but had been embezzled by the accused, and that the entries were made by him to defraud Government.

* Government Appeal No. 1 of 1908 against the order of P. E. Cammiade, Additional Sessions Judge of Sylhet, dated Sept. 19, 1907.

(1) (1894) I. L. R. 22 Calc. 313.

(3) (1882) I. L. R. 5 All. 221.

(2) (1901) 1 Weir. 554.

(4) (1880) I. L. R. 8 All. 653.

(5) (1886) I. L. R. 13 Calc. 349, 351.

The accused was tried before the Sessions Judge of Sylhet, with the aid of assessors, under s. 477A of the Penal Code, in respect of these three entries. His defence was that he did not misappropriate the money, nor did he make the entries; and that, even if the story of the prosecution was true, he was entitled to an acquittal on the ground that such entries were made to conceal a fraud already committed and not to defraud Government, and that s. 477A did not, therefore, apply. He was found guilty by the assessors. The Judge, however, without dealing with the merits of the case, but finding that the entries had been made after the enquiry in January had commenced, though the precise date or dates thereof could not be ascertained, held upon the authority of the rulings in the cases of *Empress v. Jivanand*(1), *Queen-Empress v. Girdhari Lal*(2), and *Abdul Hamid v. Empress*(3), that the intention of the accused was to conceal his previous embezzlement and not to defraud Government, and that the offence under s. 477A of the Penal Code was not made out. He accordingly acquitted the accused.

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The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The Judge ought to have followed the ruling in *Lalit Mohan Sarkar v. Queen-Empress*(4), which dissents from the Allahabad rulings in *Empress v. Jivanand*(1) and *Queen-Empress v. Girdhari Lal*(2). The case of *Abdul Hamid v. Empress*(3) also referred to by the Judge, was decided before the addition of s. 477A to the Code. My view is supported by *Queen-Empress v. Sabapati*(5) and *In re Annasami Ayyangar*(6). I refer to the definition of "fraudulently" in *Queen-Empress v. Abbas Ali*(7). The accused received the money, but did not credit it to Government, and when suspected, made the entries. The Judge is wrong in holding that there was no intention to defraud, if the entries were made to conceal a previous embezzlement.

Babu Dasharathi Sanyal (Babu Suresh Chunder Mookerjee with him), for the accused. As the Judge did not find the facts I must argue on the assumption that the accused received the money, did not credit it and then made the entries. The words of s. 477A

(1) (1892) I. L. R. 5 All. 221.

(4) (1894) I. L. R. 22 Calc. 313.

(2) (1886) I. L. R. 8 All. 653.

(5) (1888) I. L. R. 11 Mad. 411.

(3) (1886) I. L. R. 13 Calc. 349, 351. (6) (1901) 1 Weir 554.

(7) (1896) I. L. R. 25 Calc. 512, 521.

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are "wilfully and with intent to defraud". The language is different from that of s. 463. All the cases cited for the Crown, except one, were cases of forgery. It has been often held that the making of a false document to conceal one's previous dishonest acts is not an offence: see *Queen v. Lal Gumul*(1), *Queen v. Jageshwar Pershad*(2), *Empress v. Jwanand*(3), *Queen-Empress v. Giridhari Lal*(4), *Abdul Hamid v. Empress*(5) (which is in conflict with the later Calcutta case relied on for the Crown), and *Kotamraju v. Emperor*(6). The accused was also wrongly tried on three charges of falsification relating to three sums of money received on different dates.

GRIBR J. This is an appeal against a judgment of acquittal. The accused was charged with having committed offences punishable under section 477A of the Penal Code.

We find ourselves in some difficulty in dealing with this case, because the Sessions Judge has not come to any findings of fact as to what the accused has actually done with respect to the offences with which he was charged. He assumes that, if the case for the prosecution be true, the accused had committed no offence. Now the case for the prosecution is that in the months of March and November 1906 certain sums of money had been received at the Habigunj Munsifi for payment into the Government Treasury there. The accused was the accountant in the Munsif's Court, and it was his duty to have made entries of the receipt in the *challan* Register. This he failed to do. Some time afterwards, when the Register was found to be irregularly kept, an enquiry was held, and the allegation against the accused is that the sums were never paid into the Government Treasury, and that after the commencement of the enquiry, for the purpose of concealing the non-payment, he made entries in the Register showing that on the 23rd March 1906 a sum of Rs. 177 as. 12 had been paid to the credit of the Collector, on the 6th November another sum of Rs. 16-10, and on the 18th November a sum of Rs. 105 had been similarly paid to the credit of the Collector.

(1) (1870) 2 All. H. C. 11.

(4) (1886) I. L. R. 8 All. 653.

(2) (1873) 6 All. H. C. 56.

(5) (1886) I. L. R. 13 Calc. 349, 351

(3) (1882) I. L. R. 5 All. 271.

(6) (1905) I. L. R. 28 Mad. 30

The view apparently taken by the Sessions Judge is that, as these entries were made, not for the purpose of defrauding Government, but for the purpose of concealing the fraud that had been previously committed, the case does not fall under section 477A of the Penal Code. In support of this view the Judge relied on the rulings reported in *Empress v. Jivanand*(1), *Queen-Empress v. Girdhari Lal*(2) and *Abdul Hamid v. Empress*(3), and he accordingly acquitted the accused.

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It seems to me that in making the entries, which are charged against him, the accused was in reality furthering the fraud that had already been committed. If the accused had been successful, the moneys, to which Government was entitled, would have continued to be kept out of the possession of Government.

Having regard to this consideration I have no hesitation in holding that the accused, if the case for the prosecution is true, acted fraudulently. In my opinion, the view taken by the Sessions Judge is wrong. The order of acquittal is reversed and the accused must be re-tried by the Sessions Judge on the charges already framed against him.

WOODROFFE J. In my view the case is covered by the rulings in *Lalit Mohan Sarkar v. Queen-Empress*(4) and *In re Annamami Ayyangar*(5), which have not been referred to by the Sessions Judge. He should, therefore, have considered the facts.

In my opinion, even if the intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention would be to defraud and the case would fall within section 477A of the Indian Penal Code.

I agree, therefore, with the order passed by my learned brother.

Appeal allowed.

E. H. M.

(1) (1882) I. L. R. 5 All. 221.

(3) (1886) I. L. R. 13 Calc. 349, 351.

(2) (1886) I. L. R. 8 All. 653.

(4) (1894) I. L. R. 22 Calc. 313.

(5) (1901) 1 Weir 554.