

Kunjalal Ghose Vs. Emperor

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Court : Kolkata

Decided On : Jun-19-1934

Reported in : AIR1935Cal26,155Ind.Cas.261

Appellant : Kunjalal Ghose

Respondent : Emperor

Judgement

:

ORDER

1. The petitioner was convicted by the Deputy Magistrate at Chandpur in the District of Tippera, under Section 420/120-B and Section 418, Penal Code, and sentenced to rigorous imprisonment for 18 months and to a fine of Rs. 500 in default to further rigorous imprisonment for six months, under Section 420/120-B. There was a sentence of rigorous imprisonment for 18 months also, under Section 418; but the sentence so passed was to run concurrently with the other sentence passed under Section 420/120-B, Penal. Code. The aforesaid conviction and sentence by the learned Magistrate I were affirmed on appeal by the learned Sessions Judge of Dacca, to whose Court the appeal was transferred for hearing and disposal.

2. The charge against the petitioner was fraud committed on the Sun Life Assurance Company of Canada, by inducing the said company to accept the proposal for insurance on the life of one Monoranjan Mazumdar, for the sum of Rs. 15,000, securing a false medical report from Dr. Birendra Chandra Mazumdar of Dacca, about the said Monoranjan Mazumdar and by suppressing and misrepresenting facts about him and his family history, to the said company with the knowledge that the accused was thereby likely to cause wrongful loss to the said company whose interest in the transaction to which the cheating relates, the accused as an agent of the company was bound to protect.

3. In view of the terms of the rule is sued by this Court the nature of the evidence on the record had to be considered by us, for the purpose of determining whether the findings arrived at by the Court below were sustainable, and the conviction of the petitioner could be upheld.

4. One of the points raised before us related to the admissibility of a confessional statement made by Dr. Birendra Chandra Mazumdar, and it is necessary, in this connexion, to refer briefly to the materials on the record, bearing upon the question of admissibility of the statement, which proved the guilt of the petitioner in the matter of his securing a false medical report: a report which was made out by the doctor, according to the instructions of the petitioner. It appears from the evidence that Mr. Mitchell (District Manager of the Sun Life Assurance Company), Babu

Subarna Bose (Circle Inspector of Police), and Dr. Birendra Chandra Mazumdar went, during the investigation of the case, to Dr. Mazumdar's chamber at Dacca; a note book of the doctor was seized there while there Dr. Mazumdar told Mr. Mitchell that the petitioner had supplied necessary materials for his medical report. After this, Dr. Birendra Chandra Mazumdar was arrested and produced before the Sub-divisional Officer of Dacca. It was contended before us, on the authority of a decision of the Bombay High Court in the case of Emperor v. Keshav (1913) 25 Bom LR 248, that the confessional statement of the doctor that his report was made out according to the instructions of the petitioner was not admissible inasmuch as its maker had already rendered himself liable to criminal prosecution, at the time when it was made. Conceding in favour of the petitioner that the confession of the doctor, who died very soon after the statement was made by him, is not admissible in evidence under Section 32(3), Evidence Act, there can be no doubt that the statement was admissible under Section 10 of the Act, seeing that other evidence in the case disclosed reasonable grounds for believing that there was a conspiracy, and that the doctor was a conspirator. General evidence of the existence of a conspiracy of which the doctor was a member, having been given, affording reasonable ground to believe that two or more persons had conspired to commit an offence, evidence as to overt acts of things said or done by any conspirator in reference to a common design, was admissible under the law; and the confessional statement of Dr. Birendra Chandra Mazumdar was therefore admissible under the law, as evidence of the guilt of the petitioner. On that evidence, taking the same along with other evidence in the case, the Courts below have come to the definite conclusion that a false medical certificate was secured by the petitioner; the doctor granting the certificate, having done so, under instructions from the petitioner.

5. The questions requiring consideration next are whether the petitioner suppressed facts and made false representations to the insurance company as an agent, in order to have the insurance effected; whether the insured Monoranjan Mazumdar was a person known to the petitioner to be unfit to be insured. The evidence on this part of the case has been discussed by the Courts below, at length, and in detail. The argument advanced before us in support of this rule was that the report submitted by the petitioner as a canvasser, and an agent was a bona fide one, on the belief that the life of the insured was that of a healthy man; and that inasmuch as the family history of the insured was not required to be given, the fact that some of his relations died of tuberculosis was of no consequence. On this part of the case comment was made on the report furnished by the petitioner to the insurance company, and on the evidence of the witness Sures Chandra Chanda examined on the side of the prosecution. The evidence of this witness, who spoke to his having found the petitioner in the joint family dwelling house of the insured Monoranjan Mazumdar, on five or six occasions talking like a friend has to be taken as a whole, and that evidence along with the report submitted by the petitioner led to the conclusion arrived at by the Courts below that the petitioner was on intimate terms with Monoranjan's family. The recommendation contained in the report was stated to be based on personal inquiry made by the petitioner; and it was further specifically mentioned in the report that the life of Monoranjan was an average life, that the petitioner never heard of Monoranjan's ever being ill. Monoranjan was recommended unqualifiedly by the petitioner for insurance at ordinary rates. On the materials on the record, which have been discussed in detail, by the Courts below, the conclusion was arrived at that the petitioner deliberately misused his knowledge regarding Monoranjan's family history, and his own state of health. The finding on evidence in the case, further was that the petitioner conspired with Monoranjan and Dr. Birendra Chandra Mazumdar, in

making misrepresentations to the Sun Life Assurance Company.

6. On the definite findings arrived at on evidence in the case, which we see no reason to differ from, the conviction of the petitioner must be upheld. The sentence passed on the petitioner is not, in our judgment, severe, regard being had to the nature of the offence committed by him.

7. The conviction of the petitioner and the sentence passed on him are affirmed. The rule is discharged. The petitioner must surrender to his bail bond, and serve out the remainder of the sentence passed on him.

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