

CRIMINAL REFERENCE.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

EMPEROR v. CHHOTALAL BABAR.*

1912.

January 31.

Indian Penal Code (Act XLV of 1860), sections 34, 109, 467—Forgery—Abetment of forgery—Abetment by conspiracy—Conspiracy at Cambay, foreign territory—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Jurisdiction.

The accused was a subject of the Cambay State. He lived there and traded with his business partner A. He conspired with A at Cambay and sent A to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery, the accused sent his *khata* book with A. In pursuance of A's instigation the forgery was committed at Umreth. On these facts, the accused was charged, in a Court in British India, with the offence of abetment of forgery under sections 467 and 109 of the Indian Penal Code. The trying Judge referred to the High Court the question whether the accused, not being a British subject, was amenable to the jurisdiction of his Court :—

Held, that the Court in British India had jurisdiction to try the accused, for the accused's offence was not wholly completed within Cambay limits, but having been initiated there, was continued and completed within the British territory of Umreth.

Where a foreigner starts the train of his crime in foreign territory, and perfects and completes his offence within British limits, he is triable by the British Court when found within its jurisdiction.

Section 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction.

THIS was a reference made by C. N. Mehta, Additional Sessions Judge at Ahmedabad.

The accused, Chhotalal Babar, a subject of the Native State of Cambay, was charged in the Sessions Court of Ahmedabad (a Court in British India) with the offence of abetment of forgery, punishable under sections 467 and 109 of the Indian Penal Code.

The case for the prosecution was as follows. The accused Chhotalal Babar desired to get a certain valuable security,

* Criminal Reference No. 107 of 1911.

namely a *khāta*, forged in the name of one Ambalal Nanalal of Cambay. He accordingly took into his confidence his partner in trade Ambalal Jethalal and having conspired with him at Cambay sent him to Umreth to a professional forger Somnath Ranchhod to get the *khāta* forged. In pursuance of the common object of the conspiracy, Ambalal Jethalal went to Umreth (a place within British India) and there instigated Somnath to commit the forgery. Somnath forged the *khāta* at Umreth.

Under these circumstances, Chhotalal Babar, Ambalal Jethalal and Somnath Ranchhod were placed for trial before the First Class Magistrate of Kaira. The Magistrate, in the course of the inquiry before him, gave a pardon to Somnath under section 337 of the Criminal Procedure Code, and examined him as a witness. The case then proceeded only against Chhotalal and Ambalal. The Magistrate after finishing his inquiry committed the case against the two accused to the Court of Session at Ahmedabad. In that Court, the case first went on against Ambalal Jethalal, who was found guilty and sentenced to suffer rigorous imprisonment for three years.

As regards Chhotalal Babar, the facts stood thus. He was not a British subject, but a subject of the Native Indian State of Cambay. He conspired at Cambay with Ambalal Jethalal to get a *khāta* forged at Umreth and furnished him with his *khāta* book for the purpose. Accordingly, Ambalal proceeded to Umreth and had there a *khāta* forged by a professional forger.

The Additional Sessions Judge of Ahmedabad, being of opinion that the British Courts in India had no jurisdiction to try the accused Chhotalal for the offence of abetment of forgery, did not proceed with his trial, but referred the case to the High Court for quashing the commitment under section 215 of the Criminal Procedure Code.

The Reference was heard.

G. S. Rao, Government Pleader, for the Crown :—We submit that the Court in British India has jurisdiction to try the accused. The act, though it originated in Cambay, was com-

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pleted at Umreth in British India. The abetment by the accused was therefore completed at Umreth. Further, under section 34 of the Indian Penal Code, the accused must be deemed to have done what Ambalal did in British India. If the accused had sent a letter from Cambay to Umreth for the purpose by post, he would have acted in British India. The mere fact that he employs an agent to accomplish his purpose cannot make any difference. See *Queen-Empress v. Sheo Dial Mal*⁽¹⁾; *Rex v. Brisac and Scott*⁽²⁾; *Rex v. Munton*⁽³⁾; *Reg. v. Bull and Schmidt*⁽⁴⁾; *Reg. v. Taylor*⁽⁵⁾; *Reg. v. Ellis*⁽⁶⁾; *Reg. v. Rogers*⁽⁷⁾; *Rex v. Oliphant*⁽⁸⁾; *Rex v. De Marny*⁽⁹⁾; *R. v. VonVeltheim*⁽¹⁰⁾; *Reg. v. Keyn*⁽¹¹⁾; Russell on Crimes, Vol. I, pp. 55-58 (7th Edn.). The case of *Reg. v. Pirtai*⁽¹²⁾ is distinguishable, as the act of abetment there was wholly completed in British India.

L. A. Shah, for the accused:—The accused who is a subject of Cambay, a foreign territory, is not amenable to the Indian Penal Code in British India unless he has done any act in British India. All that the accused did here was to hand over his account book to his partner Ambalal at Cambay and to ask him to get a *kháta* forged. Thus the accused's act in the offence was completed at Cambay. He cannot be tried for it in British India, for abetment is an offence by itself under the Indian Penal Code. See *Reg. v. Pirtai*⁽¹²⁾ and *Queen-Empress v. Sheo Dial Mal*⁽¹⁾.

If Cambay had been British territory, then the accused could, under section 179 of the Criminal Procedure Code, have been tried in the Kaira district. But unless the legislature enacts specially, as it has done in section 121A of the Indian Penal Code, that the accused is liable for acts done outside British India, he cannot be tried in British India for acts committed

(1) (1894) 16 All. 389.

(2) (1803) 4 East 164.

(3) (1793) 1 Esp. 62.

(4) (1845) 1 Cox Cr. Ca. 281.

(5) (1865) 4 F. & F. 511.

(6) [1899] 1 Q. B. 230.

(7) (1877) 3 Q. B. D. 28.

(8) [1905] 2 K. B. 67.

(9) [1907] 1 K. B. 388.

(10) (1908) Russell on Crimes, Vol. I, p. 55 (7th Edn.).

(11) (1876) 2 Ex. D. 63.

(12) (1873) 10 B. H. C. R. 356.

outside. The cases relied on by the other side are all distinguishable on that ground. I rely on: *Reg. v. Keyn*⁽¹⁾; *Mussummat Kishen Kour v. Crown*⁽²⁾; *Roda v. Empress*⁽³⁾. There is a difference between a man sending a letter by post or telephone message and his acting through an agent. See Russell on Crimes, p. 75, and the remarks of Cockburn, C. J., in *Keyn's case*.

BACHELOR, J.:—The point of law referred to us arises in the following state of facts. The accused, Chhotalal Babar, is a subject of the Cambay State. He lived in Cambay and there traded with his business partner Ambalal Jethalal. In May 1910 the accused, conspiring with Ambalal, sent Ambalal to a certain professional forger, by name Somnath Ranchhod, living in Umreth, with instructions to instigate Somnath to forge a valuable security, namely a *khata*. To facilitate the forgery, the accused sent his *khata* book with Ambalal to Somnath. Somnath committed the forgery in pursuance of Ambalal's instigation. The accused was charged on these facts before the Additional Sessions Judge of Ahmedabad with the offence of abetment of forgery under sections 467 and 109, Indian Penal Code, and the learned Judge, Mr. C. N. Mehta, has referred to us the question whether upon these facts the accused, not being a British subject, was amenable to the jurisdiction of the Ahmedabad Court. After a careful examination of the subject the Judge records his own opinion that the accused was not triable by the British Court.

In support of that opinion the learned Judge largely relied, and the accused's pleader before us has also relied, on this Court's decision in *Reg. v. Pirtai*⁽⁴⁾. It appears to me, however, that that decision, so far from assisting the present accused, indicates the line of reasoning upon which the present reference ought to be determined against him. For in that case the *ratio decidendi* that the then accused woman, a foreigner, was not triable by the British Court was that her instigation of the crime had been "wholly committed within

(1) (1876) 2 Ex. D. 63 at p. 160.

(3) (1889) P. R. No. 30 of 1889 (Cr.).

(2) (1878) P. R. No. 20 of 1878 (Cr.).

(4) (1873) 10 Bom. H. C. R. 356.

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the foreign territory." If, therefore, the present accused's offence was not wholly completed within Cambay limits, but, having been initiated there, was continued and completed within the British territory of Umreth, then *Pirtai's case* would be authority for the view that the accused was triable at Ahmedabad; and the learned Government Pleader's argument is that this is the true view of the present case.

Turning to section 107 of the Indian Penal Code, which defines abetment, and confining ourselves to that part of the definition with which alone we are now concerned, we find that "a person abets the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act takes place in pursuance of that conspiracy, and in order to the doing of that thing." It will be seen that there are two requisites: first, the engaging with another, and, secondly, the doing of some act in pursuance of the conspiracy. Further, under explanation 4 to section 108 of the Indian Penal Code, the accused, who abetted Ambalal in abetting Somnath to forge, is punishable as an abettor of the forgery. Now, admittedly, the accused's engaging with the intermediate conspirator, Ambalal, took place in Cambay, but under the definition that was not the complete offence of abetment: the offence was completed only when the consequent act was done. What, then, was that act in this case? Mr. Shah for the accused has urged that it should be regarded as consisting of the entrusting of the accused's *khāta* book to Ambalal, but I cannot take that view. It appears to me that the act contemplated by the definition was in this case Ambalal's instigation of Somnath in Umreth. It is argued that this is to mistake the ultimate "thing done"—i. e., the final object of the conspiracy—for the intermediate act of mere facilitation; but I do not think so. The ultimate thing done here was Somnath's forgery of the *khāta*, and, as I have shown, the accused is punishable as an abettor of that forgery. Thus, the language of the Code seems to me not to conflict with, but to support, the view that the act done in pursuance of the accused's conspiracy with Ambalal was, not the accused's own

contemporaneous act of handing over his account-book to Ambalal, but Ambalal's act in instigating Somnath in Umreth.

If I am right so far, then on principle and on authority I am of opinion that Ambalal's instigation of Somnath was in law instigation by the accused, so that the case we have is that of a foreigner who, having started the train of his crime in foreign territory, perfects and completes his offence within British limits; and in such circumstances he is, I think, triable by the British Court when found within its jurisdiction.

As we are dealing with a conspiracy, section 34 of the Indian Penal Code applies, and each of the conspirators is liable for any or all of the acts of the others done in pursuance of the common intention. It is urged that this section provides only for liability to punishment, not for subjection to another jurisdiction; but it appears to me that the authorities show otherwise. *Rex v. Brisac and Scott*⁽¹⁾ was a case of conspiracy between the captain and the purser of a man-of-war for fabricating false vouchers to cheat the Crown. The fabrication was done on the high seas, but the Commissioners of the Navy had received in Middlesex some of the false vouchers which had been transmitted by one of the defendants through the medium of the post. It was held that the offence was triable in Middlesex, and Sir Nash Grose, J., in delivering the Court's judgment upon the objection as to jurisdiction, cited *King v. Bowes and others* as authority for the principle that "the conspiracy as against all having been proved from the community of criminal purpose, and by their joint co-operation in forwarding the objects of it, in different places and counties, the locality required for the purpose of trial was holden to be satisfied by overt acts done by some of them in prosecution of the conspiracy in the county where the trial was had"; and the learned Judge proceeds to lay down that the delivery of the false vouchers was an offence in the place, Middlesex, where the vouchers were delivered, and that such delivery was the act of both the defendants, even though the delivery was made mediately through innocent persons, and the letter

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(1) (1803) 4 East 164.

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containing the bill of exchange had been put in the post by only one of the defendants. In *Rex v. Munton*⁽¹⁾ the defendant, who was the principal store-keeper at Antigua, bought certain stores in England at a nominal price agreed between him and the sellers, and then charged to Government this full nominal price, misappropriating the deductions allowed to him by collusion with the sellers. On the question of jurisdiction Lord Kenyon held that "the objection would be good where the criminal matter arose wholly abroad," but here the false charges made by the defendant were contained in the several returns made by him to the Navy Office in London, and his Lordship therefore said "that there was an offence committed in London where such false returns were received, and where the fraud had been complete by their having been there allowed;" and he accordingly overruled the objection. This case was followed in *Rex v. Oliphant*⁽²⁾, where the defendant, being employed in Paris by a London firm to manage their Paris branch, fraudulently misappropriated certain sums received, having omitted to enter them in certain slips which it was his duty to transmit to London in order that the amounts might be incorporated in the London cash-book. It was held that he was triable at the Central Criminal Court, as his false returns had been received in London: "the receipt of the slips in London," said Ridley, J., "makes the offence complete in London".

It was urged that in the foregoing cases the accused person was a British subject, but I do not think that that circumstance makes any difference to the principle of the decisions. It seems to me to be immaterial whether the accused person was bodily present in British territory when the offence was completed or whether his presence there and then is derived by process and intendment of the law: in either case he is present in British territory committing an offence under the Indian Penal Code, and, that being so, his character as a foreigner cannot avail him. In support of this position reference may be

(1) (1793) 1 Esp. 62.

(2) [1905] 2 K. B. 67.

made to *Rex v. De Marny*⁽¹⁾ where the defendant, an editor, inserted in his newspaper advertisements which related, as he knew, to the sale of obscene books by foreigners resident abroad. He was convicted in London of causing and procuring obscene books to be sold and published. On the objection as to the jurisdiction the argument for the defendant was that the defendant, if guilty of anything, was guilty of aiding and abetting the sale of indecent books, and on that footing would be indictable as a principal in the second degree; but that, counsel contended, could not be so, because the real vendors, the principals in the first degree, were foreigners resident abroad and so not amenable to the jurisdiction. In reply counsel for the prosecution relied on *Rex v. Oliphant*⁽²⁾ and contended that even a foreigner abroad, who, through his innocent agent, the postman, caused the publication of indecent literature in England, committed an offence against the law of England, and could be convicted if he came within the jurisdiction; in other words, that the defendant in *Rex v. Oliphant*⁽²⁾ would have been equally triable in London if he had been a foreigner. This argument was accepted by the Court and, in my opinion, completes the case against the present accused. For this and the other authorities cited seem to me to establish the proposition that where a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed.

I may add that I am confirmed in this view of the case because the main proposition on which it depends—namely, that Ambalal's abetment in Umreth was, in law, the accused's abetment—seems to me to derive support from other considerations. In the first place the instigation was made in Umreth because the accused so willed it, and, as Bramwell J. A. said in *Reg. v. Keyn*⁽³⁾ in speaking of wilful—as opposed to negligent—acts, “if the act was wilful, it is done where the will intends it should take effect.” Then I cannot see how accused is in any

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(1) [1907] 1 K. B. 388.

(2) [1905] 2 K. B. 67.

(3) (1876) 2 Ex. D. 63 at p. 150.

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better position than he would have been if, instead of using a fellow-conspirator as his voice or means of communication, he had used the post, or, if such a mechanical contrivance had existed, the telephone; indeed, that he used a fellow-conspirator and not an innocent or unconscious medium seems to me to make the train or sequence of his acts more uniform and continuous. But if he had sent a letter to the forger in Umreth and the forger had done his work in pursuance of the instructions in the letter, I cannot doubt that accused would have been liable for abetment of the forgery in Umreth on the footing of his being present in Umreth at the material time. Thus, in *Rex v. Oliphant*⁽¹⁾ Lord Alverstone, C. J., said: "I am unable to draw any distinction between sending information by post or by telephone and giving the same information by direct personal communication." And in *Reg. v. Rogers*⁽²⁾ Field, J., observes that for the purpose of giving jurisdiction a letter speaks continuously from the moment of its being posted until its receipt by the addressee, and "the reasoning", he says, "is in this way: a letter is intended to act on the mind of the recipient, its action upon his mind takes place when it is received. It is like the case of the firing of a shot, or the throwing of a spear. If a shot is fired, or a spear thrown, from a place outside the boundary of a county into another county with intent to injure a person in that county, the offence is committed in the county within which the blow is given. So with a letter." And so, it seems to me, with the instigation which the accused here, through human agency, conveyed from Cambay to the forger in Umreth. There was one continuous act which was completed in Umreth, and for that act, so completed within British territory, the accused was triable by the British Court. The question referred should, I think, be decided accordingly.

CHANDAVARKAR, J. :—I concur.

Answer accordingly.

R. R.

⁽¹⁾ [1905] 2 K. B. 67.

⁽²⁾ (1877) 3 Q. B. D. 28.