

ANIL KUMAR BOSE

v.

STATE OF BIHAR

April 10, 1974

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Penal Code—S. 420—Guilty intention an essential ingredient of offence of cheating—mens rea.

The appellants, an accountant and a cashier, along with another person, were accused of preparing false pay bills and disbursing the amounts drawn from the treasury to fictitious persons. The Sessions Judge convicted and sentenced them under S. 420 read with s. 34, I.P.C. On appeal, the High Court confirmed the convictions and sentences passed against both of them.

On further appeal to this Court,

Allowing the appeals,

HELD : For the purpose of holding the appellants guilty the evidence adduced must establish beyond reasonable doubt *means rea* on their part. [904 E]

On the evidence all that could be said at the highest was that it was a failure on the part of the accountant to perform his duties or to observe the rules of procedure laid down in the duty chart in a proper manner and may therefore be an administrative lapse on his part. Without, however, anything more it will not be correct to impute guilty intention which is an essential ingredient of the offence of cheating. [905 D]

The material before the High Court together with the significant observations made by it against the Superintendent and Deputy Superintendent do make out a case for giving benefit of reasonable doubt to the cashier as well. It is not possible to hold that the requisite *means rea* had been established against him. [906 F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 223 and 224 of 1970. Appeals by Special Leave from the Judgment and Order dated the 4th August 1970 of the Patna High Court in Crl. Appeals Nos. 213 and 236 of 1967.

S. Balakrishnan, N. M. Ghatake and B. Chakravarti, for the appellant (in Crl. A. No. 223/70).

Nuruddin and S. M. Singh for the appellant (in Crl. A. No. 224 of 1970).

R. C. Prasad for the Respondent (in Crl. A. No. 223/70).

D. Goburdhan for the Respondent (in Crl. A. No. 224/70).

The Judgment of the Court was delivered by

GOSWAMI, J. These appeals by special leave are directed against the judgment of the Patna High Court convicting the two appellants and another under section 420/34, Indian Penal Code. They have each been sentenced to rigorous imprisonment for one year and a fine of Rs. 200/-, in default rigorous imprisonment for six months. Dr. Rama Shankar (PW 14) and Dr. Ram Balak Singh (PW 4) were

A House Physicians and Dr. Sailendra Kumar (PW 5) was a House Surgeon in the Durbhanga Medical College Hospital. Hospital House Surgeons or House Physicians are usually appointed for different sections of the Hospital by the Superintendent of the Hospital for a period of six months, January to June and July to December and their monthly emoluments total Rs. 125/-; Rs. 75/- towards stipend and Rs. 50 as diet allowance.

B The prosecution case is that for the month of March 1963 a fictitious pay bill for Rs. 125/- was prepared in the name of Dr. Rama Shankar, who had worked only for six months up to December, 1962 and had made over charge in January 1963. A similar pay bill for March 1963 was prepared for Dr. Sailendra Kumar, who was working in Ear, Nose and Throat Department, but this bill was prepared in the Pediatric Section. Likewise another fictitious pay bill for the same month was prepared in the name of Dr. Ram Balak Singh, although he never joined that post and he was substituted by Dr. Rana Chandraketu. The amounts of the three aforesaid pay bills were drawn from the Treasury and disbursed to fictitious persons. The letters of appointment and the joining reports of the various House Staff were as usual sent to the Accounts Department for preparation of the pay bills.

E Yogesh Prasad Thakur was the Bill Clerk, who has not appealed against his conviction. The Accountant, Raghunath Prasad and the Cashier, Anil Kumar Bose, are the two appellants before us. Criminal Appeal No. 223 of 1970 is by Anil Kumar Bose and Criminal Appeal No. 224 of 1970 is by Raghunath Prasad. Both these appeals are heard together and are disposed of by this common judgment.

F According to the rules of procedure, such pay bills used to be prepared by the Bill Clerk, checked by the Accountant and then placed for signature before the Superintendent of the Hospital. After his signature, the bills were handed over to the peon of the Hospital who took these to the Treasury and after collecting the money therefrom made over the same to the Cashier, who made relevant entries in his cash Book and other connected registers. Then, in accordance with the Acquittance Roll, the money used to be disbursed to the various persons who signed in token of receipt of the amounts on the Acquittance Roll. After disbursement of the money, a certificate used to be given by the Deputy Superintendent to the effect that the money had been disbursed in his presence.

H Some time in May 1963, in the course of preparation of the Annual Establishment Return for submission to the Accountant General, Bihar, the Head Clerk, Bhola Nath Jha (PW 3) noticed that in the Acquittance Roll for March 1963, there were names of more Housemen than the sanctioned strength. After enquiry by several officers at different levels, an information was lodged to the police who ultimately submitted a charge-sheet against the two appellants and Yogesh Prasad Thakur, the Bill Clerk. The accused were tried by

the Court of Sessions ending in their conviction under section 420/34 I.P.C. The High Court on appeal affirmed the conviction and sentence. Hence these appeals by special leave. A

We are not concerned with the conviction of the Bill Clerk, Yogesh Prasad Thakur, who accepted the same.

The defence of the Accountant, Raghunath Prasad, is that these bills did not pass through him and so he had no knowledge about the correctness of the same and they were directly put up before the Superintendent of the Hospital for his signature and he signed them. Thereafter these were sent to the Treasury for encashment and after that he had nothing to do with those pay bills. B

The defence of the Cashier, Anil Kumar Bose, is that he has nothing to do with the preparation of the bills. He came into the picture when the entire cash of these bills and other bills was handed over to him and he disbursed the money in accordance with the Acquittance Roll, as prepared by the Accounts Department. He did not know these three Doctors personally and he was not guilty of cheating. C

Since the Bill Clerk's conviction stands, it may be accepted that he prepared the three fictitious bills with a view to cheat the Government. D

We are now concerned whether the two appellants also are guilty under section 420/34 I.P.C.

For the purpose of holding them guilty, the evidence adduced must establish, beyond reasonable doubt, *mens rea* on their part. We will, therefore, consider the case of each appellant from that aspect. With regard to the Accountant, Raghunath Prasad, the evidence relied upon by the High Court for its conclusion of guilt of this appellant may be set out in its own words: E

"Ext. 1 is the duty chart of the Accountant. The first item of this chart is 'Sole in charge of accounts and to exercise general supervision on all staff working under him for the efficient working of the Accounts Section'. The third item of this chart is 'To complete the Bill Book and get it checked and signed by the Dy. Superintendent'. I must point out that this duty has not been performed by the Accountant in the case of these disputed bills. The fifth item of his duty is 'To put up all salary bills prepared by the dealing assistant daily before the Superintendent'. The Superintendent, PW 9 Dr. Safdar Ali Khan has stated that the Accountant is responsible for keeping the Acquittance Roll in order.... It is stated in paragraph 21 that the Accountant should check the bill and then place for signature of higher officers. Of course, it is in evidence that the Superintendent had asked the office to place all bills for his signature in the office on his table and no clerk should stand there when he F

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A would sign on those bills. This direction is clearly against item No. 5 of the Duty Chart of the Accountant. I do not know for what purpose he made this innovation in the procedure. But this procedure would not absolve the Accountant of his duty to check the pay bills and other bills before sending them to the Superintendent..... It is further interesting to note that the disputed pay bills do not bear the initial or signature of the Accountant below the signature of the Superintendent..... As the evidence shows, the Accountant did not purposely sign on these forged bills with a view to get himself absolved of the responsibility..... As a matter of course, the work of this Accountant was to get pay bills prepared, check them and then put up before the Superintendent for his signature so that after obtaining his signature the bills may be sent to the treasury for encashment".

On the above evidence at the highest it was a failure on the part of the Accountant to perform his duties or to observe the rules of procedure laid down in the Duty Chart in a proper manner and may, therefore, be an administrative lapse on his part about which we are not required to pronounce any opinion in this case. Without, however, anything more we do not think it will be correct to impute to this appellant a guilty intention which is one of the essential ingredients of the offence of cheating under section 420 I.P.C. Apart from this, the High Court is not correct and indeed had no material to hold that "the Accountant did not purposely sign on these forged bills with a view to get himself absolved of the responsibility". The evidence of the Superintendent, which is extracted above, runs counter to that conclusion.

With regard to the other appellant, the Cashier Anil Kumar Bose, we may read what the High Court has relied upon for its finding :

"Coming to the case of the Cashier, I find that his Duty Chart is Ext. 1/1. His first duty is 'Daily receipt and disbursement of cash'. A note in this Duty Chart shows 'To be solely responsible for the performance of above duties'.... The Deputy Superintendent (PW 6) has stated in paragraph 8 of his deposition that it was the duty of the Cashier to see that the payment was made to the correct or right person. Of course, in the Duty Chart it is not written in so many words. But as his duty was to disburse the money, this disbursement was to be made in a *bona fide* manner, that is, after due enquiry about the payee, if the latter is not known to the Cashier. In case of P.W. 5 one payment was made on the 5th April for the month of March and the next payment to a person of that name was made on 10th April, that is, only after five days. The Cashier ought to have detected this if his case of *bona fides* is to be accepted. The argument advanced on his behalf is that it was not possible for him to know all the Housemen. It may be so, but he cannot be allowed to take shelter that he paid the money without ascertaining who was the real recipient. It was also, the

practice to make the payment in presence of the Deputy Superintendent and then to take his initial below the seal, that, is, rubber stamp. In these disputed cases no such signature was obtained of the Deputy Superintendent, and there is no explanation as to why this was not done. The Deputy Superintendent has clearly stated that against these disputed entries his signature was not obtained and no rubber stamp concerning the payment was affixed.... In my opinion, therefore, the Cashier also cannot claim to be absolved of the charge against him. It was his duty to have seen that the payment was made to the correct person. It is not clear in evidence that these payments were made in presence of the Deputy Superintendent of the said Hospital. The witnesses have spoken only about the usual practice".

The learned Judge of the High Court made a significant observation in the following terms :—

"I am constrained to remark that both, the Superintendent and the Deputy Superintendent have shown carelessness in their duties and these things came to happen because of the latitude which they had given to these employees. Had the Superintendent been careful to see whether the signature of the Accountant was given in the pay bills, he must have detected that in the disputed pay bills there was no signature of the Accountant, and that should have aroused his suspicion about the correctness of the pay bills".

Even on the finding of the High Court, there was nothing in the Duty Chart that the duty of the Cashier was to see that the payment was made to the correct or right person. There is further no evidence that these three Doctors were known to the Cashier. On the other hand, the High Court has not absolutely repelled the argument advanced on his behalf that it was not possible for him to know all the Housemen. The High Court has come to an adverse conclusion against him on account of his not properly "ascertaining who was the real recipient" of the money before he disbursed the same. The material before the High Court together with the significant observation against the Superintendent and the Deputy Superintendent do make out a case for giving benefit of reasonable doubt to the Cashier as well. On the evidence which the High Court has relied upon against him, it is not possible to hold that the requisite *mens rea* has been established against this accused. As observed in the case of the Accountant, it may be at the highest a case of an error of judgment or breach of performance of duty which, *per se*, cannot be equated with dishonest intention to establish the charge under section 420 I.P.C. In the result, the appeals are allowed. The judgment of the High Court so far as these two appellants are concerned is set aside. The two appellants herein are acquitted of the charge and shall be discharged from their bail bonds.