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It is not possible to accede to the other contention that has been raised that the other occupants apart from Behari Lal and the petitioner were no longer interested in allotment of any portion to them or had no objection to the entire ground-floor being transferred to the petitioner. While considering whether a particular property would be covered by the proviso to rule 30 it appears wholly immaterial, how the occupants decide *inter se* among themselves to press or not to press for the allotment of such portions, which are in their occupation or to which they may be entitled. If the property cannot be suitably partitioned so as to accommodate all the occupants, it must be offered to the person, whose compensation is nearest to the value of the property in terms of the opening part of rule 30.

For the reasons given above, no question of quashing the order of respondent No. 2 arises. Consequently the petition is dismissed, but I make no order as to costs.

B. R. T.

APPELLATE CRIMINAL.

STATE,—*Appellant.*

versus

DR. VIMLA AND ANOTHER,—*Respondents.*

Criminal Appeal No. 41-D of 1958

1960

March 24th

Penal Code (XLV of 1860)—Sections 419, 463 and 464—Person getting the balance of insurance policy transferred in the name of a minor without disclosing the minority and by signing all the papers herself in the name of the minor—Whether guilty of offences of cheating by personation and forgery—Accrual of injury—Whether a necessary ingredient of fraud.

Held, that there is nothing wrong or illegal in having the balance of the insurance policy transferred in the name of the minor provided that this is done openly and by the guardian on behalf of the minor as an insurance company would certainly not knowingly enter into a contract with a minor in the minor's own name and by representing herself to the servants of the company as being Miss Nalini (the minor) and so inducing them to accept the transfer of the policy in the name of Miss Nalini, the accused clearly committed an offence under section 419, Indian Penal Code, of cheating by personation, and she must be equally held to be guilty of forgery in respect of signing the proposal form and various documents including receipts in connection with the claims in the name of Miss Nalini.

Held, that the accrual of injury is not a necessary ingredient of fraud in the Indian Penal Code and a court will not refuse to convict a person guilty of committing forgery on the ground that nobody had been injured as a result thereof.

Emperor v. *Abdul Hamid* (1) followed ; *Aparti Charan Ray* v. *Emperor* (2) and *Nga Tun Sein* v. *Emperor* (3) dissented from.

State appeal from the order of Shri E. F. Barlow, Assistant Sessions Judge, Delhi, dated 7th March, 1958 acquitting the respondents.

BISHAMBER DAYAL AND KESHAV DAYAL, for the appellant.

H. C. GUPTA AND D. R. PREM, ADVOCATES, for the respondents.

JUDGMENT.

FALSHAW, J.—The respondents in this case, Siri Chand Kaviraj and Dr. Vimla, are husband and wife and they were prosecuted and tried by an Assistant Sessions Judge on a general charge of conspiracy and a number of individual charges relating to offences of cheating and forgery. The trial resulted in their acquittal against, which the State has appealed. Falshaw, J.

(1) A.I.R. 1944 Lah. 380
(2) (1930) 31 Cr. L.J. 126
(3) A.I.R. 1935 Rang. 203

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The case against the respondents was that on the 20th of January, 1953, Dewan Ram Sarup P.W. 18, who was then stationed at Delhi as a Magistrate, sold an old Austin 10 H.P. car registered as DLA 4796 to Dr. Vimla accused, but the sale was carried through in the name of her daughter Miss Nalini, who at that time was an infant and was aged about six months. The car at the time was insured under a policy issued by the Bharat Fire and General Insurance Company Limited, which was due to expire sometime towards the end of April, 1953. According to Dewan Ram Sarup he was told by Vimla that Miss Nalini in whose name the sale was to take place was related to her and he raised no objection to the sale taking place in that person's name and he accordingly both notified the transfer of the car to Miss Nalini to the Motor Registration Authorities and also wrote to the Insurance Company for the transfer with the car of the balance of the period of which the Insurance Policy was current. After the letter Ex. P.A. had been received Dr. Vimla visited the Company's office and filled in and signed in the name of Miss Nalini the proposal form Ex. P.B. on the 3rd of February, 1953 and the policy was transferred in the name of Miss Nalini.

Thereafter letter Ex. P.C. dated the 5th of February, 1953 purporting to be signed by Miss Nalini was received by the Company asking for a claim form as the car was stated to have met with an accident. The claim form Ex. P.E. was supplied and it was filled in by Dr. Vimla and again signed by her as Miss Nalini in the presence of Siri Chand accused, who according to Rajinder Lal Jain P.W. 1, the principal witness from the Insurance Company, stated that Dr. Vimla was his daughter. In connection with this claim after the damage to the car had been assessed by C. B.

Gupta, whose fees were paid by the Company a repair bill of Rs. 426-3-0 was paid to Messrs. Kayashap Motors and Rs. 64 were paid to the accused on account of towing charges from Aligarh, where the accident was said to have taken place. Later another sum of Rs. 50 was paid for the replacement of shock absorber. Early in April, 1953 a second claim was made regarding another accident, which was alleged to have taken place near Haldwani and on this account a sum of Rs. 250 was paid by the Company in the name of Miss Nalini by means of a cheque and the receipt Ex. P. LL. as signed by Dr. Vimla as Miss Nalini and attested by her husband.

It is to be noted that these sums were paid in connection with the claims by the Company after investigation and apparently the Company ceased to have any connection with the accused after the policy had expired and after these claims had been paid during 1953, but it was not until the 18th of November, 1954, that the Company took any steps in the matter or began to allege that any fraud had taken place. It appears that someone connected with the Company heard that allegations of fraud were being made in connection with other insurance matters against the accused and then the letter Ex. P. UU was written to the Superintendent of Police, C. I. D. (Crime) on behalf of the Company. This letter reads :—

> "The insurance of Austin car No. DLA 4796 was placed by Miss Nalini and now we learn that Miss Nalini is a minor girl. During the course of the policy two claims were reported to us on 5th February, 1953 and 14th April, 1953 and both the claims were paid for Rs. 541-3-0 and Rs. 250 respectively.

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We have reason to believe that the successful cltimant has cheated us. We shall feel obliged if you kindly register a case under section 420 I. P. C. and investigate it."

A police investigation was then carried out and the accused were ultimately committed for trial in May, 1957.

The essence of the case against the accused was that they had conspired together to defraud the Insurance Company first by getting the car insured with the Company in the name of their infant daughter and that the two claims, which they had put forward and in connection with which both the sums of money had been paid out by the Company were fraudulent claims. The charges framed against them related to the general charge of conspiracy and to alleged acts of cheating and cheating by personation by Dr. Vimla in inducing the Insurance Company to accept the policy in the name of Miss Nalini, who Dr. Vimla claimed to be and acts of forgery in connection with the various documents in which Dr. Vimla had signed her name as Miss Nalini. Charges against her husband related to an alleged forged letter and receipt relating to towing charges from Aligarh and to his attestation of two receipts signed by his wife in the name of Miss Nalini.

A great deal of evidence was led by the prosecution in an effort to show both that the accidents had not taken place near Aligarh and Haldwani as was alleged and that the expenses claimed for towing, etc., had not really been incurred and also that the accused had been making fraudulent claims against other insurance companies in respect of cars.

Apart from the fact that evidence regarding other claims made against insurance companies

both before and after the events in the present case appears to be inadmissible, it must be stated at once that there is no evidence in connection with any of these other claims that it was in any way fraudulent, and, even with regard to the claims met by the Insurance Company in the present case, after considering the evidence the learned Assistant Sessions Judge has come to the conclusion, which in my opinion is justified or at any rate is not sufficiently unsound to be upset in an appeal against acquittal, that the sums of money paid by the Company in respect of the damage to the car of the accused and incidental expenses arising out of the accidents paid in respect of genuine claims and that no dishonesty has been proved against the accused.

The learned Assistant Sessions Judge has also come to the conclusion that there is no evidence whatever of any conspiracy between the accused. On this point it would undoubtedly be very difficult indeed for the prosecution to produce any direct evidence of a conspiracy between husband and wife since direct evidence of conspiracies which are usually hatched in secrecy, can only be given by somebody, who has taken part in the conspiracy and has become a witness for the State, and this course is virtually out of the question, where the alleged conspirators number only two and are husband and wife. However, I agree with the conclusion that no conspiracy has been established and that at best, if any offences of cheating and forgery were established on the part of Dr. Vimla, the prosecution might have established abetment of one or two of these acts by the husband.

Thus although there cannot be any doubt whatever on the evidence that Dr. Vimla represented herself to the employees of the Insurance Company as being Miss Nalini and in this connection

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signed a large number of documents as such including letters, claim forms and receipts, two of which were attested by her husband, the learned Assistant Sessions Judge came to the conclusion that no offence had been committed because there was no element of fraud or dishonesty involved once it was found that the claims in respect of which sums of money were paid by the Insurance Company were genuine claims and that the money paid represented the cost of the actual damage to the car and other expenses incidentally incurred in connection with the accidents.

On behalf of the State some attempt was made to upset the findings of fact of the learned Assistant Sessions Judge on the genuineness of the claims, but it is quite clear that the payments were made by the Company after it was satisfied of the extent of the damage to the car and of the genuineness of the claims in respect of other expenses, and the evidence produced by the prosecution in a futile endeavour to prove that the accidents had not taken place at the places alleged appears to me to be hopelessly weak, and as I have already observed the evidence regarding other claims made by the accused against other companies in respect of cars appears to be neither admissible nor conclusive regarding any element of fraud.

It is, however, contended that even so offences of cheating and forgery are established even if the claims themselves which were paid were not fraudulent. The offence of cheating as defined in section 415, Indian Penal Code, is as follows:—
[His Lordship read Section 415 and Continued.]
The offence of forgery is defined in section 463 of the Penal Code which reads:—

[His Lordship read Section 463 and continued.]

With this relevant portion of section 464 Indian Penal Code must be read:—

"A person is said to make a false document.

First. Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed."

It is pointed out that in both section 415 and section 463 the words "fraudulently or dishonestly" are used, which clearly indicates that the words have separate and distinct meanings and whereas the word "dishonestly" has a clear meaning as defined in section 24 the word "fraudulently" has by no means such a clear meaning in section 25. Section 24 reads:—

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 25 reads:—

"A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise."

In other words while in the definition of "dishonestly" the conception of wrongful loss and wrongful

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gain is one which is easily intelligible, it is not so easy to understand the definition of "fraudulently" in which the cognate word "defraud" is used. There has undoubtedly been some conflict of opinion over what is meant by the words "to defraud" and some Courts have taken the view that the word "fraudulently" must include not only some element of deception, but also injury to the person deceived. One such case is *Aparti Charan Ray* v. *Emperor*, (1). The facts in that case were that the husband of a woman, who had given him general permission to file papers in Court on her behalf, forged her signature in a plaint to save the suit from becoming barred by limitation and filed it in Court on the last day of limitation. It was held by Ross and Scroope JJ that the husband was not guilty of forgery as there was no intention to defraud anybody, though his act was an improper one, and that in order to constitute in point of law an intent to defraud there must be a possibility of some person being defrauded by the forgery, or there must be a possibility of some person being not only deceived but injured by the forgery. I can only say that with respect I do not consider this decision to be correct, since even if injury to some person is a necessary element I think that injury did result in that case to the defendant in the suit, which would have become barred by time if the husband had not forged signature in the plaint. I am also doubtful of the correctness of the decision of Mackney J. in *Nga Tun Sein* V. *Emperor*, (2), in which a process server had forged names on the notices with a view to save himself from the consequences of his neglect of duty or to save himself trouble and it was held that it did not amount to intent to commit fraud which involved an intent to cause injury.

(1) (1930) 31 Cr. L.J. 126
(2) A.I.R. 1935 Rang. 203

In the other case cited on behalf of the respondent, *Pramatha Nath* V. *The State,* (1) I would agree that on the facts no offence of forgery was committed, since what the accused had done was to make a false declaration in his own name on a certain petition that he had authority to file it.

On the other hand in *Causley* V. *Emperor,* (2) the facts were that the accused was lawfully entitled to possess arms and ammunition and he signed the prescribed certificate of purchase of some articles of this nature in the name of another person with an address not his own and thereby deceived the gunsmith and the Government and defeated the object of the certificate, and it was held by Chitty and Walmsley JJ. that he had committed forgery and his act had been done fraudulently if not dishonestly.

This matter was considered by Din Mohammad and Sale JJ. in *Emperor* V. *Abdul* Hamid, (3). Briefly the facts in that case were that the accused had entered Government service in 1926 when he gave the date of his birth as 15th of April, 1898. After he had been in service till 1941 his brother out of spite sent to the Government a copy of the university Certificate showing the date of birth of Abdul Hamid as 15th of April, 1891, and it was alleged that Abdul Hamid had forged or abetted the forgery of certain letters and a telegram in an endeavour to save himself. He was convicted by the trial Magistrate both of cheating in respect of having given a false date of birth at the time of his entering into Government service and of abetment of forgery. His appeal came before me as Sessions Judge at Lahore in

(1) A.I.R. 1951 Cal. 581
(2) I.L.R. 43 Cal. 321
(3) A.I.R. 1944 Lah. 380

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those days and I accepted it, finding that there was no proof that he had obtained employment in Gover nment by falsely filing his date of birth, and that although the alleged forged documents were undoubtedly forgeries in the ordinary sense of the word, they were not criminal forgeries in that there was no intent to injure anybody or liklihood of anybody being injured as a result thereof. The State appealed against the acquittal and Abdul Hamid was held guilty under section 465 and 471 read with section 109, Indian Penal Code, on being held that injury was not a necessary ingredient of fraud in the Indian Penal Code.

This judgment was cited before me in the case of *G. S. Bansal* V. *The State of Delhi,* Criminal Misc. No. 86-D of 1957, decided on the 8th of October, 1957. This was a petition challenging the committal of the petitioner, an Under-Secretary to the Government of India in the Ministry of Home Affairs, on charges under section 467 Indian Code. The facts of that case were that the Petitioner's father had deposited three National Savings Certificates of the value of Rs. 250 with the Rationing authorities as security in connection with his licence for running a ration shop. The licence was subsequently transferred to the name of his grandson, who furnished a cash security. The petitioner's father then applied to the authorities for the release of the Savings Certificates, but before any action had been taken on his application he died. About a month after his death a letter addressed to him was received by his son in which a form to be completed was enclosed. This form was completed by the petitioner, who signed it in his father's name and also signed it in his own name as an attesting witness. In fact two or three documents were signed in this manner in connection with the release of the Certificates.

It was contended before me that since it was proved that the petitioner was the sole heir of his father and was entitled to the return of the money in any case, there was no element of dishonesty in the sense of wrongful gain and there was no injury so as to make his forgery criminal. After considering a number of cases including *Abdul Hamid's case* I followed the view expressed therein and held that there was no ground for interference with the order of commitment.

Thereafter the petitioner was actually convicted and his appeal was heard on the 7th of january, 1960 by my learned brother Chopra J., who after considering the matter also agreed with the view in *Abdul Hamid's* case and dismissed the appeal.

On this view of the matter Dr. Vimla seems to have committed the offence of cheating by personation under section 419, Indian Penal Code and various offences of forgery with regard to all the documents, which she signed in the name of Miss Nalini. Undoubtedly there would be nothing wrong or illegal in having the balance of the insurance policy transferred in the name of the minor Miss Nalini provided that this is done openly and through Dr. Vimla in her own name as guardian on behalf of the minor, but at the same time it must be held that the Insurance Company would certainly not knowingly enter into a contract with a minor in the minor's own name, and by representing herself to the servants of the company as being Miss Nalini and so inducing them to accept the transfer of the policy in the name of Miss Nalini. Dr. Vimla clearly committed an offence under section 419 Indian Penal Code of cheating by personation, and she must be equally held to be guilty of forgery in respect of

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signing the proposal form and various documents including receipts in connection with the claims in the name of Miss Nalini.

As regards the husband it would certainly appear that he has abetted some of the above offences committed by his wife, but he has not been charged with abetment, but only with conspiracy and with certain acts, which really amount to abetment although the charges are framed under the substantive sections.

Actually the charges appear to have been rather badly drafted because the main offence of cheating, which appears to have been committed was made subject of the first charge against both the accused, which was simply under section 120 B. This related to the purchase of the car in the name of Miss Nalini and getting the insurance policy transferred in the name of Miss Nalini. The only charge framed against both the accused under section 419, Indian Penal Code related to the alleged cheating of the Insurance Company of Rs. 426-3-0 obtained from the company by Dr. Vimla in the name of Miss Nalini. The claim, however, does not seem to be a false claim, and the only cheating of the insurance company was in the form of getting the insurance policy transferred in the name of Miss Nalini. The actual charge framed under section 419, Indian Penal Code, therefore, cannot be held to be established against either of the accused, and although Dr. Vimla appears to have been guilty under section 419, Indian Penal Code and her husband as abetting it, no charge has been framed regarding the actual offence, which they appear to have committed under this section, and it is hardly possible to add a charge on this point at this stage. The only document alleged to have been forged by

Siri Chand accused is Ex. P.G./G.I. relating to Rs. 160 alleged to have been incurred in getting the car towed from Aligarh to Delhi after the second accident, but the finding of the Lower Court regarding this must be upheld that it has not been proved to be falsely prepared by Siri Chand and it is doubtful whether he can be held to be guilty of any of the offences with which he has been charged.

As against Dr. Vilma it must be held that although she appears to have been guilty under section 419, Indian Penal Code no charge has been framed against her under that section regarding the particular act, which would amount to an offence, but she must be held guilty on the charges of forgery covered by charges Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16. On the question of sentence, however, it is to be borne in mind that the real essence of the prosecution case has disappeared, namely, that the object of all these acts, was to cheat the company by obtaining sums of money from it on the basis of false claims, which the prosecution has completely failed to establish, and thus the offences are only technically fraudulent and not dishonest. In the circumstances I would dismiss the appeal against Siri Chand and, covicting Dr. Vimla of the offences under sections 467 and 468, Indian Penal Code specified in the charges enumerated above, sentence her to imprisonment till the rising of the Court except the fourth charge relating to the forged signatures on the proposal form, which is the chief offence to which all others were subsidiary, and on that charge I would sentence her to pay a fine of Rs. 100 or in default to undergo two weeks' simple imprisonment.

CHOPRA, J.—I agree. Chopra, J.

B. R. T.