

REGINA

BAS DEO alias KALLAN s/o Budhai

JUDGMENT

The accused is charged with the offence of obtaining chattel and money by false pretences under section 342(a) of the Penal Code.

The particulars of offence in the charge reads as follows:-

BAS DEO alias KALLAN s/o BUDHAI, on the 19th day of May, 1973, at Nasea, Labasa in the Northern Division, with intent to defraud obtained from UDHO PRASAD s/o Bipat, a billy goat valued at \$16.00 and \$4.45c in monies, to the total value of \$20.45c, by falsely pretending that he will have the three sons namely (1) PARAS RAM, (2) SAHA DEO, (3) PREM CHAND, and a brother JAI RAM of the said UDHO PRASAD s/o Bipat, who had been charged with an offence of Greivous Harm from getting convicted by having conversation with Detective Senior Inspector of Police Benjamine Bas Deo of Labasa Police Station.

Evidence for the prosecution was given by UDHO PRASAD (P.W.1), the Complainant, NARAYAN NAICKER (P.W.2), PARAS RAM (P.W.3), JAI RAM (P.W.4), PREM CHAND (P.W.5), SAHA DEO (P.W.6), RUP NARAYAN (P.W.7), Constable KRISHNA CHAND(P.W.8), CPL. BRIJ PRASAD (P.W.9) and Inspector BENJAMINE BAS DEO (P.W.10).

The prosecution case is that on 19th May, 1973 when UDHO PRASAD (P.W.1) the complainant in this action was in the Labasa Market he was met by the accused. At that time P.W.1's three sons PARAS RAM (P.W.3), SAHA DEO (P.W.6), PREM CHAND (P.W.5) and a brother JAI RAM (P.W.4) were involved in an assault case and were later charged and brought before the Labasa Magistrate's Court. The P.W.1 testified that at first his sons were kept in custody for 5 or 6 days and at that time he said that on Thursday he came to Labasa to find out about them. He said that he had brought with him one billy goat for selling and the price he wanted for it was \$16.00. The goat was unloaded on Friday morning. He said that he wanted to sell this to enable him to engage counsel for the case against his sons. The witness said that while he was at the Labasa Market, the accused whom the witness had known for 4 or 5 years came to him and after greetings were exchanged the witness told the accused about the case. The accused then said "you give me one billy goat and a bottle of liquor" and asked the witness if he knew Bas Deo.

The witness said he has a billy goat but he has no money. Whereupon NARAYAN NAICKER (P.W.2) who was with P.W.1 gave the accused \$4.45. The witness said that the accused told him to take the goat to a lemon tree at the market which the P.W.1 did. The accused said he will speak to Inspector Bas Dec. P.W.1 said that this took place at about 12 noon. He said that from what the accused said he thought that he will put the matter before the inspector and 'falsity will come out.' After 3 or 4 weeks the P.W.1 went to accused's house and stayed overnight at his place. The accused told P.W.1 then that 'I have set everything all right and there wouldn't be any thing bigger in it.' In cross-examination the P.W.1 said that the accused said to him "you give one goat and I'll get your sons released." In re-examination he said that the accused said that he will get the sons released at that time.

NARAYAN NAICKER (P.W.2) testified as to how he gave the said sum of \$4.45 to the accused. He said that he had known the accused for about 10 years.

The other witnesses PARAS RAM (P.W.3), JAI RAM (P.W.4), PREM CHAND (P.W.5) and SAHADEO (P.W.6) testified that on 11th May, 1973 they were charged for assault. P.W.3 said that they engaged Mr. Maqbool at first as their counsel and then Mr. Kohli. He said that P.W.4, 5 and 6 pleaded guilty to the charge and that he was acquitted. They said that after being charged three of them were put in the cell for 5 days (from 12/5/73 to 14th or 16th).

RUP NARAYAN (P.W.7) also testified that on 19/5/73 he saw the accused and P.W.1 together in Labasa Market. The witness said that he was selling roosters that day.

At the close of the prosecution case the accused elected to make an unsworn statement in his defence and did not wish to call any witnesses. The accused states as follows:-

"Udho Prasad has alleged is all false. I don't know anything about this. Neither I took the goat nor money. Apart from this know nothing else."

The burden of proof of guilt lies upon the prosecution and it is not for the accused to prove his innocence.

On the evidence before me I find that the prosecution has not discharged that burden. After reviewing the evidence I am left in grave doubts as to the guilt of the accused. The prosecution must prove their case beyond all reasonable doubt.

What evidence is there against the accused:-

- (a) P.W.1 has alleged that on 19/5/73 he gave a billy goat to the accused in the Labasa Market in the presence of NARAYAN NAICKER (P.W.2) and that P.W.2 gave the accused \$4.45 in money.
- (b) P.W.2 who is the brother-in-law of the P.W.1 has stated that he gave \$4.45 to the accused on behalf of the P.W.1 as he did not have any money.
- (c) Paras Ram (P.W.3), Jai Ram (P.W.4), Prem Chand (P.W.5) and Sahadeo (P.W.6) have testified that there was a case against them in May, 1973 and how it was finally disposed.
- (d) Cpl. Brij Prasad (P.W.9) evidence was in the main in regard to when the case came before the Court and when it was finally disposed. He knows of the case as he was in charge of the prosecution of the case.
- (e) Insp. Benjamin Bas Deo (P.W.10) in the main merely stated that he knows the accused and that the accused had not approached him in this connection.
- (f) Det. Constable Krishna Chand (P.W.8) speaks in the main of his interview with the accused in which the accused answers are a mere denial of the allegation and matters pertaining thereto.

The only evidence the Court is left with to decide the issue on the evidence of P.W.1 the complainant, his brother-in-law Narayan Naicker (P.W.2) and one Shiu Narayan (P.W.7) a market vendor. The P.W.2 is not an independent witness and although P.W.7 is one when one looks at their evidence and that of P.W.1 one finds that there are so many material discrepancies that one is left in doubt as to what actually happened on the day of the alleged incident. To put it more simply it is impossible to say where the truth lies. If I believe P.W.1 then I have to reject the testimony of either P.W.2 or P.W.7. If I accept the testimony of P.W.2 then there I find that in the light of certain discrepancies between P.W.1's evidence and that of P.W.2's evidence and because of P.W.2's family relationship with P.W.1 his evidence is not free from bias and one that has to be acted and relied upon with great caution. If I accept P.W.7's testimony then I definitely have to reject P.W.2's testimony in respect of the material particulars. Then again P.W.7's evidence differs from that of P.W.1 in respect of the material particulars. Although I agree that there are bound to be differences in the evidence of witnesses, even after allowing for that, I find that in a case of this nature and in criminal cases there should not be any doubts. The prosecution cannot rest on mere suspicion. In a criminal case every gap must be filled, and as VISCOUNT SIMON said in HICKMAN v. PEACEY (1945) A.C. 304 at p.318 et seq.

"Far-fetched hypothesis, unsupported by any semblance of evidence do not seem to me to advance the matter. If nothing is to be held to be proved in a Court of law when it is conceivable that another incident of which there is no evidence might reverse the conclusion, then decisions of fact based on the circumstantial evidence - such as are frequently reached in criminal cases, or in the Divorce Court would often have to be regarded as inadequately established. In my view, the right conclusion depends on the evidence, and on nothing else."

Some of the discrepancies in the evidence are as follows:-

P.W.1 said "I was standing there then Baba Bas Deo said How are you what are you doing here? I said I am in difficulty. I said I am in trouble..... Then accused said "if it is the truth, o.k." I said "this is the truth." Then he said "you give me a billy goat and a bottle of liquor" and asked me if I knew Bas Deo. I said I do not know. I said "I have got billy goat but I haven't got money. Another man Narayan was listening to us ... he was beside me. Then do not know why Narayan gave \$4.45 to Baba the accused....."

P.W.2 said ".....Udho said Ram Ram to him.. Kallan said:

But P.W.2's version of what conversation took place differs from that of P.W.1. This is what P.W.2 said took place. "When Kallan came Udho said "Ram Ram" and then Kallan said "What happened" Udho said "one son had assaulted and two sons and brother got in trouble for nothing." Then Kallan said "Boy, there is nothing to worry about. Then Udho said "what is the way out." Kallan said "it will just cost one bottle liquor and one goat." Then Udho agreed to give goat and about liquor he said where am I going to get liquor take money. Udho said how much will it cost. Kallan said one bottle rum will cost \$2.45 --- no \$4.45. At that time Udho didn't have money so I gave Kallan money \$4.45 from my pocket. Kallan said "inspector is in my hand and I'll set it up."

Yet another version of the alleged conversation between P.W.1 and the accused is given by P.W.7 who said as follows: "I heard conversation between them Udho said "I am in great trouble! He asked "What happened." Then he said "all my sons are in the cell". Bas Deo said "you give me one billy goat and one bottle of liquor." They spoke for quite sometime. Udho said I have billy goat but no money for liquor. Then Naicker said I'll give money. Naicker gave \$4.45.... then Bas Deo took goat away.....Bas Deo said he is going to have the sons released. I didn't hear anything else.

These three versions fail to establish a case of obtaining goods and money by false pretences. Apart from the conversation referred to above the time at which the alleged conversation took place differ so much from witness to witness that this again throws doubts in my mind as to whether the alleged

conversation did actually take place. P.W.1 said he was in the market "till about 12 to 1.0'clock and said that he conversed with the accused for about half an hour and that he met him at 12 o'clock. Whereas P.W.2 said that he was with P.W.1 from 11.00a.m. to 1.30p.m. and that the accused came there after 11.30a.m. Whereas P.W.7 said that there was "negotiation between Udho and accused same day between 1 and 2.00p.m. These are very material differences as to time. The witnesses are Market Vendors and they should have a very good idea of time whether they have a watch with them or not.

It is also a matter of comment that had P.W.1 been concerned about the allegations which he is making he should have reported the matter to Police long ago. The incident is alleged to have taken place in May, 1973 and Constable Krishna Chand did not commence investigation until October, 1973. After May, 1973 the P.W.1 had stayed overnight with the accused and they appear to be on friendly terms and P.W.1 has even gone to the extent of saying that the accused is related to him. If the P.W.1 did give him a goat it could possibly be because of his friendship with him or for any other good motive. Many possibilities are open in this regard. Inspector Bas Deo said on information received the accused was charged. Who informed is not before the Court. P.W.1 did not complain; none of the other witnesses said they complained. None of the prosecution witnesses seemed to be concerned about the alleged incident.

For the reasons given hereabove on the evidence as a whole I am left in grave doubts as to the guilt of the accused. The benefit of doubt has to be resolved in favour of the accused.

The accused is therefore found not guilty of the offence as charged and he is acquitted of the charge.

(D. Pathik)
Magistrate

12/7/74