## APPELLATE CRIMINAL

*Before Harnam Singh, J.*

*On differance between Bhandari, J. and Soni, J.*

THE STATE,—*Appellant.*

*versus*

MUNNI LAL, ETC.,—*Accused-Respondents.*

**Criminal Appeal No. 526 of 1950**

1952

October 7th

*Criminal offence*—Mens rea—*Intention not mentioned as constituent part of crime—Effect of—Intention—proof of—Cotton Textiles (Control) Order, 1948—Clause 23 (d)—Defacing tex mark by fast dyeing—Cloth merchant giving mill-made cloth to dyers for dyeing—Whether contravenes clause 23 (d) of the Order—Dyer—Whether also guilty of contravention of clause 23 (d)—Lawful order, carried out in an unlawful manner—Person giving the order, whether liable.*

*Held,* (per Harnam Singh, J ), Clause 23 (d) of the Cotton Textiles (Control) Order, 1948, does not contain in words a provision as to the state of mind of the accused. The effect of this is to shift the burden of proof. In the case of a crime which is defined to contain in words a provision as to the state of mind of the accused, it is for the prosecution to prove *mens rea* while in a case where words descibing *mens rea* do not appear in the definition of the crime, it is for the accused to show that he acted without *mens rea.*

*Sriniwas Mal Bairoliya and Another* v. *Emperor* (1), *Sherras* v. *De. Rutzen* (2), *and Brend* v. *Wood* (3), relied on.

*Held,* that the cloth merchants had given the mill-made cloth to the dyers for dyeing and the dyers had fixed or attempted to fix deep dyes on that cloth. The professional dyers could not have dyed the cloth in the manner in which it was dyed except in accordance with the instructions of the cloth merchants. In business the presumption under section 114 of the Indian Evidence Act is that the common course of business had been followed. The fixation of deep dyes on mill-made cloths has the effect of defacing the marking made on the cloth and the character and circumstances of the act of dyeing suggest that the cloth was dyed so that the markings made on that cloth may be defaced and both the cloth merchants and the dyers

(1) A.I.R. 1947 P.C. 135
(2) (1895) 1 Q.B. 918
(3) (1946) 175 L.T.R. 307=(1946) 110 J.P. 317

are guilty of contravening the provisions of clause 23 (d) of the Cotton Textiles (Control) Order, 1948.

*Held* (per Soni,J.)—

(1) that in every offence the prosecution must prove criminal intention on the part of the accused. *Mens rea* must be established before the offence is proved unless from the language used in the statute creating the offence it is clear that an offence is committed irrespective of the intention.

(2) Intention like any other state of mind, can only be proved by acts and circumstances.

(3) Every man is presumed to intend the natural consequences of his acts, and every man is presumed to know the law.

*Held* (per Bhandari, J.), that if a person gives an order which is not unlawful in itself, he is entitled to assume that it would be carried out in a lawful manner and cannot be held responsible if it is carried out in an unlawful manner.

(On account of difference of opinion between Mr. Justice Bhandari and Mr. Justice Soni, the case was referred to Mr. Justice Harnam Singh for final disposal).

*Apeal from the order of Shri P. N. Bhanot, Magistrate, 1st Class, Delhi, dated the 27th June 1950, acquitting the respondents.*

HAR PARSHAD, Assistant Advocate General, for Appellant.

M. L. PURI, SHAMBHU LAL PURI and N. S. KEER, for Respondents.

## ORDER

**Soni, J.**

SONI, J. These are five appeals brought by the State of Delhi, against the acquittal of certain persons by a Magistrate of Delhi.

The persons who were sent up for trial before the Magistrate were certain dyers and certain

The State
v.
Munni Lal
etc.

Soni, J.

cloth merchants who had given a number of pieces of mill-made cotton cloth to them to dye. The charge against them was that they had defaced or caused to be defaced mill and textile markings from the pieces of cloth by giving them fast dyes and had, therefore, contravened the provisions of clause 23(d) of the Cotton Textiles (Control) Order, 1948. The dyers had further been charged that they had no distinguishing marks with them as required by notification No. T.C. (6) 1/44, dated the 19th February 1949. The dyers pleaded guilty so far as the contravention of the notification No. T.C. (6) 1/44, of the 19th February 1949, was concerned but pleaded not guilty otherwise. The Magistrate fined the dyers certain sums of money for contravening this last notification. From this there is no appeal. The Magistrate acquitted both the dyers as well as the persons who gave them pieces of cloth to dye as in his opinion they had not contravened the provisions of sub-clause (d) of clause 23 of the Cotton Textiles (Control) Order, 1948. The State of Delhi has appealed against the orders of acquittal.

Clause 23(d) runs as follows :—

"23 (1) Where the marking to be made and the time and manner of making it in respect of any class or specification of cloth or yarn have been specified under clause 22—

(a) * * * *

(b) * * * *

(c) * * * *

(d) no person shall alter or deface or cause or permit to be altered or defaced any markings made on any such cloth or yarn held by him otherwise than for his bona fide personal requirements."

The State
*v.*
Munni Lal
etc.

Soni, J.

In Criminal Appeal No. 526 the accused are (1) Muni Lal a cloth merchant of Chandni Chowk, Delhi and (2) Bashir Ahmad dyer of Delhi. The evidence in this case is that of Manohar Lal, Inspector of Textiles, who stated that on the 26th November 1949, he went to the house of Bashir Ahmad, the dyer, from where he recovered dyed cloth, that 32 *thans* were wet bearing tex marks and 75 *thans* were dyed and dry, that these were of the same quality, the *tex-mark was visible on* some of these, that Bashir Ahmad was busy in dyeing the cloth, that the cloth and utensils (pans) were taken into possession (*vide* memo, Exh. P. A.) and that Bashir Ahmad did not have any distinguishing mark. The Magistrate noted that the second witness Om Parkash corroborated the first witness. This is the sole evidence in the case. Before recording evidence, the Magistrate had questioned the accused. Muni Lal had stated that he gave this cloth for colouring and not for defacing and the second accused Bashir Ahmad admitted that he had no distinguishing mark. There was no defence produced. This case and all the other four cases were tried summarily.

In Criminal Appeal No. 527, the accused are (1) the same Muni Lal, cloth merchant of Chandni Chowk and four dyers, (2) Abdul Ghafur, (3) Abdul Wahid, (4) Amir-ud-Din, and (5) Ghulam Hussain. In this case Muni Lal, stated that he gave 124 *thans* for dyeing to the other accused who also admitted it, the charge being that Muni Lal gave 124 *thans* of mill-made cotton cloth to accused Nos. 2 to 5 for defacing the mill markings, etc., by fast dyeing while accused Nos. 2 to 5 had also no distinguishing mark as required by notification No. T.C. (6) 1/44, dated the 19th February 1949. The plea was not guilty to the charge for the contravention of clause 23. The evidence in this case is that of Surat Singh, Assistant Manager, Delhi Cloth Mills, who stated that in November 1949, the Mills sold 9 bales including bale No. J. C. 7983 containing *kora latha* bearing mark 25/0155 to Muni Lal-Madan Lal—*vide* cash-memo No. 4743, the tex-mark of the Mill being 510. In cross-examination he stated that this mark can

The State v. Munni Lal, etc.

Soni, J.

be obliterated by washing. The second witness Om Parkash stated that he was also in the raid and mill-made cloth mentioned in Exh. P. A., was recovered from the house of the accused Nos. 2 to 5 who are the dyers, that some of the cloth was washed and some was being washed and that these accused had no distinguishing mark. In cross-examination he stated that he saw some of the cloth put in the water. It is noted by the Magistrate that the third witness Manohar Lal corroborated the second witness. No defence was produced in this case.

In Criminal Appeal No. 528, the accused are (1) the same Muni Lal, cloth merchant, of Chandni Chowk, Delhi and (2) Abdul Aziz a dyer. They pleaded not guilty to the charge that they defaced mill tex and other marks from mill-made cotton cloth by giving the cloth fast dyes in contravention of clause 23 of the Cotton Textiles Control Order, 1948, by accused No. 2, who had obtained no distinguishing mark as required by notification No. T.C.(6) 1/44, dated the 19th February 1949. Muni Lal stated that he gave the cloth for dyeing to Abdul Aziz who said that he dyed the cloth. The evidence in this case is that of Harbans Singh who stated that mill-made cotton cloth bearing tex-mark and dyed as given in memo, Exh. P.A., was recovered from Abdul Aziz, dyer, who did not have any distinguishing mark. The second witness is the same Surat Singh who is the Assistant Manager of the Delhi Cloth Mills. He stated that bales bearing Nos. J. C. 8498 and J. C. 8574 containing *kora latha* were sold to Messrs. Muni Lal-Madan Lal, on the 24th/25th November 1949, and a cash-memo was executed. In cross-examination, he stated that cash-memos were written by *munibs* but he did not know their names. He did not remember who gave delivery of these bales nor could he say who took the delivery. The third witness was Arjan Singh, Inspector, Textiles, who stated that the articles mentioned in Exh. P.A. were recovered from the house of Abdul Aziz, who was dyeing some of these pieces and that the mill marks were not visible on the cloth and Abdul Aziz did not have

any distinguishing mark. In cross-examination he stated that the cloth pieces did not bear the tex-mark and there were numbers on them. No defence was produced in this case.

The State v. Munni Lal, etc.

Soni, J.

In Criminal Appeal No. 529, the accused are (1) Gian Singh, proprietor, Messrs Gian Singh-Ghasita Singh, Cloth Market, Delhi, and (2) the same Abdul Aziz, dyer. Gian Singh stated that he gave mill-made cotton cloth for colouring to Abdul Aziz, accused, who admitted this. Abdul Aziz also admitted that he did not have any distinguishing mark. The charge in this case was that Gian Singh gave 21 *thans* of mill-made cotton cloth to Abdul Aziz for defacing the mill marks by fast dyeing when he was caught and that Abdul Aziz had not obtained distinguishing marks as required by notification No. T.C.(6) 1/44, dated the 19th February 1949. The only evidence in this case was that of Harbans Singh who stated that on receipt of information he along with D. S. P. Mr Bhatia and others went to Lal Kuan, that he went to the house of Abdul Aziz and recovered cloth of two bales with the covering bearing Nos. J.C. 8498 and 8574, tex-mark 510 Delhi Cloth Mills, that Abdul Aziz told them that this had been received from the shop of Gian Singh, accused, and that on one or two *thans* the tex-mark was visible while on the others it was not visible. He was not cross-examined. There was no defence produced.

In Criminal Appeal No. 530, the accused are (1) the same Gian Singh and (2) the same Bashir Ahmad dyer. The charge was that the first accused gave 62 *thans* of mill-made cotton cloth for defacing the mill marking, etc., by fast dyeing and that accused No. 2 was caught dyeing without being in possession of a dyeing mark as required by notification No. T. C. (6) 1/44, dated the 19th February 1949. There was no evidence at all recorded in this case. The reason why no evidence was recorded was probably that in this case the accused, dyer Bashir Ahmad, was the same dyer who was accused in the case out of which

The State *v.* Munni Lal, etc.

Soni, J.

criminal appeal No. 526, has been put in this Court, and the Magistrate knew that a certain number of pieces had been recovered from his premises, some wet and some dry, and that Bashir Ahmad was found dyeing and had no distinguishing mark with him. He probably thought it unnecessary to record the evidence of the two witnesses which had already been recorded in the earlier case and which I have already given.

The sum and substance of all what happened in these cases as appears from the evidence read with Exhibit P. A. is that on receipt of information a raid was made on the accused dyers' premises on 28th November 1949 and the dyers were found dyeing, and a certain number of pieces of cloth were found dry or drying and a certain number were found wet, details of the distinguishing numbers marked on receptacles of cloth and the tex-mark being given in the evidence and Ex. P. A. and that distinguishing marks were not visible on a number of pieces of cloth. Both the dry and the wet pieces had been dyed or were being dyed in a number of colours—yellow, blue, brown, green, etc. When these pieces were brought to Court, the Magistrate examined them and in his judgment he records the result of his examination in the following words :—

> "I examined some of the pieces of cloth and found that on some of them tex-mark as well as the price was quite visible while on others it was somewhat dim and there are no doubt some pieces on which tex-mark as well as the price was not visible."

The words of clause 23 of the Cotton Textiles (Control) Order, 1948, are: " . . . . . no person shall alter or deface or cause to be altered or defaced any markings made on such cloth . . . . ." When the tex-mark and the price is not visible on any piece, it is quite clear that the result of dyeing was to deface these markings. But in every offence the prosecution must prove criminal

intention on the part of the accused. *Mens rea* must be established before the offence is proved unless from the language used in the statute creating the offence it is clear that an offence is committed irrespective of the intention. Their Lordships of the Privy Council in the case of *Sriniwas Mall Bairoliya* (1), had to deal with a case of infringement of Price Control Order issued under the Defence of India Rules promulgated during the last war. They said—

> "They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the judgment of Wright, J., in *Serras* v. *De Rutzen* (2) Offences which are within that class are usually of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable with imprisonment for a term which may extend to three years. Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said:
>
> 'It is in my opinion of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out *mens rea* as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind.' *Brend* v. *Wood* (3)."

(1) I.L.R. 26 Pat. 460=A.I.R. 1947 P.C. 135
(2) (1895) 1 Q.B. 918 at p. 921
(3) (1946) 110 J.P. 317 at p. 318

The State
*v.*
Munni Lal,
etc.

Soni, J.

In these cases, therefore, it is necessary to find whether from the evidence led or from the circumstances or the statements of the accused the necessary ingredient of criminal intention has been proved against the cloth merchants and the dyers. That is to say, in these cases can the Court come to an affirmative conclusion that the cloth merchants when giving the pieces of cloth to be dyed intended to give them with the criminal intention that the dyers should dye them in such a manner that the markings on the cloths be defaced and the dyers received these cloths knowing that they had to dye the cloths in that manner? It is argued for the accused-respondents that a cloth merchant may find his customers wanting to buy dyed cloth instead of plain cloth, and in order to meet their demands he has the cloth dyed. Having a piece of cloth dyed is no offence nor is it an offence for a dyer to dye it. The offence is made out if a person does it with a particular intention forbidden by the law. Can the intention be made out from the large number of pieces of cloth found with the dyers which had been dyed or were being dyed, and from the fact that the Magistrate has observed that on a number of pieces of cloth the markings are not visible? Counsel for the State urges that it should be. He further urges that the dyers were found dyeing the cloth and wet pieces of cloth were seized by the raiding party. If the process of dyeing had been allowed to be completed, and the dyers had not been surprised in their work by the raiding party, the probability was—so urged the learned counsel—that the markings would not have been visible on any piece of cloth. His argument is that the process of dyeing defaced the markings on some pieces of cloth and the offence was complete *qua* those pieces. *Qua* the others it was an attempt to deface which was frustrated by the raid and the offence committed was the attempt to do something forbidden by the law. He urged that the requisite criminal intent must be presumed from the circumstances that the accused cloth merchants had not given an odd piece or pieces to be dyed but the work of dyeing had been entrusted to the dyers on a large

scale as evidenced by the large number of pieces recovered at the raid. He urged that the Court should take judicial notice of the fact that it was highly profitable for cloth merchants to have pieces of cloth on which proper markings have been defaced so that they may charge unauthorised prices. The argument, in short, was that having regard to the business of cloth merchants and the high profit that is daily being earned by violation of Control Orders, the Court must presume that things are likely to have happened regard being had to the conduct of cloth merchants in course of events as they are daily happening. Learned counsel urged that the pieces of cloth which were found dyed in such a way that proper markings were not visible thereon could not have been dyed in that manner by professional dyers unless the cloth merchants had given instructions to that effect. None of the accused cloth merchants has even made a statement at the trial to the effect that no such instructions were issued, nor did any dyer state at his trial to the Magistrate that the deep dyes found on cloths were due to accident contrary to instructions. *Res ipsa loquitur,* urged the learned counsel and he argued that criminal intent should be presumed from the circumstances, and as the accused had neither made any statement mentioning contrary to what the circumstances suggest nor had led any evidence to rebut they should be found guilty.

The argument of learned counsel for the accused-respondents is that the only evidence produced in the case being the evidence of the raid and recovery, and nothing more having been proved, the evidence is wholly insufficient to prove the guilty intention of either the cloth merchants or of the dyers.

In my opinion there is great deal of force in the argument of counsel for the State. Intention, like any other state of mind, can only be proved by acts and circumstances. Why should a professional dyer dye a whole piece of cloth in

The State v. Munni Lal, etc.

Soni, J.

a deep dye unless he had been told to do so, and if the effect of deep dyeing is to deface the markings it is but natural to presume the intention to deface. The cloth merchant who gave the cloth pieces to be deep dyed must be presumed to have given them with that intention to the dyer. The dyer who dyes cloth in a deep dye which makes the markings thereon invisible brings about an effect forbidden by the law. The dyer can plead not guilty only by pleading that he did not know that deep dyeing would deface the markings and that he did not know that defacing was an offence. But every man is presumed to intend the natural consequences of his acts, and every man is presumed to know the law.

In my opinion the dyers and the cloth merchants accused in these cases were guilty for having contravened the provisions of clause 23 (d) of the Cotton Textiles (Control) Order, 1948, and made themselves liable to punishment under section 7 of Essential Supplies (Temporary Powers) Act, 1946. I would sentence each of the cloth merchants to a fine of Rs. 250 in each case and each of the dyers to a fine of Rs. 50 in each case. I would order confiscation of those pieces of cloth on which the proper markings were invisible. These pieces of cloth should have been confiscated in any case under the provisions of clause 37 of the Cotton Textile (Control) Order, 1948. Should these pieces be not available, price thereof should be recovered from the cloth merchants, accused concerned.

Bhandari, J.

BHANDARI, J. I concur in the view expressed by my learned brother in regard to the dyers, but I must confess with great respect that I am unable to agree that the order of acquittal passed in respect of the cloth merchants should be replaced by an order of conviction.

The facts of the cases have been set out at length in the preceding judgment and need not be reproduced. I would, however, examine the

facts of one of these cases with the object of giving my reasons for disagreeing with the judgment recorded by my learned brother.

Muni Lal, a cloth merchant, and Bashir Ahmad, a dyer, were tried summarily in Criminal Appeal No. 526 of 1950. The charge against them was that they had "defaced mill and tex markings from mill-made cotton cloth by giving the same fast dye by accused No. 2, who had no distinguishing mark as required by notification No. T. C. (6) 1/44, dated the 19th February 1949".

Two witnesses appeared for the prosecution in this case. P. W. 1, Chaudhri Manohar Lal, Inspector of Textiles, stated as follows:—

> "On the 26th November 1949, I went to the house of Bashir Ahmad where I recovered some dyed cloth. Thirty-two *thans* were wet bearing tex marks and 75 *thans* were dyed and dry. These were of the same quality. Tex-mark was visible on some of these. Bashir Ahmad was busy in dyeing the cloth. The cloth and utensils were taken into possession,—*vide* memo, Ex. P. A. Bashir Ahmad did not have any distinguishing number.
>
> *Cross-examination*. Bashir Ahmad is a dyer."

The statement of this witness was corroborated by P. W. 2, Om Parkash.

Muni Lal, accused, admitted that he gave this cloth for 'colouring' but he denied that he had given it for defacing. Bashir Ahmad who is a dyer admitted that he had no distinguishing mark which a dyer is supposed to keep. No evidence was produced in defence.

It will be seen from the above that the sum total of the evidence produced by the prosecution in the present case consists of the testimony of two

The State v. Munni Lal, etc.

Bhandari J.

witnesses namely Manohar Lal and Om Parkash and the statements of the two accused persons, namely Muni Lal and Bashir Ahmad.

The learned Magistrate convicted Bashir Ahmad for having failed to take out a licence, but he acquitted both the accused of having contravened the provisions of clause 23 of the Cotton Textiles Control Order. The order of acquittal was based on the following grounds, namely :—

(a) that Muni Lal had asserted that he had given the cloth for dyeing and not for defacing the tex marks;

(b) that both the prosecution and the defence were agreed that the cloth was given for purposes of dyeing alone ;

(c) that dyeing and fast dyeing of cloth are not prohibited by the Cotton Textiles (Control) Order or by any other provision of law ;

(d) that it is not reasonable to hold that the cloth was given for dyeing with the object that the tex marks should be defaced ;

(e) that the Magistrate examined the pieces of cloth himself and found that the marks were visible on some pieces, that they were somewhat dim on others and that they were not visible on the rest; and

(f) that he was unable to hold that the cloth was given specifically for the purpose of defacing the tex mark, for if that had been the intention the tex marks would not have been visible on any of the pieces.

My learned brother is unable to concur in the view taken by the learned Magistrate and is of the opinion that a cloth merchant who gives

pieces of cloth for purposes of dyeing must be presumed to do so with the intention that the tex marks and the mill price should be altered or defaced. I regret I am unable to endorse this view.

The State v. Munni Lal, etc.
——
Bhandari J.

Three propositions may perhaps be taken as established : First that a person cannot ordinarily be convicted of a criminal offence unless he has a blameworthy condition of mind; secondly, that it is not an offence for a cloth merchant to have a piece of cloth dyed or for a dyer to dye the said piece; and thirdly, that an accused person is presumed to be innocent unless he is proved to be guilty.

Let us start with the initial presumption that the accused in the present case are innocent, a presumption which has been considerably strengthened by the finding of the learned Magistrate that they have not contravened the provisions of clause 23 of the Cotton Textiles (Control) Order. It is common ground that customers often ask for dyed cloth in preference to plain cloth, and there is nothing unreasonable therefore if a cloth merchant wishing to meet the legitimate demand of the public sends some pieces or bales of cloth for purposes of being dyed. The cloth merchant in this case has stated categorically that he gave the cloth "for colouring and not for defacing", and the learned Magistrate observed that the dyer supported this statement. The prosecution witnesses did not allege that when the merchant gave the pieces to the dyer he directed the latter to remove the tex marks or to use deep dyes. It follows as a consequence that in the absence of an allegation in this behalf it was not necessary for the merchant to say in so many words that he had not instructed the dyer to remove the marks. The merchant states merely that he gave the cloth for "colouring"; he did not indicate the colour which was to be used or whether it was to be a light colour or a deep colour. As an accused person is entitled to the benefit of every doubt that arises, it must be

The State
v.
Munni Lal,
etc.

Bhandari J.

assumed that the accused in this case did not specify the colour which was to be used and left it to the discretion of the dyer to use such colours as he thought fit.

Let us suppose that the merchant left it to the discretion of the dyer to use any colours that he liked. There is nothing on the record to indicate that deep colours were used; all that is said is that "fast colours were used". If the dyer used deep colours which obliterated or effaced the marks the dyer can be convicted of having contravened the provisions of law by using a colour which was calculated to efface the marks, but so far as I can judge, the merchant cannot be convicted of something which has been done by someone else. If a person gives an order which is not unlawful in itself he is entitled to assume that it would be carried out in a lawful manner and cannot be held responsible if it is carried out in an unlawful manner. A person, for example, who asks his servant to go and bring a newspaper from the Bazar expects that the servant would go and buy the paper. If the servant goes and steels the newspaper, can the master be convicted for the offence committed by the servant? Again, the owner of a motor car asks his chauffeur to take the car to the workshop. The chauffeur drives it carelessly and knocks down a child. Can the owner be convicted of an offence under section 304-A of the Penal Code?

It is of course possible to argue that a man is presumed to intend the natural and probable consequences of his acts and that if the accused in the present case directed that the pieces of cloth should be dyed in deep colours, he may be assumed to have intended that the marks should be effaced. This presumption cannot, in my opinion, arise in the present case. In the first place, the merchant ordered merely that the pieces should be dyed, the inference being that he left it to the dyer to use such colours as the latter thought fit. He did not direct the use of a fast dye. Secondly, it has not

The State
v.
Munni Lal,
etc.

Bhandari J.

been alleged, far less proved, that deep colours were used. The first information report which has been referred to by my learned brother has not been duly proved and cannot be looked at for the purposes of strengthening the prosecution case. In any case it cannot be regarded, as a substantive piece of evidence. Neither of the two witnesses who were examined by the prosecution stated that a deep dye was used. Thirdly, it is significant that the charge was that a "fast dye" was used. A fast dye need not necessarily be a deep dye. Fast colour means a colour which cannot be removed by water or possibly by sun. The colour itself may be light or deep. Fourthly, it is in evidence that the raiding party recovered 32 *Thans* which were wet and 75 *Thans* which were dyed and dry. Tex marks were visible on all the wet pieces and on some of the dry pieces. The learned Magistrate examined the pieces himself and found that the marks were fully visible on some, partly visible on some others and not visible at all on the rest. If the cloth merchant had intended that the marks should be removed he would have instructed that all the pieces should be dyed in deep colours and there can be little doubt that his instructions would have been carried out and the marks would have disappeared completely. The fact that some marks were visible on some pieces leads me to concur in the view taken by the learned Magistrate that the pieces were not given with the intention that the marks should be removed but with the intention only that they should be dyed. If the dyer had been a little more careful in carrying out the task assigned to him or if he had left the marked portion undyed, the present trouble would not have arisen. Washing a piece of cloth may possibly deface the marks but dyeing it does not necessarily have the same result.

For these reasons I am of the opinion that the cloth merchants in these five appeals cannot be convicted of having contravened the provisions of clause 23 of the Cotton Textiles (Control) Order.

The State
v.
Munni Lal, etc.

Harnam Singh J.

JUDGMENT

HARNAM SINGH, J. In Criminal Cases Nos. 425/3, 505/5, 422/3, 453/5 and 459/5 the Court of First instance convicted the dyers in each case under section 7 of the Essential Supplies (Temporary Powers) Act, 1946, hereinafter referred to as the Act, read with notification No. T.C. (6) 1/44, dated the 19th of February 1949, and sentenced each of them to a fine of rupees 25. In default of payment of fine the dyers in the several cases were ordered to suffer rigorous imprisonment for one month. The cloth merchants and the dyers in the several cases were, however, acquitted of the charge under section 7 of the Act read with clause 23(d) of the Cotton Textiles (Control) Order, 1948, hereinafter referred to as the Order.

In these proceedings the conviction of the dyers under section 7 of the Act read with the notification is not challenged. Indeed, no dyer has come up to this Court from his conviction under section 7 of the Act read with the notification.

From the orders of acquittal under section 7 of the Act read with clause 23(d) of the Order in the several cases the State of Delhi has appealed under section 417 of the Code of Criminal Procedure, hereinafter referred to as the Code.

In dealing with Criminal Appeals Nos. 526 to 530 of 1950, Soni, J., has found the cloth merchants and the dyers in the five appeals to be guilty of having contravened clause 23(d) of the Order. Bhandari, J., while concurring in the view expressed by Soni, J., in regard to the dyers has found that on the evidence examined in the several cases the cloth merchants ought not to be convicted for having contravened clause 23(d) of the Order. In these circumstances Criminal Appeals Nos. 526 to 530 of 1950 have been laid before me under section 429 of the Code.

In the five appeals referred to in the opening paragraph of this order, the facts are almost

The State
v.
Munni Lal,
etc.

Harnam Singh J.

identical. In all the cases the cloth merchants had given mill-made cotton cloth to the dyers for fast dyeing. The charge against the cloth merchants and the dyers was that they had defaced or caused to be defaced the tex marks on the cloth, specified by the Textile Commissioner under clause 22 of the Order, by giving the cloth fast dyes thereby contravening clause 23(d) of the Order. The cloth merchants and the dyers pleaded not guilty to the charge under section 7 of the Act read with clause 23(d) of the Order.

In Criminal Appeals Nos. 526 to 530 of 1950 the sole question that arises for decision is whether on the facts of the several cases the acquittal of the dyers and the cloth merchants for the offence under section 7 of the Act read with clause 23(d) of the Order is open to challenge.

Clause 23(1) (d) of the Order reads :—

"23(1) Where the marking to be made and the time and manner of making it in respect of any class or specification of cloth or yarn have been specified under clause 22—

(a) * * * *

(b) * * * *

(c) * * * *

(d) no person shall alter or deface or cause or permit to be altered or defaced any markings made on any such cloth or yarn held by him otherwise than for his *bona fide* personal requirements."

In Criminal Case No. 425/3 of 1950, out of which Criminal Appeal No. 526 of 1950 arises, Munni Lal, a cloth merchant of Delhi, Bashir Ahmad, a dyer of Delhi, were prosecuted under section 7 of the Act, read with clause 23(d) of the Order. Manohar Lal, P.W.I, Inspector of Textiles, gave evidence that on the 26th of November 1946, he found Bashir Ahmad dyeing mill-made

The State v. Munni Lal, etc.

Harnam Singh J.

cloth at his house. Finding Bashir Ahmed dyeing the cloth, he took that cloth into possession. 32 *thans* out of that cloth were wet bearing tex marks and 75 *thans* were dyed and dry. Tex marks were not visible on some of the *thans* which were dyed and dry. In the register of summary trials it is recorded that Om Parkash, P.W.2, corroborated Manohar Lal, P.W.1. In examination under section 342 of the Code Munni Lal stated that he gave the cloth for dyeing and not for defacing the tex mark. Bashir Ahmed stated that he had dyed the cloth given to him by Munni Lal. No witness was examined for the defence.

In Criminal Case No. 505/5 of 1950, out of which Criminal Appeal No. 527 of 1950 arises, Munni Lal, a cloth merchant of Delhi, and Abdul Ghafur, Abdul Wahid, Amir-ud-Din and Ghulam Hussain, dyers of Delhi, were prosecuted under section 7 of the Act read with clause 23(d) of the Order. In this case Surat Singh, Assistant Manager, Delhi Cloth Mills, gave evidence that in November 1949, the mills sold 9 bales of cloth including bale No. J.C. 7983 containing *kora latha* bearing mark 25/0155 to Messrs Munni Lal-Madan Lal, the tex mark of the Mill being 510. In cross-examination Surat Singh stated that the tex mark could be obliterated by washing. Om Parkash gave evidence with respect to the recovery of the mill-made cloth from Abdul Ghafur, Abdul Wahid, Amir-ud-Din and Ghulam Hussain. Om Parkash then stated that some of the cloth was washed and some was being washed. In the register of summary trials it is recorded that Chaudhry Manohar Lal, P.W.3, corroborated Om Parkash. Munni Lal in his examination under section 342 of the Code stated that he gave 124 *thans* for dyeing to Abdul Ghafur, Abdul Wahid, Amir-ud-Din and Ghulam Hussain who also admitted it. No evidence in defence was produced in this case.

In Criminal Case No. 422/3 of 1950, out of which Criminal Appeal No. 528 of 1950 arises, Munni Lal, a cloth merchant of Delhi, and Abdul

The State
*v.*
Munni Lal, etc.

Harnam Singh J.

Aziz, a dyer of Delhi, were prosecuted under section 7 of the Act read with clause 23(d) of the Order. Harbans Singh gave evidence that the cloth mentioned in the recovery memo, Exhibit P.A., was recovered from Abdul Aziz, dyer. Surat Singh, Assistant Manager of the Delhi Cloth Mills, stated that bales of cloth bearing Nos. J.C. 8498 and J.C. 8574 containing *kora latha* were sold to Messrs Munni Lal Madan Lal on the 24th/25th of November 1949. Arjan Singh, P.W.3, Inspector, Textiles, gave evidence that the cloth mentioned in the recovery memo, Exhibit P.A., was recovered from the house of Abdul Aziz who was dyeing some of the pieces. In cross-examination Arjan Singh stated that the cloth pieces did not bear the tex marks though there were numbers of them. In examination under section 342 of the Code Munni Lal stated that he gave the cloth for dyeing to Abdul Aziz and Abdul Aziz stated that he had dyed the cloth. No evidence in defence was produced in this case.

In Criminal Case No. 453/5 of 1950, out of which Criminal Appeal No. 529 of 1950 arises, Gian Singh, a cloth merchant of Delhi, and Abdul Aziz, a dyer of Delhi, were prosecuted under section 7 of the Act read with clause 23(d) of the Order. The charge in this case was that Gian Singh gave 21 *thans* of mill-made cotton cloth to Abdul Aziz for fast dyeing. Harbans Singh gave evidence that on receipt of information he along with Mr Bhatia, Deputy Superintendent of Police, went to the house of Abdul Aziz and recovered cloth bearing Nos. J.C. 8498 and 8574 from the house of Abdul Aziz, tex mark being [illegible]0. Harbans Singh stated that on one or two *thans* tex mark was not visible. Harbans Singh was not cross-examined. In examination under section 342 of the Code Gian Singh stated that he gave mill-made cloth to Abdul Aziz for colouring and Abdul Aziz stated that Gian Singh gave 21 *thans* of cloth for colouring. No evidence in defence was produced.

The State
*v.*
Munni Lal, etc.
——
Harnam Singh J.

In Criminal Case No. 459/5 of 1950, out of which Criminal Apeal No. 530 of 1950 arises, Gian Singh, a cloth merchant of Delhi, and Bashir Ahmed, a dyer of Delhi, were prosecuted under section 7 of the Act read with clause 23(d) of the Order. The charge was that Gian Singh gave 62 *thans* of mill-made cotton cloth for defacing the mill mark by fast dyeing and that Bashir Ahmed was caught dyeing that cloth. In the register of summary trials no evidence was recorded in this case. Memo of recovery, Exhibit P.A., appearing in Criminal Case No. 425/3 of 1950 shows the recoveries made in this case. In Criminal Case No. 425/3 of 1950 evidence of Chaudhry Manohar Lal and Om Parkash was recorded. That evidence the Magistrate has used in this case, for that evidence was with respect to the facts mentioned in the memo of recovery, Exhibit P.A., which is common to both the cases.

In acquitting the accused for the offence under section 7 of the Act read with clause 23(d) of the Order the learned Magistrate seems to think that it was not possible to hold that the cloth in the several cases was specifically given for defacing the tex mark because had this been so there should not have been signs of tex marks or numbers visible on some of the pieces.

In approaching Criminal Appeals Nos. 526 to 530 of 1950, I wish to state that it is common ground between the prosecution and the defence that *mens rea* is a constituent part of the crime defined by clause 23(d) of the Order. Indeed, no attempt was made to show that clause 23(d) of the Order either expressly or by necessary implication rules out *mens rea* as a constituent part of the crime defined by that provision of law. If so, the cloth merchants and the dyers in the several cases cannot be convicted under section 7 of the Act read with clause 23(d) of the Order unless they had acted with a guilty mind. In this connection *Sriniwas Mal Bairoliya and another* v. *Emperor*, (1), may be seen.

(1) A. I.R. 1947 P.C. 135

The State
*v.*
Munni Lal,
etc.
——
Harnam Singh
J.

Now, it may be said that the definition of crime given in clause 23(d) of the Order does not *contain in words* a provision as to the state of mind of the accused. In my judgment, the effect of this is to shift the burden of proof. In *Sherras* v. *De. Rutzen,* (1), Day, J. expressed an opinion that in the case of a crime which is defined to *contain in words* a provision as to the state of mind of the accused it is for the prosecution to prove *mens rea* while in a case where words describing *mens rea* do not appear in the definition of the crime, it is for the accused to show that he acted without *mens rea.* For the precise statement of the law on this point *Brend* v. *Wood* (2), may be seen. In that case Lord Goddard, C. J., said:—

> "It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out *mens rea* as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

In considering the question of the existence of *mens rea* illustration (a) to section 106 of Indian Evidence Act may be borne in mind. That illustration provides that when a person does an act with some intention other than that *which the character and circumstances of the act suggest,* the burden of proving that intention is upon him.

Admittedly, the cloth merchants had given the mill-made cloth to the dyers for dyeing and the dyers had fixed or attempted to fix deep dyes on that cloth. In my opinion, the professional dyers could not have dyed the cloth in the manner in which it was dyed except in accordance with the instructions of the cloth merchants. The cloth merchants did not plead that no such instructions

(1) (1895) I Q.B. 918
(2) (1946) L.T.R. Vol. 175. p. 307

The State
*v.*
Munni Lal, etc.
----
Harnam Singh J.

were given by them and the dyers did not plead that the deep dyes fixed on the cloth had been fixed contrary to the instructions given to them. Indisputably, the fixation of deep dyes on mill-made cloth has the effect of defacing the marking made on that cloth. In business the presumption under section 114 of the Indian Evidence Act is that the common course of business has been followed. In the cases under consideration the accused-respondents carry on the business of cloth merchants and dyers and it is not claimed that the cloth given to the dyers for dyeing was for the *bona fide* personal requirements of the cloth merchants. Clearly, the character and circumstances of the act of dyeing suggest that the cloth was dyed so that the marking made on that cloth may be defaced, and I have no doubt that the facts stated above afford a *prima facie* case which is sufficient, unless answered to justify this Court in convicting the cloth merchants and the dyers under section 7 of the Act read with clause 23(d) of the Order. In the cases before me the defence of the accused was denial *simpliciter* and no evidence in defence was given.

But it is said that in Criminal Case No. 459/5 of 1950, no evidence was recorded in the register of summary trials. As stated above, memo of recovery, Exhibit P.A., appearing in Criminal Case No. 425/3 of 1950 shows also the recoveries made in Criminal Case No. 459/5 of 1950. In Criminal Case No. 425/3 of 1950, evidence of Chowdhry Manohar Lal and Om Parkash was recorded. In arguments it was not said that no evidence was heard in Criminal Case No. 459/5 of 1950. Clearly, the argument raised has no force.

In the course of proceedings I thought that in the trial of cases the procedure prescribed by section 262 of the Code was not followed. From a perusal of the register of summary trials I have received no assistance in the matter. No affidavit is placed on the record to show that there was a contravention of section 262 of the Code or that

The State
v.
Munni Lal,
etc.

Harnam Singh
J.

non-observance of procedure has occasioned failure of justice. That being the situation of matters, it is not necessary to pursue the matter.

Having regard to the circumstances of the case I sentence each of the cloth merchants to a fine of rupees 250, in each case and each of the dyers to a fine of rupees 25 in each case. In default of payment of fine the cloth merchants in each case would suffer three months' rigorous imprisonment and the dyers in each case would suffer fifteen days' rigorous imprisonment.

In Criminal Cases Nos. 425/3 and 459/5 of 1950, seventy-five *thans* of cloth covered by items Nos. 3 to 6 and sixteen *thans* of cloth covered by items No. 2 in the memo of recovery Exhibit P.A., appearing on the record of Criminal Case No. 425/3 of 1950 are confiscated.

In Criminal Case No. 505/5 of 1950, forty-three *thans* of cloth covered by items Nos. 2, 6 and 7 in the recovery memo, Exhibit P.A., are confiscated.

In Criminal Case No. 422/3 of 1950, thirty-three *thans* of cloth covered by items Nos. 2 and 4 in the recovery memo, Exhibit P.A., are confiscated.

In Criminal Case No. 453/5 of 1950, nineteen *thans* out of the twenty-one *thans* recovered are confiscated.

In the several cases the cloth and the articles which have not been confiscated should be given to the owners concerned.

Judgments in Criminal Appeals Nos. 526 to 530 of 1950 shall follow the opinion recorded above.

230 HC -400 -8-12-53—CP & S., Pb., Chandigarh.