

1916.

Present: Ennis J.

DIAS v. DANO et al.

453—454—P. C. Galle, 2,042.

Abetment—Giving false evidence to support a false charge—Abetment of the institution of a false charge.

To convict a person of aiding and abetting the institution of a false charge it is not sufficient to prove that he gave evidence in support of the false charge. There must be evidence of a conspiracy to give false evidence, prior to the institution of the false charge.

THE facts appear from the judgment.

J. S. Jayewardene, for appellants.—The evidence shows that the accused gave evidence in support of the false charge. If their evidence was false, they may be guilty of giving false evidence.

¹ *S. C. Min., Feb. 7, 1916.*

² *S. C. Min., Sept. 29, 1914.*

But they cannot be said to have abetted the institution of the false charge. Counsel cited *Gour's Indian Penal Code 451*; *Mayne's Criminal Law of India 475*; 18 W. R. 28.

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May 19, 1916. ENNIS J.—

In this case the two accused appellants were charged and convicted of aiding and abetting the institution of a false charge by the first accused, an offence under section 208 of the Penal Code. It is urged by the counsel for the appellants that a person could not be convicted of abetting the offence of instituting a false charge on evidence which shows only that he gave evidence in support of the charge considered to be false. Certain Indian cases in support of that proposition were cited. Mayne, in the third edition of his *Criminal Law of India*, page 475, comments on this question as follows: "The decision was, no doubt, right in the particular instance stated. Where there was no case whatever against the prisoners, except that they had given evidence which the Court considered to be false, it is plain that they ought to have been charged with that as a substantive offence. It is an evasion of the law to twist a primary into a secondary offence, merely for the purpose of introducing a different jurisdiction, or a lower scale of punishment..... It is quite true that assistance given to another, subsequent to and independently of the substantive offence, does not amount to an abetment of it. But if the assistance was given as part of the original scheme for committing the offence, and for the purpose of furthering or facilitating it, the case would fall under the second and third clauses of section 107. For instance, the mere harbouring of a murderer is punishable under section 212, and not as an abetment of the murder. But if it were arranged that a murder should be committed at a particular place at night, and that the prisoner should leave his house door open so that the murderer might at once slip in and so escape observation, there can be no doubt that the proper way to charge the offence would be as an abetment".

I would follow this exposition of the law on the subject. There must be some evidence of a conspiracy to give false evidence, prior to this false evidence being given, before a person can be convicted of abetting the offence of instituting a false charge. In the present case the charge against the appellants is that they committed the offence charged on January 24 before the Sub-Inspector of Badigama. A petition by the principal offender, dated January 24, has been filed in the case. In that petition the first accused states that no one in the village will give evidence against the Peace Officer. This statement negatives any suggestion that there was a conspiracy, prior to the complaint, to support the evidence. In the circumstances, there is an absence of evidence that the accused, before

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the false charge was instituted, conspired to shoot; and, following Mayne's exposition of the law, I would hold that the evidence only that the accused gave evidence in support of the false charge is insufficient to the conviction. I accordingly set aside the conviction.

Set aside.

