

APPELLATE CRIMINAL.*Before Fletcher and Beachcroft JJ.*

1914

Nov. 5.

HARI KRISHNA

v.

EMPEROR.*

Evidence—Disbelief of greater part of the evidence of the prosecution witnesses—Conviction on the residue—Propriety of the conviction—Practice.

When the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it would be dangerous to convict the accused on the residue without corroboration.

THE appellant was tried with three others before the Sessions Judge of Cuttack, with the aid of Assessors, under ss. 330 and 348 of the Penal Code. One of the Assessors was of opinion that the charge of wrongful confinement by all the four had been proved, but not the branding. The other held that that neither offence was established against any of the accused. The Judge acquitted three but convicted the appellant, on the 5th August 1914, and sentenced him, under both sections, to concurrent terms of imprisonment.

The story of the prosecution was as follows. The accused, Kunja and Hari Krishna, who were uncle and nephew, lived in a joint family of which Jagannath was the head, and Radha Gobind and Kristo, two brothers, lived close by as members of another joint family. Two labourers, Narsingh and Moni, were employed in certain excavations in one of the rooms

* Criminal Appeal No. 634 of 1914, against the order of S. B. Dhave, Sessions Judge of Cuttack, dated August 5, 1914.

of Jagannath's house on the 7th May 1914, and found a small *ghoti*, or earthen vessel, containing husks of rice believed to be associated with buried treasure. Hari first heard of the discovery and demanded the treasure from the two men. On their failing to produce the same, Hari, Kunja and others assaulted and confined them in the room about midday. In the afternoon Radha and Kristo arrived and tried to recover the buried treasure from Narsingh. A conference of the four accused was held thereafter, and the labourers were taken to the room where Kristo and Kunja branded Narsingh, and Radha and Hari treated Moni similarly. Certain persons heard the cries of the two maltreated men and met them after their release by the accused, and the men related what had happened. Kamala Debya, the wife of Moni, lodged an information on the morning of the 9th, and on the same day Narsingh complained to the President of the Union. The Assistant Surgeon, who examined their injuries on the morning of the 10th, was of opinion that they could not have been inflicted less than 72 hours before.

The Sessions Judge disbelieved all the prosecution witnesses generally, but selected, without any corroboration, certain passages from their evidence, which he believed to be the correct story, and on his own estimate of their truthfulness, he convicted the appellant, Hari Krishna.

Babu Dasarathi Sanyal and *Babu Debendra Nath Bhattacharjee*, for the appellant.

Mr. S. Ahmed, for the Crown.

FLETCHER J. The appellant before us, Hari Krishna *alias* Hari Misra, was tried along with three other persons before the learned Sessions Judge of Cuttack

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with the aid of Assessors for having committed certain offences under sections 348 and 330 of the Indian Penal Code. The Assessors came to the conclusion that none of the accused were guilty. The learned Judge, agreeing with the Assessors with regard to three of the accused, acquitted them, but disagreeing with the Assessors with regard to the appellant before us convicted him and sentenced him to undergo 18 months' rigorous imprisonment. This is the interpretation placed by the learned Judge on the opinion of the Assessors. It may, however, be said that in the opinion of one of the Assessors, as would appear from the record, all four accused were guilty of wrongful confinement. The appellant before us is a young man, aged about 20 years, who is said to be a student apparently studying Sanskrit with a view ultimately to becoming a *pandit*.

The case is really an extraordinary one on the evidence, because the learned Judge has disbelieved all the witnesses in the case. In fact he described them as liars of varying degrees. But he has selected, without any corroboration at all, certain passages from the evidence which he believed to be the correct story; and on his own estimate as to whether that story is true or not he has convicted the appellant before us.

Now, in a case like this it is obvious that the opinions of Assessors are entitled to considerable weight. They are gentlemen of the neighbourhood, knowing the language and habits of the people. Their opinion was that a portion of the case was not proved as against any of the accused. As regards the remainder of the case it may be that they differed in their opinions.

Now, the story itself is also an extraordinary one. Two of the accused, namely, Kunja and the appellant before us, were uncle and nephew living together jointly. The two other accused, Radha Gobind and Kristo,

were also members of a joint family. These two families were apparently on terms of intimate friendship, and the story told is that certain alterations were being made in one of the rooms in the house of one of these two families and that the two complainants, Narsingh and Moni, were engaged in doing certain excavations, and on the 7th May last, it is alleged, Narsingh, one of the complainants, found in the course of his work a small earthenware vessel which was believed by Hari to contain treasure. The men at midday are said to have been kept from going to take their usual bath and refreshment, and later on in the day they were alleged to have been tortured by having crowbars, which had been heated, placed against various parts of their skin. One of them is said to have been incapacitated for a certain length of time. That, shortly, is the nature of the complaint. The medical evidence certainly shows that there were some marks upon these two complainants. But the difficulty on the medical evidence is, again, that it does not altogether corroborate the story of the witnesses whom the learned Judge has stated to be liars, because the medical evidence is that these injuries on the bodies of the two complainants had been caused not less than 72 hours before the time when the doctor saw them. As a matter of fact these injuries, if the story told is a true one, had been caused considerably less than 72 hours before they were seen by the doctor. Of course in an ordinary case one might not pay much attention to the opinion of a doctor on a matter like that. But when the direct evidence is disbelieved by the Judge, or rather when the witnesses who gave the direct evidence were disbelieved by the Judge, it is a matter of importance that the medical evidence tends further to throw doubt upon the story as told by the witnesses. The other witness who is said to corroborate in part

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the story told by the complainant, is the wife of Moni Kamali. She again was believed not to be a truthful witness by the learned Judge. Personally I do not remember ever having seen a man convicted on evidence of the nature of what the learned Judge describes as that of liars without any corroboration at all. It seems to me a dangerous precedent to convict a man on evidence of people who were found to be untruthful without any corroboration. I think, under the circumstances, the case is much too doubtful for us to support the conviction passed solely on evidence of this nature, and we ought to allow the appeal of the accused and set aside the conviction and sentence passed upon him.

BEACHCROFT J. I agree that the conviction based on the evidence of persons, the greater part of whose evidence has been found to be false by the learned Judge, cannot be sustained, especially in view of the great delay in lodging information, a delay for which no adequate explanation had been given.

E. H. M.

Appeal allowed.