CRIMINAL REVISION.

Before Henderson and Khundkar JJ.

KAMAKHYA PRASAD DALAL

v.

EMPEROR.*

1939

July 4.

Perjury—*False affidavit, when an offence—Evidence, What is—"Legally bound by oath or affirmation to state the truth," Meaning of—Indian Penal Code (Act XLV of 1860), s. 181—Indian Oaths Act (X of 1873), ss. 4, 14.*

Before an accused can be convicted under s. 181 of the Indian Penal Code for having made a false statement in an affidavit, sworn before a Magistrate as to the age of a deceased holder of an insurance policy, meant for the use of insurance company, it must be proved that the affidavit was such as would be receivable as evidence in a judicial proceeding. In the absence of anything to indicate an anterior stipulation between the insurance company and the policy-holder that, on the death of the latter, such an affidavit would be receivable as good evidence of age in any judicial proceeding to which the claim might give rise, conviction of the affirmant of the affidavit under s. 181 of the Indian Penal Code was illegal.

Per KHUNDKAR J. Such statement might become evidence on the happening of certain conditions or events, *e.g.*, the death of the affirmant when it would be evidence under s. 32 of the Indian Evidence Act, but it was not something which was intrinsically evidence and, therefore, did not come under s. 181 of the Indian Penal Act read with ss. 4 and 14 of the Indian Oaths Act.

Kotha Subba Chetti v. *Queen* (1) referred to.

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The material facts of the case appear from the judgments.

Probodh Chandra Chatterjee and *Jyotish Chandra Pal* for the petitioners. Accepting the findings that statement of age in the affidavit was false, it does not follow that an offence under s. 181 of the Indian Penal Code has been committed. The opening words of that

*Criminal Revision, No. 477 of 1939, against the order of B. M. Mitra, Sessions Judge of Nadia, dated April 17, 1939, confirming the order of Mazharul Islam, Subdivisional Magistrate of Chuadanga, dated Dec. 22, 1938.

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section are that the affirmant must be "legally bound "to state the truth." Some meaning must be attached to the word "legally". If every statement on oath be punishable, this word is entirely superfluous. The phrase "legally bound to do" is defined in s. 43. The proper interpretation is that, apart from the oath taken, there must be some provision in law or in some rule having the force of law which enjoins that the affirmant must state the truth. There are a large number of such provisions in many Acts and statutory rules. It is to those affidavits that s. 181 applies. It does not apply to a purely voluntary statement on oath like the present. Under s. 14 of the Oaths Act it is only a person who is giving evidence before any Court or a person authorised to administer oaths, who is legally bound to state the truth. As the present affidavit was merely for the satisfaction of the directors of the insurance company, it is not evidence within the meaning of s. 3 of the Indian Evidence Act. *Kotha Subba Chetti* v. *Queen* (1). The conviction of the accused is therefore illegal.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya, for the Crown. Every voluntary statement on oath is not necessarily exempted from the operation of s. 181 of the Indian Penal Code. When a man takes oath he takes upon himself the responsibility of telling the truth and is, therefore, legally bound to do so. The purpose of requiring such affidavit to be sent with the claim papers is not only that the insurance company would be satisfied, but because, if subsequently any dispute arises in connection with that claim and the matter goes to Court, it may be used in evidence. It may sometimes happen that if the affirmant dies in the meantime, the affidavit would become admissible under s. 32 of the Indian Evidence Act. According to the agreement between the parties, when the policy is issued, the claimant is bound to furnish such affidavit before his claim can be considered. The affidavit is,

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therefore, one which is receivable as evidence should occasion arise. The case cited on behalf of the petitioner has no bearing to the present case. The conviction is legal.

HENDERSON J. This is a Rule calling upon the District Magistrate of Nadia to show cause why the conviction of the first petitioner under s. 181 of the Indian Penal Code and that of the second petitioner of the abetment thereof should not be set aside.

One Nani Gopal Datta, uncle of the petitioner No. 2, insured his life in December, 1934. He died in April, 1935. In connection with the claim, the petitioner No. 1 swore a false affidavit about the age of the deceased before an Honorary Magistrate of Chuadanga. On receipt of an anonymous letter, the suspicion of the company was aroused. A police investigation ensued and as a result the petitioner No. 2 and an agent of the company were committed to the Court of Sessions on a charge in connection with the fraud: they were acquitted. This prosecution, amongst others, was started with regard to offences which were alleged to have been committed in connection with this false claim.

The Rule was granted on ground No. 1 attached to the petition, which is in the following terms :—

For that the Court below ought to have acquitted your petitioners, holding that the elements necessary to constitute an offence either under s. 181 or 181, read with s. 109, of the Indian Penal Code were not proved against the petitioners.

Briefly, Mr. Chatterjee argued in support of the Rule that this affidavit, even though false, is not within the terms of s. 181 of the Indian Penal Code. The question depends upon the meaning to be attached to the words "legally bound by oath or affirmation to "state the truth". Under s. 43, a person is said to be legally bound to do whatever it is illegal for him to omit to do. The prosecution has, therefore, to establish that it would have been illegal for the first petitioner to refuse on oath to state the truth about the age of the deceased to the Honorary Magistrate.

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Under s. 14 of the Oaths Act, a person giving evidence on any subject before any Court or person hereby authorised to administer oaths or affirmations shall be bound to state the truth on such subject.

Mr. Chatterjee contended that this affidavit is purely a voluntary statement made for the satisfaction of the directors of the insurance company. He refers us to the decision of the Madras High Court in *Kotha Subba Chetti* v. *Queen*. In that case certain persons had been convicted for making false statements in an enquiry into the conduct of a pleader under the provision of the Legal Practitioners Act. The third accused was the pleader himself. The learned Judges held that, inasmuch as it was not competent for the Court which conducted the inquiry to take a statement from him on solemn affirmation, he was not legally bound to speak the truth.

On behalf of the Crown, the learned Deputy Legal Remembrancer relied on some provision in the contract between the insurance company and the deceased which would make the affidavit evidence. The contract was not produced. It is, therefore, impossible for us to say whether there was anything in it which would entitle us to hold that the affidavit is evidence within the meaning of s. 14 or that the petitioner No. 1 comes within the terms of s. 5(*a*) of the Oaths Act. On the record, Mr. Chatterjee's explanation is very probably correct and, if it is correct, there can be no doubt that no offence was committed. The prosecution did not really take proper steps to make out a case.

The Rule is accordingly made absolute, the petitioners' conviction and sentences are set aside and they are discharged from their bail.

KHUNDKAR J. I agree. Section 181 requires the offending statement to be made to a public servant or other person authorised by law to administer an oath

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or affirmation. In order to ascertain what public servants or other persons are so authorised, one has to go to s. 4 of Act X of 1873 (Indian Oaths Act). That section provides that all Courts and persons, who have, by law or consent of parties, authority to receive evidence are Courts or persons authorised to administer oaths or affirmations. The argument advanced on behalf of the Crown raises this question :—Was the Honorary Magistrate before whom the accused swore this affidavit acting as a Court or person clothed with power to receive evidence? According to the Crown he was in this instance a Court, which was receiving what, by consent of parties, was evidence. Now, evidence must have the meaning attaching to it under s. 3 of the Indian Evidence Act, and it follows that, in order to come within the definition, the statement or the document would have to be such as a Court would receive in a judicial proceeding. If the statement or document were inadmissible in such a proceeding it would not be evidence. The argument for the Crown assumes that the parties had agreed that this affidavit would be receivable as evidence of the age of the deceased in any possible litigation regarding the policy. This is a large assumption. In the absence of anything to the contrary, it would be unreasonable to suppose that judicial proceedings were contemplated by either party when the policy money was claimed. The insurance company had asked for the affidavit probably for no other purpose than that of satisfying itself about the age of the deceased. The agreement upon the existence of which the Crown relies is an anterior agreement between the insurance company and the policy-holder, and, as my learned brother has pointed out, no such agreement is forthcoming, nor is there anything to indicate that, before the policy was issued, it was stipulated that, on the death of the deceased, such an affidavit would be sworn, and would be good evidence of age in any future judicial proceeding to which a claim for the policy money might give rise.

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It is doubtful whether, in the ordinary course, such an affidavit would necessarily be receivable in a judicial proceeding as evidence to prove the age of the insured. It might perhaps, subject to certain conditions, be admissible under s. 32 of the Indian Evidence Act, if the deponent were dead or if his attendance could not be procured. It might also perhaps be receivable as corroboration under s. 157 of the deponent's oral testimony. But, in such cases, the admissibility of the document would depend upon the happening of conditions and events. Apart from such conditions and events the mere swearing of the affidavit did not make the statement contained therein a piece of evidence which a Court would be bound to admit in a judicial proceeding. It follows that, in receiving that statement, the Honorary Magistrate was not receiving something which was intrinsically evidence and was, therefore, not acting in the exercise of any authority to receive evidence. In my opinion, in the instance with which we are concerned, the Honorary Magistrate did not satisfy the definition in s. 4 of the Indian Oaths Act of a Court or person authorised to administer oaths and affirmations, and the offending statement is, in the present case, not caught up under s. 181 of the Indian Penal Code.

Rule absolute. Accused acquitted.

A. C. R. C.