APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1928, November 27.

ELAVARTHI PEDDABBA REDDI (PETITIONER), ACCUSED,

v.

IYYALA VARADA REDDI (RESPONDENT), COMPLAINANT.*

Statements by witness—Privilege—If absolute—Witness answering counsel's question—Protection of sec. 132 *of Indian Evidence Act, not sought—Effect of.*

In India, the statements made by a witness are entitled not to an absolute but only to a qualified privilege. *Manjaya* v. *Sesha Setti* (1888) I.L.R., 11 Mad., 477, dissented from.

A witness who answers a question or questions put to him by counsel without seeking the protection of section 132 of the Indian Evidence Act is not entitled to that protection. *The Queen* v. *Gopal Doss* (1881) I.L.R., 3 Mad., 271 (F.B.), followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order framing a charge against the petitioner (accused) of the Sub-divisional Magistrate of Chittoor, dated 29th March 1928, in Calendar Case No. 11 of 1928.

V. L. Ethiraj and *A. S. Sivakaminathan* for petitioner.

T. K. Srinivasa Thathachari for respondent.

K. N. Ganpati for *Public Prosecutor* for the Crown.

JUDGMENT.

DEVADOSS, J. DEVADOSS, J.—The petitioner is being prosecuted for defamation in respect of certain statements made by him as a witness before arbitrators. He has applied to this Court for quashing the proceedings against him on the ground that no indictment for defamation would lie in respect of statements made in answer to questions by

* Criminal Revision Case No. 424 of 1928.

Counsel. The question for determination is, "is a witness absolutely privileged as regards statements made by him on oath in answer to questions by Counsel or Court except as to a charge for perjury?" So far as the Criminal Law of this country is concerned, defamation is defined in section 499 of the Indian Penal Code. Section 499 contains ten exceptions and a person who pleads privilege has to bring himself within one or more of the ten exceptions. The first exception and the ninth exception afford sufficient protection to a witness; in the case of the first exception, the imputation should be true and for the public good, and in the case of the ninth exception, imputation should be made in good faith for the protection of the interest of the person making it or of any other person or for public good. What is claimed for the petitioner is absolute privilege, whether the statement be relevant or irrelevant, bona fide or malicious, or false or true. In other words, a eleventh exception is sought to be added to section 499 to provide for the case of witnesses.

The Criminal Law of India as to defamation is different in many respects from the English Law. Under the Penal Code all libels and slanders are indictable, for section 499 begins thus: "Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes, etc." Under the English Law slander is not indictable except in the cases of slanderous words to a Magistrate in the execution of his office. Only certain cases of libel are indictable, such as seditious libel, blasphemous libel, libel affecting the administration of justice, obscene libel and defamatory libel calculated or intended to provoke a breach of the peace or to expose a person to public hatred, contempt or ridicule or to damage his reputation. In the Indian Criminal Law there is no distinction

PEDDAMBA REDDI v. VARADA REDDI

DEVADOSS, J.

between libel and slander. When a statute like the Penal Code contains exhaustive provisions as to the law of defamation we cannot hold that an exception was left out and that the Court should engraft an exception to the codified law. The Penal Code which was drafted by Lord Macaulay in the early thirties and was considered by more than one Law Commission, did not become law till 1860. When a Code has been in a state of gestation for more than 20 years, it should not be lightly considered to have omitted anything material. The framers of the Indian Penal Code were English lawyers who were familiar with the state of the law at the time in England, and if they had wanted to give absolute protection to a witness, they would have done so in so many words and it is bad policy to add to codified law some of the provisions of the English Common Law on the ground that the codified law is silent as to them. The words of a statute should not be departed from on the ground that something was omitted to be enacted. In this view I hold that a witness has not absolute privilege as regards the statements made by him but has only a qualified privilege under the ninth exception or the first exception to section 499 of the Indian Penal Code. In *Gopal Naidu* v. *King-Emperor*(1), it was held, "The Criminal Law of India has been codified in the Indian Penal Code and the Criminal Procedure Code; the former code deals specifically with offences and states what matters will afford an excuse or a defence to a charge of any offence and the Court is not entitled to invoke the Common Law of England in such matters at all".

Reliance is strongly placed by Mr. Ethiraj upon *Manjaya* v. *Sesha Setti*(2), in support of his contention.

(1) (1922) I.L.R., 46 Mad., 605 (F.B.). (2) (1888) I.L.R. 11 Mad., 477.

In that case it was held by COLLINS, C.J., and SHEPHARD, J., that a conviction under section 500, Indian Penal Code, could not be sustained in respect of a statement made by a witness under cross-examination. The learned Chief Justice relied upon *Seaman* v. *Netherclift* (1), and *Goffin* v. *Donnelly*(2), and SHEPHARD, J., relied upon an observation of the Judicial Committee in *Baboo Gunnesh* v. *Mugneeram*(3). In *Seaman* v. *Netherclift*(1), COCKBURN, C.J. observed, "If there is anything as to which the authority is overwhelming it is that a witness is privileged to the extent of what he says in course of his examination. Neither is that privilege affected by the relevancy or irrelevancy of what he says; for then he would be obliged to judge of what is relevant or irrelevant, and questions might be, and are, constantly asked which are not strictly relevant to the issue. But that, beyond all question, this unqualified privilege extends to a witness is established by a long series of cases, the last of which is *Dawkins* v. *Lord Rokeby*(4), after which to contend to the contrary is hopeless. It was there expressly decided that the evidence of a witness with reference to the enquiry is privileged, notwithstanding it may be malicious; and to ask us to decide to the contrary is to ask what is beyond our power." In *Goffin* v. *Donnelly*(2), the action was in respect of the statement made by a witness before the Select Committee of the House of Commons. FIELD and MANISTY, JJ., held that the principle of *Seaman* v. *Netherclift*(1) applied to the case. In *Baboo Gunnesh* v. *Mugneeram*(3), their Lordships observed, "Witnesses cannot be sued in a Civil Court for damages in respect of evidence given by them upon oath in a judicial proceeding. Their Lordships hold this

(1) (1876) L.R., 2 C.P.D., 53.
(2) (1881) L.R., 6 Q.B.D., 307.
(3) (1872) 11 Beng.L.R., 321.
(4) (1875) L.R., 7 H.L., 744.

PEDDABBA REDDI v. VARADA REDDI

DEVADOSS, J.

maxim which certainly has been recognized by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages; but that the only penalty which they should incur if they give evidence falsely should be indictment for perjury." Notwithstanding the high authorities relied upon by the learned Chief Justice and SHEPHARD, J., in *Manjaya* v. *Sesha Setti*(1), the question still remains whether the Penal Code did not make a departure from the English Law. As already stated the Criminal Law of defamation is different from the Criminal Law of England as to libel and slander and the privilege that is accorded to a witness in England on grounds of policy is deliberately cut down by the framers of the Penal Code to statements made in good faith for the protection of the interests of the person making it or of any other person or for public good. With due respect I decline to follow *Manjaya* v. *Sesha Setti*(1).

The next branch of the argument is that under the law a witness is compelled to answer all questions put to him and therefore the protection given by section 132 of the Evidence Act applies to all statements made by him in Court. Under the English Law of Evidence a witness cannot be compelled to answer certain kinds of questions. Sections 121 to 129 contain the provisions as to questions which a witness cannot be compelled to answer. Sections 130 and 131 relate to production of documents. Section 132 is, "A witness shall not be excused from answering any question as to any matter

(1) (1888) I.L.R., 11 Mad., 477.

relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind : Provided that no such answer which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer". The English Law as to the privilege of a witness from being compelled to answer certain questions was taken away by section 32 of Act II of 1855 and the present section 132 of the Evidence Act is a reproduction of that section. In order to avail oneself of the protection given, he must bring himself within the proviso; in other words, he should be compelled to answer the question. The contention of Mr. Ethiraj is that the mere fact that a witness is asked to get into the witness box and is sworn to tell the truth and nothing but the truth, is tantamount to compulsion under section 132 of the Evidence Act. Section 132 is clear in its terms. It says that no witness shall be excused from answering any question on the ground that the answer might expose him to civil or criminal proceeding or may tend to his prejudice. The proviso protects him from arrest or prosecution or proof of the statement in criminal proceeding against him except as to perjury. The compulsion contemplated in section 132 is something more than being put into the box and being sworn to give evidence ; the compulsion may be express or implied. It is not necessary that the compulsion must be in any set form of words or that the asking for protection should be in a particular form. If the witness is made to understand that he must

PEDDABBA REDDI v. VARADA REDDI.

DEVADOSS, J.

answer all questions without exception, it would amount to compulsion. In all cases, it is a question of fact whether there was or was not compulsion. Whether the witness seeks the protection of the Court in a set form of words or not, if the witness is made to understand directly or indirectly that he has no option in the matter but to answer all the questions put to him, I conceive he would bring himself within the proviso to section 132. I am not prepared to hold that the proviso would only apply to witnesses who ask in so many words the protection of the Court under section 132. The words of the proviso should be understood in the ordinary sense and the word "compelled" means forcing or insisting upon a witness to answer the question. The witness may not know that he should apply for protection; but any reasonable man ought to know that any statement defamatory of another would expose him to a charge of defamation. If he hesitates to answer and the Court tells him he must answer the question, I would hold that that hesitation and the direction of the Court to the witness to answer would bring the witness within the proviso.

In *The Queen* v. *Gopal Doss*(1) it was held by the majority of the Full Bench, where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, may be used against him on his trial on a criminal charge. In that case an affidavit and the deposition of the accused made in a small cause suit were sought to be put in evidence against the accused. TURNER, C.J., INNES and KINDERSLEY, JJ., held that both the affidavit and the deposition were properly admitted. KERNAN and

(1) (1881) I.L.R., 3 Mad., 271 (F.B.).

MUTTUSWAMI AYYAR, JJ., held that the affidavit was properly admitted but not the deposition. The contention that a witness as soon as he is sworn is compelled by law to answer all questions was put forward by Mr. Handley, who appeared for the prisoner. The learned Chief Justice negatived the contention and observed at page 278, "If the term 'compelled' in the proviso to section 132 and 'compel' in section 148 do not refer to the Court but to the obligation of the law, then the witness is left without protection if the Court arrives at an erroneous conclusion as to whether or not the question is as to a matter which the witness is bound to answer, or if he has incautiously answered an irrelevant question. On the other hand, if the term refers to the constraint put upon the witness by the authority before whom he is examined, he is protected whether that authority has decided rightly or wrongly that the question is such as the witness is bound to answer. If it had been the intention of the legislature to protect the witness whenever he was, or believed himself to be, constrained by law to give an answer criminating himself, then this intention could clearly have been expressed in very much more simple language; and if unlearned persons, not assisted by Counsel, are not to be placed in a worse position than persons who are acquainted with the law or have the benefit of professional assistance, I can suggest no reason why the protection should not have been extended to all answers whether relevant or irrelevant. The terms of Section 132 especially when read with the rest of the Act, impel me to the conclusion that protection is afforded only to answers to which a witness has objected or has been constrained by the Court to give." With this observation of the learned Chief Justice I respectfully agree and I would add that the expression "has been constrained by the Court to give"

PEDDABBA REDDI v. VARADA REDDI.

DEVADOSS, J.

used by the learned Chief Justice should be understood in a liberal sense. The constraint need not be in so many words and the protection for the witness need not be in any particular form or in any set words.

Great reliance is placed by Mr. Ethiraj upon the recent decision of Mr. Justice WALSH in *Emperor* v. *Ganga Sahai*(1). In that case the learned Judge held "that a witness in a civil suit cannot be prosecuted for defamation in respect of an answer made by him to a question asked by the Court." He differed from two judgments of his own Court and held that the word "compelled" means the obligation under the law to answer questions. In that case the question was by the Court. When a Court asks a question, it may be inferred that the Court insists upon an answer; with due respect, that by itself would not be sufficient to bring the witness within the proviso of section 132. If he hesitates to answer or if he says, "I cannot answer, or I won't answer," without actually asking for protection and if the Court says, "You must answer," and he answers, he is within the exception. Where the Court makes a witness understand that he has no option but to answer, the proviso would apply whether the witness asks for protection or not, but to hold that 'compelled' includes the ordinary obligation of a witness to answer all questions, is to make the proviso meaningless. The learned Judge quotes the observation of PIGGOTT, J., in *Kallu* v. *Sital*(2) but the sentence following the extract, "Whether this be so or not, I think the principle laid down in these rulings fully applies to the facts of the present case," shows how PIGGOTT, J., viewed the matter. In *Queen Empress* v. *Moss*(3) Sir JOHN EDGE, C.J., observed, "In my opinion

(1) (1920) I.L.R., 42 All., 257. (2) (1918) I.L.R., 40 All., 271.
(3) (1893) I.L.R., 16 All., 88.

'compelled' in section 132 of the Indian Evidence Act only applies where the Court has compelled a witness to answer a question, and not to a case in which the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. I think that in reading section 132 and considering the word 'compelled' in the proviso, we must not overlook the earlier part of the section, which says 'a witness shall not be excused'." In *Kallu* v. *Sital*(1) PIGGOTT, J., held that "compelled" means compelled by the Court. The learned Judge felt the difficulty of ignorant witnesses not being able to claim the protection afforded by section 132 and also the difficulty of framing the request so as to satisfy the terms of the section and observed, "Obviously no form of words can be prescribed in which this claim is to be made; and I conceive that cases may arise in which the Courts will be compelled to hold that the claim has been made by implication, or that the witness was placed under practical compulsion to answer certain questions by the mere fact of his appearance in the witness box". In *Emperor* v. *Chatur Singh*(2) TUDBALL, J., held that "an answer given by a witness in a criminal case on oath to a question put to him either by the Court or by Counsel on either side, especially when the question is on a point which is relevant to the case, is within the protection afforded by section 132 of the Indian Evidence Act, 1872, whether or not the witness has objected to the question asked him." He held that he had no doubt whatsoever that the accused persons in the case were compelled within the meaning of the law to answer the questions put to them when they entered the witness box. With due respect, I am unable to agree either

(1) (1918) I.L.R., 40 All., 271.

(2) (1920) I.L.R., 43 All., 92.

PEDDABBA REDDI v. VARADA REDDI.

DEVADOSS, J.

with the reasoning or with the conclusion of the two learned Judges, WALSH, J., and TUDBALL, J., in *Emperor* v. *Ganga Sahai*(1) and *Emperor* v. *Chattur Singh*(2). As observed by TURNER, C.J., if the interpretation of these two learned Judges is correct, the proviso to section 132 may as well be omitted. In *Bai Shanta* v. *Umrao Amir*(3), it was held by the Full Bench of the Bombay High Court, "Relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding cannot be held to be protected by the proviso to section 132 of the Indian Evidence Act, in case where the witness has not objected to answering the question put to him." In *Tiruvengada Mudali* v. *Tripurasundari Ammal*(4) it was held that defamatory statements in complaints to Magistrates are not absolutely privileged. The cases, *Mir Anwaruddin* v. *Fathim Bai Abidin* (5) and *Mcdonnell* v. *King-Emperor*(6) are cases of Advocates and need not be considered as the point is not before us. In *Emperor* v. *Banarsi*(7) it was held, "Whether or not a witness is 'compelled' within the meaning of section 132 of the Indian Evidence Act to answer any particular question put to him while in the witness box is in each case a question of fact. . . ."

It is strongly urged that on grounds of public policy a witness should be free to answer questions put to him in examination or in cross-examination or by the Court. The expression "public policy" is not capable of any accurate definition. It is as much public policy to protect a witness from harassment as much as it is to protect the character and reputation of a party or a person not connected with the matter before the Court.

---

(1) (1920) I.L.R., 42 All., 257. (2) (1920) I.L.R., 43 All., 92.
(3) (1925) I.L.R., 50 Bom., 162 (F.B.) (4) (1926) I.L.R., 49 Mad., 728 (F.B.).
(5) (1926) I.L.R., 50 Mad., 667. (6) (1925) I.L.R., 3 Rang., 524.
(7) (1923) I.L.R., 46 All., 254.

It is a matter of common experience that parties and witnesses attack the character and reputation of the relations of the opposite party maliciously; unfounded allegations are made recklessly with a view to injure such persons, and it is within my experience that many persons avoid going to the Court for fear of being exposed to unfounded imputations and slanderous remarks. In a petty case of assault, the Advocate for the accused may be instructed to put the most obnoxious and slanderous questions to the complainant or to his witness, affecting the character and reputation of the female members of his family. Is it in the interests of public policy to expose innocent persons like the complainant's relations to the imputation contained in the question by reason of the protection that the law is supposed to give to the accused in defending himself? Anything which is *bona fide* and which would protect his interest, in other words, which would bring him within exception 9 to section 499 is privileged. But to allow a witness to make the most unfounded insinuation or allegation against any person without restraint is certainly opposed to public policy. The administration of justice in my opinion would not suffer by limiting the privilege to that contained in the exceptions to section 499 of the Indian Penal Code. A witness who is prosecuted for defamation in respect of a statement made by him on oath before a Court has two courses open to him. He may plead in bar of the prosecution the protection given to him under section 132 of the Evidence Act. If he did not claim the protection of section 132 when he gave his evidence he can claim the privilege given by the ninth exception or any other exception to section 499 of the Indian Penal Code. I hold that the petitioner has not the absolute privilege claimed by him but has only a qualified privilege given

PEDDAMMA REDDI v. VARADA REDDI.

by the exceptions to section 499 of the Penal Code. The petition is dismissed.

WALLER, J.

WALLER, J.—This petition raises the question whether statements made by a witness are entitled to absolute or only to qualified privilege. The petitioner was examined as a witness before arbitrators. In the course of his evidence he made certain statements regarding the respondent, on which the respondent charged him with criminal defamation. Mr. Ethiraj asks us to quash the proceedings on the ground that the statements are entitled to absolute privilege. He relies on the decision in *Manjaya* v. *Sesha Setti*(1), but that decision is based on the Common Law of England and more recent decisions of this Court have held that, in matters of this kind, we must look to the Statutory Law of India and not to the Common Law of England for guidance. I must therefore hold that we are in no way bound by it.

Mr. Ethiraj falls back on section 132 of the Evidence Act, which, he contends affords absolute protection to a witness who has answered a relevant question. This contention was considered and rejected by a Full Bench of this Court in *The Queen* v. *Gopal Doss*(2). The majority of the Bench held that "If a witness does not desire to have his answers used against him on a subsequent criminal charge, he must object to answer, although he may know beforehand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled." Mr. Ethiraj asks us to say that the majority of the Judges based their ruling on the English Law and to concur in the opinion of the minority. It seems to me perfectly clear that their ruling was based on the construction of the language of the section and on nothing else. With

(1) (1888) I.L.R., 11 Mad., 477. (2) (1881) I.L.R., 3 Mad., 271 (F.B.).

great respect, I do not see how the language could have been construed otherwise. Had it been the intention of the legislature to refer to a general obligation of law and not to specific compulsion by a Court, the section would have been very differently worded. Worded as it is, it seems to require a request by the witness to be excused from answering and compulsion by the Court on him to answer. This ruling was followed by PIGGOTT, J. in *Kallu* v. *Sital*(1) and also in *Queen Empress* v. *Moss*(2). WALSH, J, in *Emperor* v. *Ganga Sahai*(3), did not consider the 3 Madras case at all. As regards Moss's case, he thought that the ruling was *obiter*. Some remarks made incidentally by PIGGOTT, J., in *Kallu* v. *Sital*(1), he quoted with approval in which that learned Judge observed that he could "conceive that cases might arise in which the Courts will be compelled to hold that the witness was placed under practical complusion to answer certain questions by the mere fact of his appearance in the witness-box", but that seems dangerously near the theory of a general obligation of law which the Madras decision—and PIGGOTT, J., was following it—expressly repudiated. In any event, what WALSH, J., decided was that a witness, who was questioned by the Court itself, was bound to answer and was therefore protected. When such a case arises here, it will be time to decide whether his view is correct. In *Emperor* v. *Chatur Singh*(4), TUDBALL, J. held that answers given by witnesses on relevant points to the Court or to Counsel on either side were protected by section 132 of the Evidence Act. He relied in fact, on the theory of a general obligation of law, which was rejected by the Madras Full Bench and in 16 and 40 Allahabad. In the most recent Allahabad case *Emperor* v. *Banarsi*(5), WALSH and

(1) (1918) I.L.R., 40 All., 271. (2) (1893) I.L.R., 16 All., 88.
(3) (1920) I.L.R., 42 All., 257. (4) (1920) I.L.R., 43 All., 92.
(5) (1923) I.L.R., 46 All., 254.

PEDDABBA REDDI v. VARADA REDDI.

WALLER, J.

RYVES, JJ., held that the question whether a witness was "compelled" to answer a particular question was, in each case, one of fact. In *Bai Shanta* v. *Umrao Amir* (1), a Full Bench of the Bombay High Court took the same view of section 132 as was taken by the Full Bench in the 3 Madras case.

Following the ruling in *The Queen* v. *Gopal Doss*(2) I must find that, in this case, the petitioner who answered a question or questions put to him by his Counsel without seeking the protection of section 132 of the Evidence Act is not entitled to that protection. All that he is entitled to is the limited privilege afforded to him by section 499 of the Indian Penal Code. He must prove that he made the imputations against the respondent in good faith for the protection of his own or some other person's interest. I agree that the petition should be dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

1928, October 9.

T. SIVASANKARAM PILLAI AND FIVE OTHERS (PETITIONERS) ACCUSED.*

Local Boards Act (XIV of 1920) Madras, sec. 16—President of Taluk Board—Communication to individual members tendering his resignation—If proper—Power of Government to decide question—President—If public servant—Sec. 197, Criminal Procedure Code—Applicability of.

A communication by a President of a Taluk Board tendering his resignation of his office as such President addressed to each

(1) (1925) I.L.R., 50 Bom., 162 (F.B.). (2) (1881) I L.R., 3 Mad., 271 (F.B.).

* Criminal Revision Case No. 298 of 1928.