

1895

BEIKHARI
DAS
v.
DALIP SINGH.

the interest in arrears was to be added to the principal and the aforesaid rate of interest was to be charged on the consolidated sum.

We allow this appeal, and give the plaintiff a decree for sale under s. 88 of Act No. IV of 1882, by which the whole, or such portion of the property mortgaged as may be necessary, may be sold. The amount claimed in the plaint as due up to the commencement of the suit is Rs. 7,250. We give the defendants until the 7th of September next to redeem the mortgage of the plaintiff on payment of Rs. 7,250, *plus* interest thereon at the rate of Rs. 1-12-0 per cent. per mensem from the date of the institution of the suit down to the date of payment within such period, *plus* the costs of this suit in the Court below and in this appeal in this Court; and if the payment be not made on or before the 7th of September 1895, such interest shall be allowed from the date of the commencement of the suit up to the 7th September 1895. A decree shall be prepared under s. 88 of Act No. IV of 1882.

Appeal decreed.

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March 16.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

QUEEN-EMPRESS v AJUDHIA PRASAD.

Act No. XLV of 1860 (Indian Penal Code), s. 193—Fabricating false evidence—Report made by Amin executing a Civil Court's decree that he had been obstructed—Similar report to Police—Subsequent deposition in Court—Alternative charges.

Held that a report made by an Amin of a Civil Court deputed to give possession of certain property in execution of a decree, as to his having been obstructed in so doing, to the Court executing the decree, and a similar report made to the Police, would not, even if false, amount to the fabrication of false evidence within the meaning of s. 193 of the Indian Penal Code, and consequently, where such Amin was charged in the alternative with making the two reports as above and also a third and inconsistent statement in respect of which he might have been charged under s. 193, that he was wrongly charged, and that it was necessary to prove the falsity of the third statement.

THE facts of this case were as follows :—

The appellant, Ajudhia Prasad, a Court Amin, was deputed to make over possession of certain property in execution of a decree.

He made a report on the 24th of September 1894 to the Court in which the decree was that he had been obstructed in executing the decree by certain persons whom he named. He also made a similar report to the Police. Subsequently, on the 15th of December 1894, Ajudhia Prasad made a deposition with respect to the circumstances of his attempt to execute the decree in question, which appeared to be inconsistent with the two reports formerly made by him. He was accordingly put on his trial for the offence defined by s. 193 of the Indian Penal Code and charged in the alternative with the making of the two reports on the one side, and of the subsequent deposition on the other. He was also charged under s. 211 in respect of the report made to the Police. On these charges Ajudhia Prasad was convicted and sentenced to rigorous imprisonment for one year and one day. Ajudhia Prasad thereupon appealed to the High Court.

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QUEEN-
EMPRESS.
v.
AJUDHIA
PRASAD.

The Hon'ble *Mr. Colvin*, Pandit *Moti Lal* and Babu *Durga Charan Banerji* for the appellant.

The Government Pleader (*Munshi Ram Prasad*) for the Crown.

EDGE, C. J., and BANERJI, J.—It is very probable that Ajudhia Prasad's evidence given in December was false evidence, but it has not been shown to us that it has been proved to have been false evidence. The evidence given in December was inconsistent in material points with the statement made in the report submitted to the Court of Small Causes and made to the Police. But there is nothing to show whether it was the earlier statements which were false or the evidence given on the trial which was false. In our opinion he could not have been convicted under s. 193 of the Indian Penal Code in respect of the statement made to the Police, nor in respect of that made in the report in the Court of Small Causes. We do not think that on either occasion he was fabricating evidence, even assuming that the statements were false. Consequently it became necessary for the prosecution to prove that the evidence given in the trial in December was false. We allow the appeal, set aside the conviction and sentence, and acquit Ajudhia Prasad of the charge. The recognizances will be discharged.