

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

ISURI PRASAD SINGH AND OTHERS (APPLICANTS) v. UMRAO SINGH
(OPPOSITE PARTIES).*

Act No. XLV of 1860 (Indian Penal Code), section 499—Defamation—Statement made by an accused person in an application to a Court—Statement made in good faith for protection of the interests of the person making it.

In an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one Umrao Singh in order to prejudice them in their defence in a civil suit which Umrao Singh had caused to be brought against them. *Held* that this statement did not amount to defamation—not because of the application of any principles of English law, for such principles did not apply to prosecutions for defamation under the Indian Penal Code—but because the statement fell within the ninth exception to section 499 of the Indian Penal Code. *Queen-Empress v. Balkrishna Vithal* (1), *In re Nagarji Trikarnji* (2), *Queen v. Pursoram Doss* (3), *Greene v. Delaney* (4) and *Abdul Hakim v. Tej Chandar Mukarji* (5) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. E. A. Howard for the applicants.

Babu Satya Chandur Makerji for the opposite parties.

AIKMAN, J.—Proceedings had been instituted at the instance of one Balwant Singh against Isuri Prasad Singh and six other persons to have them bound over to keep the peace. Whilst the case was pending in the Court of a Magistrate of the first class, a petition was presented to the District Magistrate by Isuri Prasad Singh and the others, asking that the case might be transferred to some other Court, and that a local inquiry might be made. In this petition it was alleged by the petitioners that one Umrao Singh had got Balwant Singh falsely to institute the proceedings against them in order to prejudice them in their defence to a civil suit which Umrao Singh had caused to be brought against them. Umrao Singh coming to know of this,

* Criminal Revisional No. 789 of 1899.

(1) (1893) I. L. R., 17 Bom., 573. (3) (1865) 3 W. R., Cr. R., 45.
(2) (1894) I. L. R., 19 Bom., 340. (4) (1870) 14 W. R., Cr. R., 27.
(5) (1881) I. L. R., 3 All., 315.

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prosecuted the petitioners for defamation. They have been convicted under section 500, Indian Penal Code, and sentenced, Isuri Prasad Singh to a fine of Rs. 10, and the others to a fine of Rs. 2 each. Both parties applied to the Sessions Judge—Umrao Singh asking that the case should be reported to this Court with the view of having the sentences enhanced, and the accused asking that the case should be reported with the view of having the convictions quashed.

The learned Judge has forwarded the case for the orders of this Court. He stated that, in his opinion, the convictions were right, and that it appears to him that they should either be set aside as bad in law, or that the sentence imposed on Isuri Prasad should be enhanced.

There is no doubt that the expressions used by the accused in their petition to the District Magistrate are in themselves defamatory. But the expressions complained of are undoubtedly pertinent to the case which was pending against the accused in the Criminal Court. According to English case-law the accused could not therefore be proceeded against, either civilly or criminally, for using those expressions.

There are decisions of the Bombay and Madras High Courts which, applying the principles of English law, hold that witnesses and counsel cannot be prosecuted for defamatory statements made by them as such. In one case, however, in the Bombay High Court, *Queen-Empress v. Balakrishna Vithal* (1), Telang, J., expressed an opinion that according to correct principles of construction the meaning of the words of the section of the Indian Penal Code, defining defamation, should not be limited so as to exclude therefrom any evidence given by a witness before a Court of Justice. And in a subsequent case *In re Nagarji Trikamji* (2), in which a pleader had been convicted of defamation for having, in defending his client, described the witnesses for the prosecution as "loafers," Jardine and Farran, JJ., said they were inclined to share the doubts expressed in the previous case by Telang, J., and acquitted the pleader, not on the ground of English law, but because they held that his case was covered by exception 9 to section 499 of the Indian Penal Code. The case

(1) (1893) I. L. R., 17 Bom., 573. (2) (1894) I. L. R., 19 Bom., 340.

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of *Queen v. Pursoram Doss* (1) was somewhat similar to the present. In that case it was contended that a defendant in a criminal case was not tongue-tied, but might make use of any remarks, however defamatory *per se*, with perfect equanimity and protection from indictment or action. As to this plea Kemp, J., remarked:—"This may or may not be so, but the present case is governed by the provisions of the Indian Penal Code," and in this opinion Glover, J., concurred. In a criminal revision case (2) Phear, J., observed:—"If the facts which are the subject of the complaint fall within the limits of the definition in section 499, construed, as the section ought to be, according to the plain meaning of the words therein used, and if they are not covered by any of the exceptions to be found in the Code, then in my judgment they amount to defamation quite irrespective of what may be the English law on the subject;" and in this observation Jackson, J., concurred.

It may be true that the principles of public policy which, according to English law and some Indian decisions, ought to guard the statements of counsel and witnesses apply with equal force to the statements made by accused persons for their own protection. But, as was remarked in the case *Abdul Hakim v. Tej Chandar Mukarji* (3), when there is substantive law which can be appealed to for information and guidance, the safer course is to look there to ascertain some intelligible rule or rules by which the determination of cases like the present should be regulated. The Indian Legislature might, had it chosen, have so framed section 499 of the Indian Penal Code as to afford to parties, counsel, and witnesses in this country the same protection against indictment for defamation which they have in England. The fact remains that it has not seen fit to do so. This case therefore must, I hold, be decided according to the Indian Penal Code.

The words used in the petition being in themselves defamatory, the conviction under section 500 of the Penal Code was right, unless it can be shown that the accused are protected by one or other of the exceptions to section 499. The only

(1) (1865) 3 W. R., Cr. R., 45.

(2) (1870) 14 W. R., Cr. R., 37.

(3) (1881) 1. I. R., 3 All., 815.

exception at all applicable to this case is the ninth, which enacts that it is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it.

In this case it is clear that the imputation was made, for the protection of the interest of the accused. The question remains—Was it made in good faith? In the case *In re Nugarji Trikamji* (1) the Judges remark at p. 349 of the judgment:—“In considering whether there was good faith, *i. e.*, under section 52, due care and attention of the person making the imputation must be taken into consideration.” This I understand to mean that in considering the amount of care and attention required to establish good faith, regard must be had to the position in which the person making the imputation stands at the time he makes it. In the present case the Magistrate says in his judgment “the accused ought to have ascertained whether the facts mentioned by them in the aforesaid petition were true: and it was necessary for them to prove in this case that those facts were true, but they have failed to do so.” This I hold to be an incorrect view of the law, inasmuch as, considering the position in which the accused stood, it is requiring from them an undue amount of care and attention to call upon them to substantiate all that they deemed it necessary to say for the protection of their interests. The accused may have been quite mistaken in thinking that Umrao Singh had caused Balwant Singh to institute the proceedings against them. But I think the evidence adduced by them as to the enmity borne against them by Umrao Singh, the connection between him and Balwant Singh, and other circumstances, is sufficient to show that it was not unreasonable for them to entertain the belief that Umrao Singh was the real instigator of the proceedings. I am of opinion that the accused are protected by the ninth exception. I quash the convictions and direct that the fines, if paid, be refunded.

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(1) (1894) I. L. R., 19 Bom., 340.