

Court of first instance through the learned District Judge under section 562 of the Code of Civil Procedure, with directions that the plaint be treated as an application under sections 244 and 583 and be disposed of on the merits. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

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SHEODIHAL
SAHU
v.
BHAWANI.

APPELLATE CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. CHEDA LAL.*

Act No. XLV of 1860 (Indian Penal Code), section 192 - Fabricating false evidence—Definition.

One Cheda Lal, whose brother Debi was an accused person, applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify Debi. The Court assenting to this request, Cheda Lal produced before the Court ten or twelve men, none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was, Cheda Lal pointed out a man who, upon further investigation, was discovered to be wearing a false moustache and to be not Debi at all, but one Chimaman. *Held* upon these facts that Cheda was rightly convicted of fabricating false evidence having regard to the definition contained in section 192 of the Indian Penal Code.

THE facts of this case are as follows:—Debi, the brother of the appellant, was charged before a Deputy Magistrate, with enticing away a married woman. When the case was called on for hearing, an application was presented on behalf of Debi praying that the witnesses for the prosecution should first of all be made to identify him. A similar application was verbally made by the appellant Cheda Lal. The Deputy Magistrate granted the application and directed Cheda Lal to bring up Debi. Cheda Lal brought before the Deputy Magistrate, who was holding his Court in camp, ten or twelve men and said that Debi was one of them. The Deputy Magistrate, however, did not satisfy himself that the accused person was in fact before him. The men were ranged in a line and the witnesses were called in to identify Debi. All of them, including the woman said to have been enticed away, failed to do so. Thereupon the Deputy Magistrate asked the appellant Cheda Lal where Debi was. He

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pointed to a man in the crowd, who upon being questioned also said that he was Debi. It was discovered that the man was wearing a false moustache and that he was not Debi, but Chimman. Debi was subsequently arrested and tried, Cheda Lal was convicted of having fabricated false evidence and sentenced to five years' rigorous imprisonment. Cheda Lal applied in revision to the High Court and it was contended on his behalf that the facts proved against him, if accepted, did not constitute the offence of fabricating false evidence.

Mr. R. K. Sorabji, for the appellant.

The Government Pleader (*Maulvi Gharlam Mujtaba*), for the Crown.

BANERJI, J.—The appellant Cheda Lal, has been convicted of the offence of fabricating false evidence and has been sentenced to five years' rigorous imprisonment.

The facts of the case, as established by the evidence, are somewhat peculiar. They are as follows:—Debi, the brother of the appellant, was charged before a Deputy Magistrate with enticing away a married woman. When the case was called on for hearing, an application was presented on behalf of Debi, praying that the witnesses for the prosecution should first of all be made to identify him. A similar application was verbally made by the appellant, Cheda Lal. The Deputy Magistrate granted the application and directed Cheda Lal to bring up Debi. Cheda Lal brought before the Deputy Magistrate, who was holding his Court in Camp, ten or twelve men and said that Debi was one of them. The Deputy Magistrate, however, did not satisfy himself that the accused person was in fact before him. The men were ranged in a line and the witnesses were called in to identify Debi. All of them, including the woman said to have been enticed away, failed to do so. Thereupon the Deputy Magistrate asked the appellant, Cheda Lal, where Debi was. He pointed to a man in the crowd, who, upon being questioned, also said that he was Debi. It was discovered that the man was wearing a false moustache and that he was not Debi, but Chimman. Debi was subsequently arrested and tried. For the part which Cheda Lal took in this farce he has been convicted, as stated above, of having fabricated false evidence and sentenced to five years' rigorous imprisonment. It is

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contended by the learned counsel who has appeared on behalf of Cheda Lal that his offence did not amount to that of fabricating false evidence. I must confess that at the hearing this argument seemed to me to be well founded, but after giving the matter my best consideration, I am of opinion that Cheda Lal is guilty of fabricating false evidence. The essential elements of that offence, as defined in section 192 of the Indian Penal Code, are:— (1) that the accused caused the existence of any circumstance; (2) that he intended that such circumstance might appear in evidence in a judicial proceeding, and (3) that so appearing in evidence, it might cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding. All these elements exist in the present case. Cheda Lal, by placing before the Magistrate a person who was not his brother Debi, and representing that he was Debi, caused a circumstance to exist. His intention was that the witnesses for the prosecution should not be able to identify the accused person in the case against Debi and that their failure to identify him should induce the Magistrate to disbelieve these witnesses. The identification of the accused by the witnesses for the prosecution or their failure to identify him is evidence of an important character bearing materially on the result of the trial. And it was certainly the intention of Cheda Lal that the failure of the witnesses to identify the accused should appear in evidence and mislead the Court, otherwise his conduct in enacting the farce which was enacted by him is inexplicable. Whether he could or could not succeed in carrying out his intention is immaterial. The gist of the offence did not consist in actually causing a failure of justice but in the intention to cause a failure of justice by misleading the Court, and with such intent causing the existence of any circumstance which might appear in evidence. In the present instance it was the placing before the Court of another man as Debi which constituted the first element of the offence. The putting of a false moustache on him was immaterial for the purposes of this case, especially as it appears that the real Debi had no moustache and the man substituted for him, whose name is Chimman, is very unlike him in many respects. It is, therefore,

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not surprising that the witnesses did not identify him and the Court was not in fact misled. Even if some of the witnesses had identified Chimman as Debi and had thus proved themselves to be false witnesses, that would not have affected the question of Cheda Lal's guilt, as it is his intention to mislead the Court, and not the actual result, upon which his guilt or innocence depends. For the above reasons I am of opinion that he has been rightly convicted under section 193 of the Indian Penal Code. He has also brought himself under the purview of other sections of the Code, but it is not necessary to go into that question. The sentence passed on him is, in my judgment, unduly severe, and I think the justice of the case would be sufficiently met by reducing it to one of two years' rigorous imprisonment. Whilst therefore I affirm the conviction, I alter the sentence to one of two years' rigorous imprisonment and to this extent allow the appeal. The appellant must surrender to his bail and serve out the remainder of his sentence.

APPELLATE CIVIL.

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March 4.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

PARSOTAM RAO TANTIA AND ANOTHER (DEFENDANT) v. JANKI BAI
(PLAINTIF) AND RADHA BAI (DEFENDANT)*

Hindu law—Joint Hindu family—Self-acquired property—Devise of self-acquired property to sons—Nature of son's interest.

Seemle that property which is the self-acquired property of a Hindu who has sons and grandsons and is devised by will to one of the owner's sons remains after devolution self-acquired property and does not become the joint property of the devisee and his sons. *Jugmohandas Mangaldas v. Sir Mangaldas Nathubhoy* (1) followed. *Tara Chand v. Reeb Ram* (2), *Muddun Gopal Thakoor v. Ram Bhusk Pandey* (3) dissented from.

Seemle also that, where the sons of a Hindu father, apparently members with their father of a joint Hindu family, took under their father's will property acquired by him under the will of his father, devised to them separately by name; but continued to live in the manner of a joint Hindu family and

*First Appeal No. 53 of 1906, from a decree of Babu Prag Das, Subordinate Judge of Cawnpore, dated the 13th of February 1906.

(1) (1886) I. L. R., 10 Bom., 528, (2) (1866) 3 Mad. H. C. Rep., 50,
(3) (1863) 6 W. R., C. L., 71.