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HAR PRASAD v. SUKDEVI KUNWAR.

[The judgement then dealt with these items].

We decline to award any of these items. The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

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January, 26.

Before Mr. Justice Chamier and Mr. Justice Piggott.

EMPEROR v. DIP NARAIN.*

Act No. I of 1872 (*Indian Evidence Act*), *section* 30—*Evidence—Confession—Admissibility of, in evidence against co-accused.*

One out of several accused persons who were being tried jointly for an offence under section 193 of the Indian Penal Code pleaded guilty and made a statement implicating himself and other accused. The Magistrate, however, did not convict him merely upon his plea of guilty, but upon the evidence and upon the statement made by him. The Magistrate also took the confession of this accused into consideration as against the others.

Held that the course taken by the Magistrate was not only admissible, but that in the circumstances of the case the Magistrate would not have exercised a sound discretion in convicting the confessing accused at once on the strength of his own statement alone.

THE facts of the case were, briefly stated, as follows :—

Nine persons were put on their trial before a Magistrate of the first class on charges under sections 211 and 193 of the Indian Penal Code, or of abetment of the offences named therein. After the evidence for the prosecution had been recorded the accused were called upon to enter on their defence, when one of them, Muhammad Ishaq, made a statement amounting to a confession implicating himself and his co-accused and pleaded guilty. The Magistrate, however, did not convict Muhammad Ishaq on this plea. He proceeded with the case against all the accused and ultimately convicted them all. He took the confession into consideration against the other accused. Muhammad Ishaq was not convicted on his plea of guilty. All the accused appealed. The Sessions Judge held that the confession could not be taken into consideration against the other accused. He remarked :—" The trial was no doubt joint up to a certain stage. But as soon as he pleaded guilty the Magistrate should

* Criminal Appeal No. 995 of 1914 by the Local Government from an order of Durga Dat Joshi, Sessions Judge of Azamgarh, dated the 7th of September, 1914.

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have convicted him. There was no necessity to keep him on in the dock. The Magistrate, it appears from his judgement, was clearly of opinion that the statement of Ishaq was true . . . There is a ruling of the Madras High Court in I. L. R., 22 Mad., 491, where in a case tried before a Magistrate the statement made by one accused was not considered as evidence against the other . . . See also I. L. R., 17 All., 524; I. L. R., 23 All., 53; and I. L. R., 30 All., 540. As there was no joint trial of Ishaq with the appellants his statement is not admissible in evidence." In the end the Sessions Judge set aside the convictions of two persons and acquitted them and dismissed the appeals of the rest. The Local Government appealed against the acquittal of one, namely, Dip Narain.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown:—

The case was decided upon the whole of the evidence, including the confession of Muhammad Ishaq. He was not convicted on his plea of guilty; so it cannot be said that his conviction was deferred merely with the object of taking his statement into consideration against his co-accused. The cases referred to by the Sessions judge are, therefore, distinguishable. There is also another ground of differentiation. In a sessions trial the plea of the accused is recorded at the outset of the trial. The present case being a warrant case triable by a Magistrate the whole of the prosecution evidence had to be recorded first and then the plea of the accused was taken. The Madras case relied on by the Sessions Judge was a summons case; and the other cases were sessions cases. I rely on the following rulings:—*In re Vempalli Bali Reddy* (1) and *Queen-Empress* v. *Chinna Pavuchi* (2). The statement of Muhammad Ishaq can, therefore, be taken into consideration against his co-accused.

Mr. *C. C. Dillon* (with him Babu *Satya Chandra Mukerji*, Dr. *Surendra Nath Sen*, Pandit *Ramakant Malaviya* and Maulvi *Iqbal Ahmad*), for the accused, discussed the facts and evidence and supported the judgement of the Sessions Judge.

CHAMIER and PIGGOTT, JJ.—This is an appeal by the Local Government against the acquittal of one Dip Narain,

(1) (1913) 22 Indian Cases, 157. (2) (1899) I. L. R., 23 Mad., 151.

who was convicted by a Magistrate of the first class of an offence punishable under sections 211/109 of the Indian Penal Code, but acquitted by the learned Sessions Judge of Azamgarh on appeal. As a matter of fact nine persons were put on their trial before the Magistrate, all of whom were convicted and all of whom appealed. The Sessions Judge dismissed seven of the appeals, but acquitted Dip Narain and one Musammat Talia. There has been no appeal against the acquittal of the latter.

The task before us is a simpler one than was before the courts below, as many matters which were in controversy there have been accepted in argument in this Court as fully established by the evidence. We find that Gaya, *Sunar*, resident of Shahzadpur in the Fyzabad district, was on bad terms with his relatives, Sarju and Lachhman. He somehow or other came to believe that a false charge brought against these persons could be successfully prosecuted, if suitable measures were taken, before a certain Bench of Honorary Magistrates exercising jurisdiction at Azamgarh. He came in to Azamgarh for that purpose, and there got into communication with various persons, including Gulab, *Sunar*, and one Muhammad Ishaq, a dealer in timber. A conspiracy was hatched for the filing of a false complaint before a Bench of Honorary Magistrates consisting of Raja Muhammad Shah and Babu Krishan Deo Narain Singh. Salaran, *Teli*, of Azamgarh was employed to come forward as complainant; and it seems to us perfectly clear on the evidence—if indeed this much also has not been practically conceded in argument before us—that there were members of the conspiracy who professed to be able to ensure its success by bringing improper influence to bear on Babu Krishan Deo Narain Singh. Accordingly, on the 3rd of April, 1914, Salaran filed a complaint before the Honorary Magistrates already named, in which he falsely charged Sarju and Lachhman with having committed, within the jurisdiction of the said Magistrates, offences punishable under sections 323,406 and 417 of the Indian Penal Code. Salaran was examined on his complaint and put in a list of witnesses. We cannot refrain from remarking that a magistrate of experience could scarcely have helped seeing that the story told by Salaran was a most extraordinary one, and that even if it might prove on inquiry that there was some truth in the other allegations made

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by him, the story of the assault said to have been committed by Sarju and Lachhman on the 1st of April bore every appearance of being a piece of imaginative embroidery. The Honorary Magistrates, however, took cognizance of the complaint as one of causing hurt (under section 323, Indian Penal Code) only, and issued process for the attendance of the accused persons and of the witnesses named by Salaran, fixing the 17th of April, 1914, for the trial. On that date Sarju and Lachhman, having come to Azamgarh and secured the services of Sheikh Faiyaz Husain, a local mukhtar, presented a petition before the Sub-divisional Magistrate asking for a transfer of the case against them to some other court. There were allegations made in this petition which satisfied the Sub-divisional Magistrate that prompt action was called for on his part. He transferred the complaint of Salaran to his own file, and went over in person to the court of the Honorary Magistrates to take possession of the record and secure the attendance before himself of the complainant and his witnesses. The falsity of the complaint was at once disclosed. Salaran absconded. His witnesses denied all knowledge of the affair. The complaint was dismissed, and the Sub-divisional Magistrate initiated a proceeding under section 476 of the Code of Criminal Procedure, which resulted in the trial out of which the present appeal has arisen.

As against Dip Narain the case for the prosecution is that he was an active member of the conspiracy which organized the institution by Salaran of his false complaint of the 3rd of April, 1914, and more particularly that he was the member to whom the others looked as the instrument through which improper influence was to be brought to bear on the Honorary Magistrate, Babu Krishan Deo Narain Singh.

In this connection we may at once proceed to comment on one aspect of the case which calls for special notice. The learned Sessions Judge seems to have been much influenced by the view that the case for the prosecution involved serious allegations against this Honorary Magistrate. He considered those allegations grossly improbable and very inadequately supported by the evidence. He then followed out a train of reasoning according to which the acquittal of Dip Narain appears to follow as a necessary consequence on the failing of the prosecution to establish any specific

charge of corruption or misconduct against Babu Krishan Deo Narain Singh. We are quite unable to look at the case in this light. The Honorary Magistrate was not on his trial. No charge was preferred against him, and no onus lay on the prosecution of establishing any such charge. The question with which we are concerned is whether Dip Narain represented himself, or was understood by the other conspirators, to be a person in a position to bring corrupt influences to bear on the Honorary Magistrate. Whatever remarks we may find it necessary to make on any portions of the evidence, we have to bear in mind that the point for determination is the guilt or innocence of Dip Narain, and that his guilt is perfectly consistent with the entire innocence of the Honorary Magistrate.

[The judgement then proceeds to discuss the facts and evidence].

This is the position we have reached without even touching upon the two most controverted points in the case, the evidence of the witness Chedi Rangrez and the confession of the accused Muhammad Ishaq. If we could be sure that these two men spoke the truth to the best of their knowledge, we need not have discussed any other evidence. Both assert that the filing of Salaran's complaint was the outcome of an elaborate conspiracy, in connection with which Dip Narain was an important member, acting (or purporting to act) as go-between for the others in their dealings with Babu Krishan Deo Narain Singh. The confession of Muhammad Ishaq obviously requires to be taken into consideration against all the accused; the learned Sessions Judge need have had no misgivings on this point. Muhammad Ishaq was not convicted on his plea of guilty, and he was tried jointly with the other accused. Under the circumstances of this case the trying Magistrate would have shown very poor discretion if he had convicted Muhammad Ishaq on his plea of guilty, thereby recording his belief in the substantial truth of Muhammad Ishaq's confession before the other accused had even entered on their defence. The case obviously required the most thorough sifting out, before any court could say with confidence that Muhammad Ishaq's confession was substantially true, even where it implicated himself. As it is, the learned Sessions judge has taken into consideration the confession of

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Muhammad Ishaq to a far greater extent than did the trying Magistrate; only he has used it to discredit the witness Chedi and to throw doubt on the prosecution case generally, as if the prosecution could be made responsible for all the allegations which Muhammad Ishaq saw fit to make against the Honorary Magistrate.

[The judgement again proceeded to discuss the facts and evidence.]

We set aside the Session Judge's order of acquittal, and we restore the Magistrate's convicting Dip Narain on the charge under sections 211/109 of the Indian Penal Code as framed. No special argument has been addressed to us on the subject of sentence, and we see no adequate reason for departing from the sentence originally passed by the trying Magistrate. We sentence Dip Narain to be rigorously imprisoned for one year and to pay a fine of Rs. 60. In default of payment of fine he will undergo further rigorous imprisonment for two months. He must surrender to his bail accordingly. Any period of imprisonment which he may have already undergone will count towards execution of the sentence now imposed.

APPELLATE CIVIL.

Before Mr. Justice Chamier and Mr. Justice Piggott.

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February, 5.

KHUSHHALI RAM (APPLICANT) *v.* BHOLAR MAL AND OTHERS (OPPOSITE PARTIES)*

Act No. III of 1907 (*Provincial Insolvency Act*), *section* 36—*Insolvency—Right of one creditor to challenge claim of another—Duty of Court to inquire—Jurisdiction.*

Held that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and, if he does so, the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to his remedy by suit.

THE facts of this case were as follows:—

One Mutasaddi Lal applied on the 10th of March, 1914, to be adjudicated an insolvent. His application was opposed by one of his creditors named Khushhali Ram, on various grounds, but he was so adjudicated by an order of the same date. On the 6th of April, 1914, Khushhali Ram presented to the court an application,

* First Appeal No. 113 of 1914, from an order of G. K. Darling, Additional Judge of Meerut, dated the 6th of April, 1914.