

District Magistrate with the request that he himself or by a competent subordinate Magistrate do hold an inquiry into the matter and commit the case to the Court of Session, if necessary. The case should be deemed to have been committed to the Criminal Court under section 476 of the Code of Criminal Procedure.

1917

EMPEROR
v.
BABU
PRASAD.

Before Justice Sir Pramada Charan Baneji.

EMPEROR v. BADRI PRASAD*

Act No. XLV of 1860 (Indian Penal Code), section 192—“Fabricating false evidence”—Document helping court to form correct opinion.

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September, 24.

Certain cattle were sold in a market on the 21st of March, 1917. A clerk, whose duty it was to register sales of cattle held at that market and give receipts to the purchasers, gave a receipt on the 27th March, most probably, and dated it the 27th March, but subsequently altered the date to the 21st, the actual date of sale.

Held that there was no case of fabricating false evidence, for the alteration of the date was not intended to lead anyone to form an erroneous opinion touching the date of sale, but the contrary.

THE accused was a clerk employed by the Court of Wards, and one of his duties was to register the sale of any cattle that took place in a market held at a place called Naraini. On the 21st of March, certain cattle-dealers passed from Naraini through police station Bisenda and the sub-inspector asked the dealers to produce registration receipts. Two men who were driving 26 head of cattle, could produce only 19 receipts, and the sub-inspector arrested them on suspicion of their having stolen property and commenced an investigation. The two men said that the seven receipts were with another man, Gani. The sub-inspector sent a constable to Naraini to see the accused. In the mean time Gani produced seven receipts bearing date 21st March, 1917. The counterfoil receipts in the register with the accused showed that the receipts were originally dated 27th March, 1917, and subsequently changed to 21st March, 1917. The result of the investigation, however, showed that the cattle were really sold on the 21st of March, 1917, but that the receipts were granted subsequently. The police sent up the accused under section 218, Indian Penal Code, but the Magistrate being of opinion that the

*Criminal Revision No. 680 of 1917, from an order of Guru Prasad Duba, Additional Sessions Judge of Banda, dated the 2nd of August, 1917.

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accused was not a public servant, held that section not applicable, but convicted the accused under section 193, Indian Penal Code, of having fabricated false evidence as defined by section 192, Indian Penal Code. The conviction and sentence were upheld by the Sessions Judge. The accused applied in revision to the High Court.

Babu Piari Lal Banerji, for the applicant :—

Upon the facts found, no offence of fabricating false evidence was committed. The sub-inspector was investigating a case of suspected stolen property and the question he had to decide was whether the cattle were stolen property or not. It has now been found that the cattle were not stolen property and were really sold in the market on 21st March, 1917, therefore the receipts could not possibly induce him to form an erroneous opinion. They would, on the contrary, help him in arriving at a true opinion. There was nothing dishonest in the action of the accused. He had forgotten to issue receipts on the date of sale and when it was represented to him that the cattle-dealers were in trouble on account of his carelessness, he issued the receipts, and put upon them the date of sale of the cattle.

Mr. C. J. A. Hoskins (for the Assistant Government Advocate), for the Crown :—

It is quite clear that the accused must have been paid something to induce him to grant the receipts and his action was dishonest. The receipts would influence the opinion of the sub-inspector and the act amounted to fabricating false evidence.

BANERJI, J.—The applicant *Badri Prasad* has been convicted of fabricating false evidence as defined in section 192 of the Indian Penal Code and has been sentenced under section 193 of that Code to three months' rigorous imprisonment. *Badri Prasad* was a clerk employed by the *Naraini Estate*, which is in charge of the Court of Wards, and one of his duties was to register sales of cattle at the *Naraini market*. On the 21st of March, 1917, two persons, *Riyayat* and *Arman*, were carrying away twenty-six head of cattle. While they were passing *Bisenda police station* the sub-inspector stopped them and wanted them to produce the receipts which they had obtained as

to the registration of the date of the sale of the cattle. They produced 19 receipts, but they had none as regards the remaining seven head of cattle. On the 27th of that month, they produced seven receipts bearing date the 21st of March, 1917. These receipts had in fact been prepared by the accused on the 27th, but they were dated, as I have said above, the 21st of March. It has been proved that the seven head of cattle were in fact purchased by Riyayat and Arman on the 21st of March at the market, but, for some reason which does not appear, probably through oversight, receipts were not granted in regard to them. The accused was sent up for trial for an offence under section 218 of the Indian Penal Code. But as he was not a public servant he could not be convicted under this section. The learned Magistrate, however, convicted him under section 193, he being of opinion that in preparing the seven receipts Badri Prasad had fabricated false evidence. The offence of fabricating false evidence is defined in section 192. The ingredients of the offence are, that circumstances should be caused to exist, or a false entry should be made in any book or record, or any document containing a false statement; that such circumstances, false entry or false document should be made with the intention that it may appear in evidence in a proceeding taken by law before a public servant, and so appearing in evidence may cause such public servant to entertain an erroneous opinion touching any point material to the result of the proceeding. The proceeding which the sub-inspector, who is a public servant, was holding was one for the purpose of ascertaining whether the cattle had been purchased at the market by the two men who were carrying them or whether they were stolen property. The receipts which were granted by the accused to the purchasers of the cattle could not possibly cause the sub-inspector to entertain an erroneous opinion touching a point material to the result of the inquiry he was making. He was satisfying himself whether the cattle were stolen property and these receipts, so far from causing him to entertain an erroneous opinion as to whether the cattle had been sold or not, might have caused him to form a correct opinion on the point. One of the principal ingredients of the offence of fabricating false

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evidence was therefore wanting in this case. This being so, the offence of fabricating false evidence was not committed by the accused and he could not be criminally punished under section 193 of the Indian Penal Code. His conduct in granting receipts subsequently to the date of the actual sale or in making alterations in his register was no doubt reprehensible, but it did not constitute a criminal offence for which he could be convicted. I accordingly allow the application, set aside the conviction and the sentence, and acquit Badri Prasad of the offence of which he was convicted. The bail-bond furnished by him is cancelled.

Application allowed.

1917

September,
25.

Before Justice Sir Pramada Charan Banerji.

EMPEROR v. BARKAT ALI AND ANOTHER.*

Act No. VII of 1878 (Indian Forest Act), section 25(i)—Hunting without a permit in a reserved forest.

Four persons made up a party and went, without having a permit, to shoot in a reserved forest. Two of the party shot deer; the other two shot nothing. *Held* that the two members of the party who had not shot anything could properly be convicted of hunting in a reserved forest within the meaning of section 25 (i) of the Indian Forest Act, 1878.

FOUR persons went together, without having obtained the necessary permit to shoot in a reserved forest. Two of the party shot two deer; the other two shot nothing. All four were tried for and convicted of an offence under section 25, clause (i), of the Indian Forest Act; the two persons who had shot nothing, and who had been fined Rs. 50 and Rs. 40, applied in revision to the High Court.

Babu Satya Chandra Mukerji, for the applicants.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

BANERJI, J.—The applicants Barkat Ali and Hamid Ali have been convicted under section 25 of the Forests Act (No. VII of 1878). The former has been sentenced to a fine of Rs. 50 and the latter to a fine of Rs. 40. It appears that these two persons along with two others went to a reserved forest. The other two persons who were tried along with the applicants Barkat Ali and

*Criminal Revision No. 701 of 1917, from an order of W. R. G. Moir, Sessions Judge of Gorakhpur, dated the 11th of July, 1917.