

For the opposite party:—*Debi Prasad v. Sheodat Rai* (1) *Jhingai Singh v. Ram Partap* (2), *Soyeda Khatun v. Lal Singh* (3), *Har Prasad v. Pandurang* (4), *Goluck Chandra Pal v. Kali Charan De* (5), *Matukdhari Singh v. Jaisri*, (6), *In the matter of Chinnappudayan* (7).

Nowhere throughout the case was any allegation ever raised by the applicants that they had been prejudiced, although the case was argued for a month and a mass of evidence taken.

*Application dismissed.*

*Before Justice Sir George Knox.*

EMPEROR v. PARWARI.\*

*Act No. XLV of 1860 (Indian Penal Code), section 499—Defamation—Statement made to the police—Criminal Procedure Code, sections 154 and 155.*

Statements made to the Police as the result of action taken under section 154 or section 155 of the Code of Criminal Procedure are privileged statements, and as such, cannot be used as evidence or made the foundation of a charge of defamation. *Manjaya v. Sesa Shetti* (8) and *Queen-Empress v. Govinda Pillai* (9) referred to.

Further, inasmuch as a statement, in order to be defamatory within the meaning of section 499 of the Indian Penal Code, must be made with a certain intention, a statement made primarily with the object that the person making it should escape from a difficulty cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.

THIS was an application in revision against an appellate order of the Sessions Judge of Saharanpur, maintaining the conviction and sentence of the applicant on a charge of defamation under sections 499 and 500 of the Indian Penal Code. The facts of the case are fully stated in the judgment of the Court.

Mr. A. S. Osborne, for the applicant.

Mr. Nihal Chand and Mr. J. M. Banerji, for the opposite party.

\* Criminal Revision No. 743 of 1918, from an order of J. H. Cuming, Sessions Judge of Saharanpur, dated the 29th of October 1918.

- (1) (1907) I. L. R., 30 All., 41. (5) (1886) I. L. R., 13 Calc., 175.  
 (2) (1908) I. L. R., 31 All., 150. (6) (1917) I. L. R., 39 All., 612.  
 (3) (1914) I. L. R., 36 All., 233. (7) (1907) I. L. R., 30 Mad., 548.  
 (4) Weekly Notes, 1905, p. 260. (8) (1888) I. L. R., 11 Mad., 477.  
 (9) (1892) I. L. R., 16 Mad., 235.

1918

EMPEROR  
v.  
SARHAWAT  
ALI.

1919

January, 8.

1919

EMPEROR  
v.  
PARWARI.

KNOX, J.:—This is a case in revision. The Sessions Judge of Saharanpur had before him an appeal by a woman one Musammat Parwari, so called at any rate. The appellant had been convicted of the offence of defamation and sentenced under sections 499 and 500 of the Indian Penal Code to two months' rigorous imprisonment. The complaint had been instituted against her by one Chhajju Singh. Chhajju Singh, according to the prosecution, was step-brother of one Musammat Parwari, Rajput by caste, and Musammat Parwari was the wife of Pirthi Singh, also Rajput. Parwari, some two years before the complaint was lodged, had gone to the house of Umrao Singh, her sister's husband. There she fell ill and died on the 21st of June, 1916. After her death, Pirthi Singh gave it out that she was still alive, and that Umrao Singh's story that she was dead, was false, and the woman was really in concealment in Umrao Singh's house. Parwari's husband and relations had wanted, so the complainant says, to out-caste him and his family and in order to effect this had put up the appellant who was in fact a Chamar woman, to pretend to be his wife: that, in pursuance of this conspiracy, the appellant had been induced to go to the courts at Dehra and to make a false statement to the effect that she was Pirthi Singh's wife and had been kept in seclusion as above mentioned. As a result of this, the complainant, his parents and Umrao Singh have been out-casted. The complaint went on to say that the feelings of the complainant had been further outraged by statements made by the appellant. Those statements were certainly statements, if true, to the prejudice of the complainant and his relations. All these statements were said to have been made by the woman appellant to a Sub-Inspector of police stationed at Rikhikesh, and when the charge sheet was drawn up the woman was charged with having on the 26th of February, 1918, at Rikhikesh, by words spoken to the Sub-Inspector, published an imputation of incestuous connection with different persons knowing that such imputation would harm the reputation of Musammat Parwari, if living, and intended to harm the feelings of the near relatives such as her father and brother. The statements are then set out in the charge sheet; and it is added that she had thereby committed an offence punishable under section 499, read with section 500, of the Indian Penal

1919

---

 EMPRESS  
 v.  
 PARWARI

Code. The record, as it stood, was, as I pointed out in my order of the 2nd of December, 1918, so meagre, that it was difficult to decide from it the precise circumstances under which the statement of the 26th of February said to have been made by the appellant came into existence. In order to ascertain these circumstances, I summoned Sub-Inspector Indarjit Singh, the Sub-Inspector concerned, to ascertain these circumstances as far as possible. His evidence has been recorded, and I cannot say that it is at all satisfactory. Taking it as it stands, he says that the statement contained in Exhibit H was a statement made under the authority of section 154 of the Code of Criminal Procedure, 1908. As to the statements contained in Exhibit I and J, he found it difficult to say positively how those statements came to be made. Eventually, however, he deposed that they were statements made in consequence of action taken by him under section 155 of the Code of Criminal Procedure. He is not a novice in police work, for he says he has been Sub-Inspector for five years, but he left it it rather doubtful whether he did intentionally and knowingly act under the authority of section 155 of the Code or of some authority given him by the Police Manual. If the statements resulted from action taken under section 154 or under section 155, they are privileged statements, and as such, should not have been used as evidence at all. [See section 162 of the Code of Criminal Procedure and the case of *Manjaya v. Sesha Shetti* (1) ; also *Queen-Empress v. Govinda Pillai* (2)]. The Madras High Court is very positive and consistent upon the view that statements under these circumstances are privileged and cannot be made the foundation of a charge of defamation. I do not know what authority the Police Manual may give, but, whatever authority it may give, if it does give any authority, that cannot override the law. It is difficult to understand how the Sub-Inspector could have taken these statements at all. The probability is that he took them out of prurient curiosity and not in the course of any investigation made under Chapter XIV of the Code of Criminal Procedure. I mention this as what I am about to say might otherwise be considered *obiter dictum*. I have on previous occasions pointed out that in dealing with cases of criminal defamation, it is necessary to

(1) (1888) I. L. R., 11 Mad., 477; (2) (1892) I. L. R., 16 Mad., 235.

1919

---

EMPEROR  
v.  
PARWARI.

---

follow carefully the provisions made in the Indian Penal Code on the question of defamation. There is a marked difference between criminal liability for defamation under the English law and under the Indian law, arising no doubt from the fact that the English criminal law when dealing with defamation had mainly to consider whether the defamation was such as would result in a breach of the peace or the question whether the person who claimed punishment for defamation was a person aggrieved by the statements made. In the present case the defamation consisted of imputing matters which concerned a deceased person. The authors of the Code have themselves pointed out their intention that the penal law in India on this point should differ from that in England. Their intention was that the essence of the offence of defamation should consist in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. This was the reason evidently why they attached to section 499 the explanation marked I. Section 499 by itself could not touch the present case. The imputation affected a deceased person. Explanation I expands section 499 by adding that it may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of the person if living and is intended to be hurtful to the feelings of his family or other near relatives. The learned counsel who supported the case for the prosecution argued that in this case intention was proved if it was the probable consequence of the act done. I find myself unable to agree with him, ably as he put forward that argument, and I hold that in the present case it was incumbent upon the prosecution to prove not only that the statements made by the appellant would have harmed the reputation of Musammat Parwari as they undoubtedly would have, but also, that he had to prove that the statements were made with an intention to be hurtful to the feelings of Chhajju Singh, Chhajju Singh's family or other near relatives. Whether the words "near relatives" would include Chhajju Singh is open to question. The evidence for the Crown is, however, that the appellant on the 26th of February made statements on which she

has been convicted under these circumstances :—A constable came upon her in a fair, she was at the time wearing a male attire. For some reason or other he suspected that she was not a male person but a woman in male attire. He took her to the *thana* of Rikhikesh. She was seen at once by the Sub-Inspector, Indurjit Singh. He questioned her and came to the conclusion that she was a woman masquerading in male clothes. The statements she made at that time were not statements to the prejudice, but if it can be so said, would have been to the credit of the family of Chhajju Singh. She described herself as a Brahmin and so forth. The Sub-Inspector sent her to another *thana*, Sahaspur. She left for Sahaspur under the conduct or the arrest of a constable. Soon after the Sub-Inspector went to the railway station, Rikhikesh road, with the intention of proceeding on four days' leave. He there saw the woman again, and she then made statements which were to the derogation of the family aforesaid. The theory of the prosecution is that she made these latter statements at the instigation of one Pirthi Singh and hence the derived malice that turns these statements into defamation, statements, made according to the Crown, with the object of aspersing the memory of the dead and with a design to injure the feelings of the relatives of the dead. The case of *Queen v. Labouchere* (1) is very instructive on this point, always bearing in mind that we must adhere strictly to the Indian law as laid down in section 499 of the Indian Penal Code. If the intention of the appellant was to aggrieve, if the word may be used, the feelings of the relations, is it at all likely that the woman would not have done so on the first occasion she had a chance of doing it, namely, when she came to the Rikhikesh *thana*, or later on, as she is charged with doing? A woman bent upon causing pain to the relations of Chhajju Singh would surely have done so when she had the first opportunity of doing it. We can easily imagine her blurting out a false story upon the first opportunity. It is difficult to imagine her designing to get credence to her false story by first stating matters to the credit of the family and then taking advantage of an unexpected interview with the Sub-Inspector to do the opposite. She did not know of the Sub-Inspector's intention to take leave or the

1919

---

 EMPEROR  
 v.  
 PARWARI.

(1) (1884) 12 Q. B. D., 320.

1919  
 EMPEROR  
 v.  
 PARWARI,

probability of meeting him at the railway station. The improbability is so great that it amounts to my mind to an impossibility. Her intention was not to cause pain to the relatives of the deceased, but to get herself, if she could, out of the scrape into which she had come by going about in male attire with a large amount of jewellery. In any case I cannot hold that the intention has been proved; her statements therefore do not amount to defamation. The offence of defamation of which she has been convicted has not been established. I find her not guilty and direct her immediate release from custody; if on bail, as I understand she is, she should be instantly released and the bail bonds cancelled.

*Application allowed.*

## APPELLATE CIVIL

1919  
 January, 4.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice*

*Sir Pramada Charan Banerji.*

BHARAT INDU AND OTHERS (PLAINTIFFS) v SYED MUHAMMAD MUSTAFA KHAN (DEFENDANT)\*

*Lambardar and co-sharer - Suit for profits - Lambardar appointed after some of the rent in respect of which the suit was brought had become due—Liability of lambardar.*

A lambardar is not exempted from liability in respect of rents merely because they may have become due on a date prior to his appointment as lambardar; but he would be liable to account for such rents if he had either actually received them or had obtained decrees for them.

THIS was a suit for profits against a lambardar. The share in respect of which the claim was made was purchased by the plaintiffs on the 22nd of January, 1912. The defendant was appointed lambardar on the 5th of February, 1913. The court of first instance decreed the greater part of the plaintiff's claim, but dismissed it in respect of a portion of the rent, which had fallen due before the date of the defendant's appointment as lambardar, and this decree was upheld in appeal by the Officiating District Judge. The plaintiffs appealed to the High Court in respect of such portion of their claim as had been disallowed by the court below.

---

\*Second Appeal No. 102 of 1917, from a decree of Rama Das, Officiating District Judge of Farrukhabad, dated the 26th of September, 1916, confirming a decree of Ram Narain, Assistant Collector, First Class, of Farrukhabad, dated the 27th of June, 1916.