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proposed to depart from it. The other Judges who constituted the Full Bench, however, differed. There was a former decision to be found in I. L. R., 38 All., 243, which, however, in our opinion, does not affect the decision in the case of *Muhammad Sadiq v. Laute Ram* (1). The learned Chief Justice no doubt was of the opposite opinion to that expressed in the former Full Bench decision but the two learned Judges who sat with him decided the case on a totally different point, as a close perusal of the judgment will disclose.

In view of the former decisions of this Court on the point we must hold that the decision of the learned Judge of this Court is correct and this appeal therefore fails and is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Tudball.*

EMPEROR v. CHATUR SINGH AND OTHERS.\*

1920

June, 26.

*Act No. I of 1872, (Indian Evidence Act), section 132—Witness—Defamation—Statement made on oath by a witness in a criminal case in answer to a question—Witness “compelled” to answer even if he has not objected.*

Although a voluntary statement made by a witness may stand on a different footing, an answer given by a witness in a criminal case on oath to a question put to him either by the court or by counsel on either side, especially when the question is on a point which is relevant to the case, is within the protection afforded by section 132 of the Indian Evidence Act, 1872, whether or not the witness has objected to the question asked him. *Queen v. Gopal Das* (2), *Queen-Empress v. Moss* (3), *Kallu v. Sital* (4) and *Ganga Sahai v. Emperor* (5) not followed.

The facts of this case are fully stated in the judgment of the Court.

*Munshi Ram Nama Prasad*, for the applicants.

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

TUDBALL, J.:—The five applicants, Chatur Singh, Tula Ram, Johri, Poltu and Sri Chand have been convicted each of an

\* Criminal Revision No. 298 of 1920. from an order of T. K. Johnston, Sessions Judge of Agra, dated the 24th of January, 1920.

(1) (1901) I. L. R., 23 All., 291. (3) (1893) I. L. R., 16 All., 88.

(2) (1881) I. L. R., 3 Mad., 271. (4) 1918) I. L. R., 40 All., 271.

(5) (1920) I. L. R., 42 All., 257.

offence under section 500 of the Indian Penal Code and have been sentenced to a fine of Rs. 51 each, or in default, to undergo one month's rigorous imprisonment. These five persons were called as witnesses in a certain case. As the learned Sessions Judge has pointed out, the question in that case was whether one Lallu Singh had been to a certain house. The question was relevant to the case and in order to prove that he had not been to that house these five persons were called to prove that he could not have gone there because he had been outcasted by reason of what is known as a *dharecha* marriage with his uncle's wife. In that case Lallu Singh was a witness for the prosecution, and the present five applicants were witnesses for the defence and apparently they were called to disprove the statement of Lallu Singh in order that the accused might be acquitted. In the result the accused was acquitted. Thereupon Lallu Singh made a complaint against these five persons charging them under section 500 of the Indian Penal Code, in that they had falsely stated that he had been outcasted for the reasons mentioned above. The magistrate who tried the case found that the statement of outcasting was untrue, because he found it satisfactorily established by evidence that a *dharecha* marriage of this description is common in the caste and did not constitute a reason for outcasting. He, therefore, held that the statements made by these persons in the former case were untrue and therefore defamatory, and he convicted and fined the accused as above stated.

The learned Sessions Judge on appeal upheld the convictions. Two points were taken before him which have also been taken before this Court. The first was that the statements made by these persons were privileged statements and that they were compelled to answer the questions put to them when they were called as witnesses; that the questions were relevant to the trial which was then before the court, and that therefore under section 132 of the Indian Evidence Act they were protected and could not be prosecuted for any offence other than that of perjury. The second point taken was that the trial of these five persons in one joint trial was illegal, as each man was solely responsible for his own statement and not for the statements of his other co-accused.

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The learned Sessions Judge held that the accused persons could not claim the protection of section 132 of the Indian Evidence Act because they had not protested when the question was put to them but answered it voluntarily. His judgment runs as follows :—“ The question as to whether Lallu Singh had been to a certain house was relevant in that case and an attempt was made to show that he could not have gone to the house as he was an outcaste. Under section 132 of the Evidence Act the witnesses could have been compelled to answer the questions that were put to them, but it appears that they took no objection when the questions were put, and so, according to the interpretation placed upon the law by the various High Courts, they were not entitled to the protection afforded by the proviso to that section.” The rulings to which the learned Sessions Judge probably referred, though he does not say so, are to be found in *Queen-Empress v. Gopal Das* (1) and *Queen-Empress v. Moss* (2). Perhaps also the Judge may have had in his mind the decision of this Court in *Kallu v. Sital* (3). My attention has also been called to the decision of a single Judge of this Court in *Ganga Sahai v. Emperor* (4).

As regards the Madras case it will be noticed that it was a Full Bench case. Only three Judges were in favour of the interpretation of the law given by the learned Chief Justice, whereas two Judges differed from that interpretation. The decision in *Kallu v. Sital* (3) was also a decision of a single Judge of this Court. The point deals with the meaning of the word “compelled.” The question was discussed in the case of *Kallu v. Sital* (3), mentioned above, by Mr. Justice PIGGOTT of this Court and a quotation from his judgment was made by Mr. Justice WALSH in his judgment in *Ganga Sahai v. King-Emperor* (4). I personally have no doubt whatsoever that the accused persons in the present case were compelled within the meaning of the law to answer the questions put to them when they entered the witness box. A voluntary statement by a witness may stand on a totally different footing to an answer given by him as a witness on oath to a question put to him either

(1) (1881) I. L. R., 3 Mad., 271.

(3) (1918) I. L. R., 40 All., 271.

(2) (1893) I. L. R., 16 All., 83.

(4) (1920) I. L. R., 42 All., 257.

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by the court or counsel on either side, specially when the question is on a point which is relevant to the case. It would be too much to ask of an ordinary layman that he should know all the terms of section 132 of the Indian Evidence Act and that he should be prepared to protest against every question put to him in order to protect himself under that section. I think, if a common sense meaning be given to the word "compelled" in section 132, it is clear that in the present case these five persons were compelled to answer. They were under the direct compulsion of the law and of the court and in my opinion they were protected by that section.

As regards the second point, the learned Sessions Judge remarks that "it follows that these defamatory statements being similar to one another must have been made in concert and as the result of conspiracy. That being so the joint trial appears to me to be proper." Excepting the similarity of the statements and the fact that the court of first instance has, on a somewhat flimsy ground, held them to be untrue, there is nothing else to indicate conspiracy. If it had been necessary I should have been compelled to send the case back for retrial of the accused separately. However, no order on this point is necessary as in my opinion they are protected by the law as laid down under section 132 of the Indian Evidence Act and they cannot be convicted of defamation. I, therefore, allow this application, set aside the convictions and sentences and direct that the fines, if paid, be refunded.

*Conviction set aside.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Sulaiman and Mr. Justice Kanhaiya Lal.*  
 HET SINGH (PLAINTIFF) v. BIHARI LAL AND OTHERS (DEPENDANTS).  
*Act No. IV of 1882 (Transfer of Property Act), section 60—Mortgage—  
 Redemption—Tender of mortgage-money as a condition precedent to suit  
 for redemption.*

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 1920  
 June, 29.

Section 60 of the Transfer of Property Act, 1882, does not necessarily mean that before a suit for redemption can be instituted the amount due on

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\* Second Appeal No. 1393 of 1917, from a decree of D. R. Lyle, District Judge of Agra, dated the 6th of August, 1917, reversing a decree of Kalka Singh, Subordinate Judge of Agra, dated the 21st of February, 1917.