APPELLATE CRIMINAL

Before Mr. Justice Lindsay, Acting Chief Justice.

EMPEROR *v.* SUR NATH BHADURI.*

1927
July, 28.

Act No. XLV of 1860 (*Indian Penal Code*), *section* 194—"*Causing a circumstance to exist*"—*Bringing tutored evidence before a court—Charge translated into Urdu and read out to jury by Government Pleader—Procedure.*

Held that a person who brings before a court a witness whom he has tutored to tell a false story concerning the case before it, may properly be convicted under section 194 of the Indian Penal Code. *Emperor* v. *Chcda Lal* (1) and *Durga Prasad* v. *Emperor* (2), referred to.

A Sessions Judge having a rather complicated charge to deliver to a jury, and not feeling quite sure that he had sufficient Urdu to be able to make himself perfectly intelligible to them, wrote out his charge in English and then got the Government Pleader to translate it and read it to the jury. *Held* that this procedure was not illegal.

THE facts of this case sufficiently appear from the judgement of the Court.

Mr. *A. Sanyal*, for the appellant.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

LINDSAY, A.C.J.—The appellant, Sur Nath Bhaduri, has been convicted in the Court of Sessions at Benares on a charge under section 194 of the Indian Penal Code and has been sentenced to five years' rigorous imprisonment. The trial was with a jury and, according to what is stated, the jury returned a unanimous verdict of "guilty" of an offence under the section just named.

An appeal from a conviction had after trial by jury is only admissible on points of law. The petition of

*Criminal Appeal No. 459 of 1927, from an order of K. A. H. Sams, Sessions Judge of Benares, dated the 7th of April, 1927.

(1) (1907) I.L.R., 29 All., 351. (2) (1915) 30 Indian Cases, 651.

1927

EMPEROR v. SUR NATH BHADURI.

appeal which is before me enumerates eight points. They may, however, be reduced to a smaller number.

To put the case briefly, this man, Sur Nath Bhaduri, was charged with the offence known as the fabrication of false evidence. According to the charge, as framed by the Magistrate who committed the accused for trial, there was only one charge, namely, that this accused had produced a man named Nil Ratan Banerji before the District Magistrate of Benares to make a false deposition concerning a case of murder. The charge, however, seems to indicate that two other allegations were made against the accused, namely, that in order to support the false statement which was intended that this man Nil Ratan should make, the accused fabricated other false evidence, namely, by inducing two witnesses, named Sita Ram Gond and Shib Chandra Mukerji, to come forward and make false statements, and that the accused in order to further his intention in the matter of procuring false evidence, planted or caused to be planted a certain weapon in the house of Anant Pergash Thakur. I do not know whether the intention of the Magistrate was that the accused should be indicted on separate charges. All I find is that this charge is described as a charge with one head.

The substance of the case is as follows :—It appears that some time previous to the commission of this offence a Bengali had been murdered at Narad Ghat in Benares in mysterious circumstances. A body was found with the head cut off and this was afterwards identified as being the body of one Nagendra Nath Banerji.

It is made to appear that the present appellant came into touch with the District Magistrate of Benares, Mr. Mehta, and that it was suggested to the accused that he might find out something about this murder. The accused, it is said, promised Mr. Mehta that he

would make inquiries and it was in performance of this promise that the offence charged is said to have been committed. Some time after his interview with Mr. Mehta it was proved that the accused brought forward this man Nil Ratan, who made a long statement in which he admitted having taken part in the murder, and he incriminated two other Bengalis, who, according to the evidence, were arrested. This man Nil Ratan was taken into custody and sent to the jail and at a later stage the two witnesses whose names I have mentioned, namely, Gond and Mukerji, were put forward in order to corroborate Nil Ratan's story. Their statement broke down and it came out that Nil Ratan had been tutored by the accused to come forward with a story which was eventually found to be false. That is the sum and substance of the case against the accused Bhaduri.

Coming now to the law points which are raised in the petition of appeal, I take points 1 and 2 together, because they amount to a plea that on the facts, as stated by the prosecution, the accused was not liable to conviction under section 194 of the Indian Penal Code. The argument is that according to the definition of fabrication as contained in section 192 of the Code, the tutoring of a man to give false evidence does not amount to what the section describes as the "causing of a circumstance to exist".

In the course of the trial in the court below a case was cited before the Sessions Judge, *Durga Prasad* v. *Emperor* (1). That was a case decided by a single Judge of this Court who seems to have been of the opinion, although the judgement is not a reasoned one, that the suborning of a false witness does not amount to the fabrication of false evidence under section 192.

(1) (1915) 30 Indian Cases, 651.

1927

EMPEROR v. SUR NATH BHADURI.

I am unable to accept the law as laid down in that ruling and I am confirmed in my opinion by the judgement of another learned Judge of this Court, which is to be found in *Emperor* v. *Cheda Lal* (2). That was a case in which the accused produced a number of men before a court, who could not be identified by the prosecution witnesses. It further appeared in that case that when the accused was asked where the man whose identification it was sought to establish was, he pointed out another man who was discovered to be wearing a false moustache and who was not the man whose identification was wanted. At page 353 of the report Mr. Justice BANERJI refers to the essential elements of the offence of fabricating false evidence as described in section 192 of the Indian Penal Code. The first of these is "causing the existence of any circumstance". Mr. Justice BANERJI was of opinion that the accused in that 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; and so, when it is found that the accused, after inspiring Nil Ratan with an absolutely false story of the murder, brought Nil Ratan before the District Magistrate who took down his statement, I am of opinion that in these circumstances the accused Bhaduri did cause a circumstance to exist. It is in my opinion impossible to argue that on the facts, as they were stated by the prosecution witnesses and as found by the jury, the accused was not liable to conviction under section 194.

In the third ground a plea is taken with regard to that portion of the charge which related to the "planting" of a weapon. It is said that there was no evidence on record that the appellant planted the weapon or caused it to be planted. There again I am unable to accept the argument. There was evidence on the record from

(1) (1907) I.L.R., 29 All., 351.

1927

EMPEROR v. SUR NATH BHADURI.

which the jury, if they were so minded, could come to the conclusion that the accused either placed the weapon himself where it was found or got some one else to do it.

In the fourth ground of appeal the procedure of the court below is attacked. It is said that the jury returned a unanimous verdict of "doubt" on the second head of the charge and that the learned Judge improperly asked the jury to retire again and re-consider their verdict. I am not quite sure what a unanimous verdict of doubt means, but from the affidavits which have been produced in this Court, it is made to appear that when the Judge asked the jury for their opinion about that part of the case relating to the planting of the weapon, the foreman of the jury hesitated and then informed the court that the jury had not considered that part of the case and it was for this reason that the Judge sent the jury back in order that that part of the case might be considered. It was after this that the unanimous verdict of "guilty" was returned. I see nothing wrong in the procedure of the court below.

Then it is said that the Sessions Judge acted contrary to law in adjourning the case for a week after the Government Pleader and the counsel for the accused had addressed the jury. It is said that this illegal procedure has caused failure of justice. I do not see how the adjourning of the case for a week constitutes any illegality. It is inevitable that cases should be adjourned and in this particular case the hearing had to be adjourned for a week on account of the intervention of certain holidays and because the learned Sessions Judge was sent off somewhere else for a day or two on special duty. There can be no question of illegality having arisen in this way. The suggestion is that by the time the hearing was resumed the jury had forgotten all about the arguments and ought to have been addressed again. I do not think there is any provision in law for action of this kind.

1927

EMPEROR v. SUR NATH BHADURI.

Then it is said that the learned Sessions Judge acted improperly in delivering his charge to the jury through the Government Pleader. It is, I think, the right course for a Judge to charge the jury himself; but there are difficulties in the way of doing this if the Sessions Judge does not happen to be sufficiently acquainted with the Urdu language so as to be understood by the jury. In the present case the learned Judge candidly admits that in view of the technical language necessary to describe the offence of fabrication of false evidence he did not feel competent to address the jury himself with any confidence that they would understand what he was saying to them. He wrote out a very long charge dealing elaborately with all the evidence and all the points in the case and I understand that this, after being translated into Urdu, was read to the jury by the Government Pleader. I am not prepared to say that there was any illegality in this procedure. The important thing is that the review of the evidence made by the learned Judge should be placed before the jury in a manner which they can understand, and if unfortunately the presiding Judge is unable to express himself in Urdu with sufficient fluency, he must of necessity resort to some other means. I reject this plea of illegality.

Then it is said that the learned Judge misdirected the jury because he did not draw their attention to certain statements and circumstances favourable to the case of the accused. On this point, all I have to say is that I have read the whole of the evidence which was recorded before the Sessions Judge and I have also read the entire charge which was delivered by translation to the jury. I do not think it is made to appear that the learned Judge withheld from the jury anything which he was bound to put before them. It seems to me that he has stated the case very fairly in the written charge which is upon

1927

EMPEROR v. SUR NATH BHADURI.

the record, and that being so, I cannot accept any plea that there has been any prejudice to the accused.

As for the last plea, which is a plea *ad misericordiam*, I cannot accept any suggestion that a sentence of five years' rigorous imprisonment for the concoction of false evidence intended to implicate two men on a charge of murder is in any way too severe. The learned Judge says he would have passed a much heavier sentence except for the recommendation of the jury on account of the appellant's being in a weak state of health. I dismiss this appeal.

Appeal dismissed.

PRIVY COUNCIL.

J. C. 1928 January, 13.

BHAGWATI AND ANOTHER (PLAINTIFFS) *v.* BANARSI DAS AND OTHERS (DEFENDANTS).*

[On Appeal from the High Court at Allahabad.]

Act No. IV of 1882 *(Transfer of Property Act), section* 55, *clause* (1) *(g)—Act No. IX of* 1872 *(Indian Contract Act), section* 69—*Sale of immoveable property—Discharge of incumbrance—Purchaser discharging undisclosed mortgage—Liability of vendor—Construction of contract.*

A stipulation in a contract for the sale of immoveable property that in the event of part of the property being sold as the result of an undisclosed incumbrance the vendor shall repay a proportionate part of the consideration, does not affect the vendor's obligation under section 55, clause (1) (*g*) of the Transfer of Property Act, 1882, to pay incumbrances, nor the consequent right of the purchaser under section 69 of the Indian Contract Act, 1872, to recover from the vendor the amount paid in discharge of a mortgage decree obtained after possession has been taken.

Decree of the High Court reversed.

Present :—Lord SHAW, Lord CARSON and Sir LANCELOT SANDERSON.