

APPELLATE CRIMINAL.

1929
September,
10.

Before Mr. Justice Young and Mr. Justice Sen.

EMPEROR *v.* NARBADA PRASAD AND ANOTHER.*

Act No. I of 1872 (Evidence Act), sections 34 and 67—Account-books—"Regularly kept in the course of business"—Formal proof of regularity unnecessary—Act (Local) No. X of 1922 (U. P. District Boards Act), section 34—False defence of accused alleging criminal conspiracy to bring false charge against him—Aggravation meriting severer sentence.

Account-books are admissible in evidence, under section 34 of the Evidence Act, 1872, without any formal proof that they were regularly kept in the course of business. The legislature, in section 34, has dispensed with the necessity of such formal proof, which was required by the former Act II of 1855.

In order that account-books may be deemed regularly kept in the course of business it is not necessary to show that they had been entered up as and when the transactions took place.

It is a matter of intrinsic evidence as to whether the books in question are books of account and regularly kept in the course of business.

Where it is not alleged that an account-book has been wholly or partly written by any particular person, section 67 of the Evidence Act does not apply.

False allegations against innocent and respectable persons of a criminal conspiracy to bring a false charge against the accused, when used as a defence, aggravates greatly the original offence, and the fact ought to be taken into consideration in awarding punishment.

The Government Advocate (Mr. U. S. Bajpai), for the Crown.

Dr. K. N. Katju and Messrs. A. P. Pandey and Gaya Prasad, for the respondents.

* Criminal Appeal No. 304 of 1929, by the Local Government, from an order of S. W. Bobb, Magistrate First Class, Allahabad, dated the 28th of January, 1929.

YOUNG and SEN, JJ. :—Pandit Narbada Prasad and Jagannath Prasad *alias* Kunnoo were charged before Mr. S. W. Bobb, first class Magistrate of Allahabad, under section 168 of the Indian Penal Code, and sections 168/109 of the Indian Penal Code, for contravention of section 34 of the District Boards Act of 1922. The Magistrate acquitted both the accused.

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Section 34 of the District Boards Act reads as follows :—“(1) A member of the Board who, otherwise than with the permission in writing of the Commissioner, knowingly acquires, or continues to have, directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.”

An “interest in a contract” we hold to mean a financial interest, with profit or hope of profit from the contract as the object of the person interested. This must be inferred from the facts in evidence in each case.

In the month of January, 1928, the District Board of Banda was suspended by order of the Government. It appears to us, after reading of the activities of this Board in this case, that the Banda District Board might have been suspended earlier with great advantage to the citizens of Banda. The administration of the District Board was placed in the hands of the District Magistrate, who appointed Mr. Chakarvarti as Official Chairman of the Board. Mr. Chakarvarti, on investigation into the affairs of the District Board, thought it proper to request Rai Bahadur Thakur Jaswant Singh, a Special Magistrate of Banda, to investigate the connection of Narbada Prasad, who had been Chairman of the Mau sub-committee of the District Board, with a contract for metalling one mile of a road in the Mau subdivision which had been given to the second accused,

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Jagannath Prasad. It is to be noted that the investigation was started officially and not at the instigation of Thakur Jaswant Singh. On the 24th of March, 1928, Thakur Jaswant Singh had finished his investigation and made his report in this matter to Mr. Chakarvarti. The police then took the matter in hand, and as a result the Local Government sanctioned the prosecution of Narbada Prasad on the 7th of July, 1928. In view of the nature of the defence in this case, to which we will allude hereafter, these dates are important. Mr. Vishnu Sahai, a first class Magistrate of Allahabad, originally commenced the hearing, but, on an application for transfer being made to the High Court, the case was ordered to be transferred to Mr. S. W. Bobb.

The evidence produced by the prosecution consisted of :—

[The judgement then proceeded to set forth the evidence in detail, which included certain documentary evidence, and continued.]

And, lastly, the very important documentary evidence which was discovered in the search of the houses of Narbada Prasad and Jagannath. These documents consisted of muster rolls, in which names of the labourers on the contract appear, with the amounts which were paid to them, a cash-book consisting of entries from the 18th of February, 1927, down to the 17th of July, 1927, setting out the payments made by Narbada Prasad for the purposes of the contract . . . This cash-book is of most vital importance and, in our view, it is impossible for any one having this evidence before him to come to any other conclusion but that Narbada Prasad was interested in the contract within the meaning of section 34 of the District Boards Act. There was also a ledger account, which extracted from the cash-book all the payments made by Narbada Prasad from

February to July, amounting in all to Rs. 2,960-12-6, on account of this contract. (The contract price to be paid to Jagannath was Rs. 4,995.) The cash-book, ledger, and muster roll were discovered at Jagannath's house. Jagannath admits that the writings in *Muria* and the cash-book and ledger are his.

[The judgement then commented on the conduct of the Board and discussed the oral evidence in detail.]

We are satisfied that the oral evidence alone is sufficient to bring home the charge to the accused.

With regard to the documentary evidence a preliminary objection has been taken by Dr. *Katju* that the account-books, Exhibits G 18 and G 20, are not admissible in evidence for want of formal proof. It cannot be questioned that the Crown is entitled to rely upon any material evidence of an incriminatory character found in the house of an accused person as the result of house search. If Exhibits G 18 and G 20 directly or indirectly connect Jagannath Prasad with the offence charged, the fact that those documents were found in the house of Jagannath is itself a circumstance which, if unexplained, may seriously tell against Jagannath Prasad. It has not been suggested in the case that any entries in these documents have been interpolated or fabricated.

Section 43 of Act II of 1855 provided that "Books proved to have been regularly kept in the course of business shall be admissible as corroborative but not as independent proof of the facts stated therein." Act II of 1855 was repealed and was replaced by the Indian Evidence Act (Act I of 1872). Section 34 of this Act runs as follows:—"Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient to charge any person with liability." From a com-

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parison of the two sections referred to above, it is manifest that there is a material difference between the two and the change of expression in the later Act is not a mere variant but amounts to a substantial alteration in the law. Under the former Act, books to be admissible had to be "proved to have been regularly kept in the course of business". In the latter Act the words "proved to have been" have dropped out. The legislature dispensed with the necessity of any formal proof that the books were kept up in the regular course of business. It was a matter of intrinsic evidence as to whether the books in question were books of account and regularly kept in the course of business. It was held by Mr. Justice WEST in *Munchershaw Bezonji v. New Dhurumsey Spinning etc Co.* (1), that only such books as are entered up as transactions take place that can be considered as books regularly kept in the course of business within the meaning of section 34 of the Indian Evidence Act. Their Lordships of the Privy Council did not approve of this ruling and held that it gave a much too limited meaning to the section: *Deputy Commissioner of Bara Banki v. Ram Parshad* (2).

The only limitation imposed by the statute is that the statement contained in the account-books "shall not alone be sufficient to charge any one with liability." If the entries stood alone, without any independent evidence such as has been produced in this case, the entries could not be treated as sufficient evidence to convict either Jagannath Prasad or Narbada Prasad.

Whether or not the books have been regularly kept in the course of business is a question of fact and this question may be solved by a reference to the entries in the books. We have examined these books of account. There are two columns on each page, relating to the debits and credits. The entries are duly dated. The

(1) (1880) I.L.R., 4 Bom., 576 (583) (2) (1939) I. L. R., 27 Cal., 118.

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cash-book begins on each date with the closing balance of the previous date. The entries on each side are totalled at the close of the day and the debits and the credits tally. There is a reference in the cash-book to the corresponding entry in the ledger. The entries in the ledger on the debit and credit sides agree with the entries in the cash-book.

It is clear, therefore, that these documents are account-books regularly kept in the course of business.

The value of the entries is corroborative and cannot be used as independent evidence to charge any person with liability. It was so held in *Dwarka Das v. Sant Bakhsh* (1).

An account-book is not a document which is required by law to be attested and section 68 of the Evidence Act has no application. The prosecution do not allege that the documents have been wholly written or have been written in part by any particular person except as to the entry which has been marked as Exhibit G. The prosecution have established that the said entry is in the handwriting of Narbada Prasad. As to the rest of the entries in the account-books, section 67 of the Evidence Act does not apply.

We hold that the documents in question are admissible in evidence against Jagannath Prasad and Narbada Prasad without any formal proof.

It is to be noted that the documentary evidence completely upsets the defence that the interest of Narbada Prasad in the contract was merely that of a financier, in that he had merely lent money to Jagannath and had no interest in the contract itself.

[The judgement then discussed the evidence.]

The main defence was an allegation of enmity against Rai Bahadur Thakur Jaswant Singh, a Special

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and Honorary Magistrate in Banda and a large zamindar, the ground of enmity being that some thirteen years ago Narbada Prasad joined in a memorial to the Local Government praying that Thakur Jaswant Singh should not be appointed an Honorary Magistrate. As to this, we have the evidence of a defence witness, Mr. Pearey Lal, in which he says that shortly before the contract in this case Thakur Jaswant Singh told him that Narbada Prasad was a "good man". There is no evidence that Thakur Jaswant Singh took the slightest notice of this memorial, so long ago, to the Local Government, or had the slightest enmity against Narbada Prasad. The reason of the memorial is clear from the evidence of another defence witness, who says that Thakur Jaswant Singh was a strict Magistrate. In a district like Banda, which produced such a District Board, it is not to be wondered that a Magistrate who did his duty would be unpopular with certain persons. It is admitted by Dr. *Katju* on behalf of Narbada Prasad that there is no evidence on the record of enmity or conspiracy on the part of Thakur Jaswant Singh on which he can rely. We agree entirely with Dr. *Katju*.

The other branch of the defence was that Thakur Jaswant Singh, together with one Sheo Kunwar, conspired to bring the charge in this case out of enmity. The reason of the enmity as regards Sheo Kunwar was alleged to be that Narbada Prasad was the reversioner of Sheo Kunwar, that Sheo Kunwar adopted the son of one Sheo Balak in order to defeat the claim of Narbada Prasad, and that from that date these conspirators were determined to do something to put Narbada Prasad out of the way. That this is an unfounded accusation is clear from the record itself. The defence evidence shows clearly that the adoption took place in June or July, 1928, and that the investigation by Thakur Jaswant Singh ended in March, 1928, and the Government sanc-

tioned the prosecution of Narbada Prasad in July, 1928. It is clear that the prosecution of Narbada Prasad was well on the way before the alleged cause of enmity ever arose. Further, the reason of enmity alleged might cause Narbada to dislike Sheo Kunwar, but could hardly cause Sheo Kunwar to have enmity against Narbada.

It is clear from the above that the evidence for the prosecution in this case was overwhelming and that there was really no defence to the charge.

[The judgement then criticised the findings of the trial court.]

We allow the appeal of the Local Government, set aside the order of acquittal of the learned Magistrate, direct that Narbada Prasad and Jagannath Prasad be arrested and that, as regards Narbada Prasad, he serve three months' simple imprisonment and further pay a fine of one thousand rupees. As regards Jagannath, we consider that he was merely a servant of Narbada Prasad in this matter and under his influence. We, therefore, sentence him to one month's simple imprisonment. With regard to the sentence on Narbada Prasad, we have given him a longer sentence and a larger fine than otherwise we would have done, had it not been for the nature of the defence. False allegations against innocent and respectable persons of criminal conspiracy to bring false charges, when used as a defence, aggravate greatly the original offence. This type of defence is much too common in India and it ought to be recognized that where a defence of this character is obviously false, that fact ought to be taken into consideration in awarding punishment.

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