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deliberate on the part of the insolvent, provided, of course, no question of fraud is involved. Our answer, therefore, to the question framed by the learned Judge of the small cause court is that the defendant is discharged from the liability under the promissory note in suit.

APPELLATE CRIMINAL

Before Mr. Justice Young and Mr. Justice Thom

EMPEROR *v.* UJAGAR AND OTHERS*

1933
April, 5

Witness—Testimony of perjured witness should be entirely discarded and not used for any purpose—Evidence—Degree of proof—Not affected by degree of gravity of the charge—Quantum of evidence—Communal riot cases—Evidence Act (I of 1872), section 134—Oath, efficacy of.

The evidence of a witness proved to have committed perjury is of no value whatsoever and cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.

There is only one standard of proof for all charges, and that is that the Crown must prove the charge beyond all reasonable doubt. The nature of the sentence cannot affect the question of proof. Where the accused was charged with murder and arson, and the evidence both on the murder charge and the arson charge was precisely the same, but the Sessions Judge thought that a lesser standard of proof might be applied to the arson charge but that a higher standard was necessary for convicting on a capital charge and inflicting an irrevocable sentence, and gave the accused the benefit of doubt in respect of the murder charge but convicted him on the arson charge, it was *held* that the benefit of the doubt should have been given on both charges.

In communal riot cases it is unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence in addition.

The oath administered in Indian courts to Indian witnesses is of an unsatisfactory nature.

Mr. *K. D. Malaviya*, for the appellants.

*Criminal Appeal No. 34 of 1932, from an order of H. J. Collister, Sessions Judge of Cawnpore, dated the 28th of November, 1931.

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The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

YOUNG and THOM, JJ. :—Fourteen persons were committed to the court of session of Cawnpore, charged under sections 302, 396, 436 and 147 of the Indian Penal Code. Against four of them further charges were made under section 307 of the Indian Penal Code. The learned Sessions Judge acquitted no less than eleven but convicted Ujagar, Narain and Bandi Din; the first two under sections 147 and 436 of the Indian Penal Code and the latter under sections 147, 436, 307 and 302. Ujagar and Narain were sentenced to rigorous imprisonment for two years under section 147 and to ten years' rigorous imprisonment under section 436. Bandi Din was sentenced to two years' rigorous imprisonment under section 147, ten years' rigorous imprisonment under section 436 and ten years' rigorous imprisonment under section 307. Under section 302 he was sentenced to transportation for life; the sentences in all cases to run concurrently.

On the 24th of March, 1931, the well known murderous riots in Cawnpore commenced. After raging there for a few days the riot and slaughter spread to the surrounding villages. On the 28th and 29th of March in the hamlets of Fatehpur, Barhat, Hingupur and Paigupur, some seven miles from Cawnpore, the riots, the subject-matter of the charges in this case, took place. The land in those hamlets is alluvial and used as grove land. All the huts and dwellings of the Mussalmans in that neighbourhood were burnt and nine men, women and children were murdered there. A band of 150 to 200 Hindus marched to this district at about 2 o'clock in the afternoon on the 28th, and butchered these men, women and little children and burnt their dwellings.

We are not concerned whether there was a riot or not; that is admitted. The only question which we have to consider is whether Ujagar, Narain and Bandi

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Din, those persons who have been convicted in the lower court and who have appealed to the High Court, are guilty of the offences with which they were charged. Before we consider the cases of the individual accused we think it necessary to make some preliminary observations :—

1. We ruled recently in the Raiya riot case *Emperor* v. *Shukul* (1) that the evidence of a witness proved to have committed perjury was of no value whatsoever and could not be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence. That ruling has been followed by a Bench of this Court, of which one of us was a member, in *Emperor* v. *Ram Kumar* (2) and by one of us sitting alone in *Man Singh* v. *Emperor* (3). The reasons for that ruling have been sufficiently set out in the judgments in those cases and we do not need to repeat them here. We follow that ruling in this case in considering the value of certain witnesses for the prosecution. The learned Sessions Judge, in a careful judgment, has for excellent reasons found the approver Babu Lal and a witness Madar Bakhsh guilty of lying. Nevertheless, in accordance with the practice too frequently followed in this country, he has relied on the evidence of both when corroborated. In fact he has gone rather farther than is usual, for in the case of Bandi Din he has used the evidence of both these liars to corroborate each other in conjunction with the evidence of another unsatisfactory witness. On this evidence he has convicted Bandi Din.

2. In the case of Narain the learned Judge lays down a rule of law from which we strongly dissent. He says : "Evidence which may be good enough to prove a lesser offence may not necessarily reach the high standard which is required for convicting a man on a capital charge and inflicting an irrevocable sentence." Narain was charged with murder and arson. There was the

(1) (1933) I.L.R., 55 All., 379. (2) Cr. A. No. 346 of 1932, decided on 5th of April, 1933.
(3) [1933] A.L.J., 581.

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same evidence on both charges. On the murder charge the learned Judge—acting on the principle set out above —gives Narain the benefit of his doubt, but not on the arson charge.

It cannot be stated too emphatically that there is only one standard of proof for all charges, and that is that the Crown must prove the charge beyond all reasonable doubt. The nature of the sentence cannot affect the question of proof.

3. In communal riot cases we think it unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence in addition.

4. We again call attention to the unsatisfactory nature of the oath administered in Indian courts to Indian witnesses. It surely is not beyond the resources of the legislature to discover an oath or oaths which Indian witnesses would respect.

We next consider the individual witnesses and the nature of their evidence :—

(1) *Babu Lal*, approver. This man undoubtedly took part in the riot and indeed we think it satisfactorily established that he actually murdered one of the victims. Of this man the learned Judge in the court below says as follows : "But he did not impress me at all favourably as a witness and I do not think that his evidence can be trusted far. In his statement under section 164 and in his examination in the Magistrate's court in the case against accused Nos. 1 to 12 Babu Lal gave the court to understand that he had taken no part whatsoever in the rioting which took place on the west of Bithur road, but here he would have the court believe that he was present when the groves of Manna and Rasul Bakhsh were attacked. Apart from the previous statements of Babu Lal, there are certain facts in the deposition which he has made in this court which suggest that he has lied in saying that he took part in the attack on Manna's huts . . . When asked whether it was a fact that he cut Allah Din's throat as alleged by Mst. Batulan, he

gave the remarkable answer that he did not remember. The facility with which Babu Lal can lie is indicated by the fact that when the prosecutor by mistake asked him why he had not identified in jail those accused whom he has named, he replied that his reason for not doing so was that the Circle Inspector told him that there was no need for him to identify those men; but when his attention was drawn to the fact that those accused were not paraded before him in jail at all, he said that he had given the above reply because he thought it was expected of him by the prosecutor." Again in another part of the judgment the learned Judge says: "He either lied in his previous statements or else he is lying now. In any case, no reliance can be placed on what he states in this court in respect to the incidents which took place on the west of the road." The above observations of the learned Sessions Judge clearly establish that Babu Lal has sworn falsely. We discard the evidence of the approver Babu Lal in so far as it affects any of the appellants before us.

(2) *Rasul Bakhsh.* With regard to this witness the learned Judge has said as follows: "Nor can I rely with any confidence on the testimony of Rasul Bakhsh." Later on the learned Judge also observes: "I find it very difficult to believe that Rasul Bakhsh had the courage to hide so close to his house . . . and I find it desperately hard to put any real confidence on Rasul Bakhsh's testimony . . . After having carefully considered the testimony of Rasul Bakhsh, I distrust it." It is quite clear from these extracts, with which we agree, that Rasul Bakhsh also is a witness of no value.

(3) *Madar Bakhsh.* The learned Judge says of this man as follows: "Madar Bakhsh has identified Ram Bharose in jail and in court. He pretends that he did not know Ram Bharose before; but in cross-examination he has had to admit that he had a quarrel with Ram Bharose in respect to some lemon trees which the latter uprooted and took away. He admits that he dunned

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Ram Bharose two or three times for the price of the lemon trees. He has, therefore, obviously lied in saying that he did not know Ram Bharose and his evidence against the accused accordingly becomes suspect." Again in another place the learned Judge says: "Madar Bakhsh denies having known Mulla before the riot; but when counsel for the accused made Mulla stand up in the dock and suddenly asked Madar Bakhsh where Mulla lived, the latter replied in Ishriganj." Further, this witness has made various contradictory statements. On the 1st of April Madar Bakhsh was taken to hospital. He told the sub-inspector on that day that he did not know the names of any of the assailants, but later on the same date to a Magistrate in the hospital he gave the name of Bandi Din, one of the appellants in this case. In his statement in the sessions court he says: "Moslem *raises* of the city used to come and see the patients. They asked me how I had received my injuries. I do not remember whether I told them that I had not yet made a report. They asked me if I had recognized any of my assailants. I do not remember who asked me or where. They asked me in the hospital; I remember that I told them I could recognize 2 or 4 or 6 men if I saw them. I gave no names because I then knew no names." It is to be noted that the interview with these Moslem *raises* took place some two or three weeks after this witness had named Bandi Din to the Magistrate on the 1st of April. Further, when several previous statements were put to this witness in cross-examination he contradicted those statements or said that he did not remember whether he had made them or not . . . Madar Bakhsh gave evidence in this case against four of the accused. The Judge disbelieves him in two cases and does not rely upon his evidence in a third. With regard to Bandi Din, one of the appellants before us, however, he relies upon Madar Bakhsh as corroborating Babu Lal, the approver, about whose evidence we have sufficiently commented above. We are satisfied on a

careful consideration of the above facts that Madar Bakhsh is a witness whom no one can believe and upon whom it would be unsafe to rely against any of the appellants. 1933 EMPEROR v. UJAGAR

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Dealing with the individual cases of the appellants we shall consider first that of Ujagar. Three witnesses were called to give evidence against this appellant, Daulat, Babu Lal and Rasul Bakhsh. From what we have said above we must ignore the evidence of Babu Lal and Rasul Bakhsh. This leaves one witness alone against Ujagar, namely Daulat. On general principles we must say that in the case of a communal riot one witness is insufficient for a finding of guilty and on this ground alone we must allow the appeal of Ujagar. But we have this further to say about the evidence of Daulat that all he says against this appellant is as follows: "Many Hindus were at my huts. Four or five of them ran towards me. One of them struck me a *lathi* blow on the head. I fell. I recognized Ujagar Kori of Ludhauri (witness points out Ujagar). One of the others struck me. They bade me bring my money. I said I had none. Ujagar said: 'He is a poor man and he is half dead from one *lathi* blow. He will die from a second blow.' Then they went towards Allah Din's huts. Ujagar went with them. I knew Ujagar from his childhood. My grove adjoins the boundary of his village and we have smoked *ganja* and *charas* together. Some of the 4 or 5 men who ran at me had *kantas*, some had spears and some had *lathis* with a blade attached. Ujagar had a *lathi*." The only thing that Ujagar certainly appears to have done was to intervene for the benefit of Daulat and save him from being murdered.

We therefore set aside the convictions and sentences passed upon Ujagar and order his immediate release.

Narain. Four witnesses give evidence against this appellant. They are Ghonche, Lukain, Rasul Bakhsh and Babu Lal. The evidence of Rasul Bakhsh, Babu

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Lal and Ghonche must be discarded for reasons already given. With regard to Lukain, the only evidence that this witness gives is that he saw Narain coming back with a crowd after Maniya's house had been burnt. He did not see any one actually at the house. He further saw this accused going on to Maniya's grove afterwards with the mob. Apart from the fact, as we have pointed out above, that in a communal riot case one reliable witness is insufficient for conviction, we have the fact that the learned Judge himself clearly records that he has a doubt as regards this accused. The learned Judge records as follows in his judgment: "On the other hand, there is no evidence to show that Narain actually took part in the assaults and murder which were committed in Manna's grove, in fact there is no evidence to show what he did at all in Manna's grove; but the fact that he was among those who began to set fire to the cart of Rasul Bakhsh at Lukain's huts leads to the inference that he at least shared the common object of committing arson. It may be argued that it can also be inferred that he shared the common object of committing murder. It may be so, but, as I have already said, there is nothing to show what he did in Manna's grove or whether he went to Allah Din's grove; and in any case I think that evidence which may be good enough to prove a lesser offence may not necessarily reach the high standard which is required for convicting a man on a capital charge and inflicting an irrevocable sentence. I therefore prefer to give Narain the benefit of doubt in respect to the charge under section 302. In my opinion he is liable to be convicted under sections 147 and 436." It is clear in this case that the evidence both on the murder charge and the arson charge is precisely the same. There is no doubt according to the evidence that this appellant was with the crowd when the murders were committed. He was also with the crowd—and that is all—when arson was committed. The learned Judge, however, thinks that a lesser standard may be

applied as regards the evidence on the offence which is not punishable with hanging, but that a higher standard is necessary where hanging is involved. He, therefore, gives the benefit of the doubt in respect of the charge of murder but refuses to give it in respect of the charge involving arson. We deal with this question in our preliminary observations. This appellant ought to be given the benefit of the doubt on both charges. Viewing the case as a whole as against this accused we come to the conclusion that the conviction against him cannot stand. The convictions and sentences, therefore, are set aside and this accused will be set at liberty.

Bandi Din. With regard to this appellant the witnesses are Babu Lal, Rasul Bakhsh, Ghonche, Madar Bakhsh and Munne. From what we have set out above we cannot rely upon the first four. This leaves Munne only. Apart from the fact that the evidence of one witness is not sufficient, the only evidence which Munne gives is that of identification, and the learned Judge says of this identification that it was quite possible that he was familiar with the features of Bandi Din. Therefore there is not much value in this evidence. Madar Bakhsh certainly gave the name of Bandi Din in a statement which he made to the Magistrate on the 1st of April after having failed to name him to the Superintendent of Police on the same day. But the Bandi Din whom Madar Bakhsh named to the Magistrate was Bandi Din a *mallah* and a resident of Charana. The Bandi Din, the appellant, is a *kachhi* and a resident of Tisjha. As the learned Judge points out, this may possibly be an error because Tisjha adjoins Charana. We think that some doubt must be raised by the misstatement of the man's caste and his place of residence. In any event, we are satisfied that there is not enough evidence upon which to record a conviction against this accused. The result is that we set aside the convictions and sentences passed upon Bandi Din and order that he be set at liberty.