

prejudiced, he would certainly have raised a ground to that effect. In these circumstances, we accept the finding of the learned Sessions Judge that the accused was not prejudiced in any way. The irregularity, therefore, is cured by section 537, Criminal Procedure Code.

The conviction and sentence passed on the accused, therefore, stand.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Rachhpal Singh*

EMPEROR *v.* BHAGIRATH LAL\*

*Indian Penal Code, sections 192, 193—Accused person fabricating false evidence for defending himself at his trial—No privilege or exception in his favour.*

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There is no protection or privilege in favour of an accused person who fabricates false evidence in order to defend himself at his trial. Section 192 of the Indian Penal Code is quite general in its application to every person and it is impossible to hold, on the language of sections 192 and 193, that an accused person is in any more privileged position than an ordinary person.

The mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabricating evidence which may appear in a judicial proceeding; but if the act of an accused person comes within the language of section 192 he can not take shelter behind the circumstance that he is an accused person. *Emperor v. Ram Khilawan* (1), distinguished.

Mr. S. K. Mukerji, for the applicant.

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

SULAIMAN, C.J., and RACHHPAL SINGH, J.:—This is an application in revision by an accused person against whom a complaint under section 476 of the Criminal Procedure Code has been ordered to be filed by the Magistrate in whose court he was being tried under section 4 of the United Provinces Prevention of

\*Criminal Revision No. 277 of 1931, from an order of Sarup Narain, Sessions Judge of Muzaffarnagar, dated the 23rd of February, 1934.

(1) (1906) I.L.R., 28 All., 705.

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Adulteration Act. The case against the accused was that he had exposed adulterated ghee for sale. In his defence he produced a phial containing some ghee, stating that it had been given to him by the Health Officer at the time he took a sample of the ghee, with the request that it be tested again by the Public Analyst at his expense. The Magistrate thought that the colour of the contents of the original phial was different from that of the contents of the phial produced by the accused and also thought that the seals purporting to be those of the Health Officer on the two phials were not the same. Accordingly he took proceedings under section 476 against the accused for having fabricated false evidence. The revision came up before a learned Judge of this Court who has referred it to a Division Bench.

The facts of this case have not yet been finally found. There is only a suspicion against the accused so far. The question whether the ghee which was exposed by the accused for sale was identical with the sample in the original phial or in the second phial is a question of fact which may have to be decided in the criminal case itself. On the face of it, therefore, it seems to be premature for the Magistrate to form an adverse opinion against the accused, and, without himself inquiring into the matter and recording a clear finding, to direct the prosecution of the accused under section 193 of the Indian Penal Code.

But we cannot accept the contention urged on behalf of the accused that there is an absolute protection or privilege in favour of an accused person who fabricates false evidence in order to defend himself. Section 192 of the Indian Penal Code is quite general and applies to every person who "causes any circumstance . . . . intending that such circumstance . . . . may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such

circumstance, . . . . so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of the proceeding." Such a person is said to "fabricate false evidence."

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The first paragraph of section 193 provides punishment for fabricating false evidence for the purpose of being used in any stage of a judicial proceeding; while the second paragraph provides punishment for a person who in any other case intentionally fabricates false evidence. Obviously the other cases implied are the cases mentioned in sections 191 and 192 of the Indian Penal Code.

On the language of these sections it is impossible to hold that the accused is in any more privileged position than an ordinary person. To say so would be dangerous and would put a premium on the fabrication and manufacture of false evidence in judicial proceedings by accused persons.

The learned advocate for the applicant relies on the case of *Emperor v. Ram Khilawan* (1). That was a somewhat peculiar case. The learned Judges took the finding of the Sessions Judge, which was the ground of the conviction, to be that "the accused endeavoured to make it appear that the murder was committed at a place different from that at which it was perpetrated, and thereby fabricated false evidence." This was understood to be nothing more than that an accused person had been charged either with giving or fabricating false evidence "with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged". The learned Judges probably did not mean to lay down anything more than this that where an accused person fabricates false evidence with the sole object of diverting suspicion from himself and concealing his

(1) (1906) I.L.R., 28 All., 703

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guilt he cannot be convicted under section 193. Of course, the mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabricating evidence which may appear in a judicial proceeding or in a proceeding taken before a public servant or before an arbitrator so that such authorised person would form a different opinion. But if the act of an accused person comes within the language of section 192 it is difficult to see how he can take shelter behind the circumstance that he is an accused person. The opinion expressed in *Ram Khilawan's* case was not followed by the Bombay High Court in *Emperor v. Rama Nana Hagavne* (1). We are of opinion that the view expressed in *Ram Khilawan's* case was due to the peculiar way in which the learned Sessions Judge had recorded his finding, which apparently did not amount to more than stating that the sole object of the accused was to divert suspicion from himself. In that view the case would be distinguishable.

We are therefore of opinion that there is no warrant for the conclusion that any special protection is intended to be afforded to accused persons who can escape from the penalty imposed by section 193 by reason only of being accused persons.

We would, however, make it clear that we express no opinion on the facts of this case because they have not yet been finally determined by the learned Magistrate. In our opinion the prosecution of the accused under section 193 is premature. The stage for making such an order would arise if the Magistrate, in disposing of the case under section 4 of the U. P. Prevention of Adulteration Act, came to a finding against the accused. We, therefore, quash the proceedings under section 193 upon the filing of a complaint under section 476 of the Criminal Procedure Code against the applicant.

(1) (1921) I.L.R., 46 Bom., 317.