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valid ground for refusing to set aside an illegal conviction, but I think it would be a ground for refusing to interfere unless the illegality were admitted or perfectly clear upon the face of the record.

BY THE COURT:—We set aside the conviction of the accused and acquit him. He need not surrender to the bail.

APPELLATE CRIMINAL

Before Mr. Justice Young and Mr. Justice King

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August, 18

EMPEROR *v.* ASMATULLAH AND OTHERS*

Criminal trials—Perjured evidence—Prosecution case exaggerated and false in material particulars—Several persons deliberately falsely implicated—Whether a witness falsely implicating some accused or giving false version in material particulars should be relied on at all—"Corroboration"—Duty of court.

Where, in a criminal trial arising out of a fight regarding a disputed right to cut grass from a certain field, it was perfectly clear that a lot of false evidence had been given by the prosecution, that certain incidents had been alleged such as the looting of property, and the desecration of mosques, which were false and were only added in order to aggravate the charge against the accused, and that a large number out of the accused persons had been falsely implicated, deliberately on account of enmity, it was held—

Per YOUNG, J.—The plain duty of the court when it finds the prosecution case false and manufactured in material and vital particulars, and supported by perjured evidence, is to throw the whole case out without delay. The evidence of the prosecution witnesses, being perjured, is of no value whatever, whether for reliability or for "corroboration". In a case such as this, the practice has been for the court laboriously and anxiously to search with a microscope for some truth which might be buried in the evidence; but such procedure is wrong, a waste of valuable time, and a danger to the public. A conviction in such a case must largely be the result of guesswork. No one, however gifted, can by any process be certain of discovering beyond reasonable doubt the truth in a lying witness.

*Criminal Appeal No. 44 of 1933, from an order of Ghansham Das, Sessions Judge of Bijnor, dated the 31st of December, 1932.

Per KING, J.—The trial Judge must decide each case on its merits and it is impossible to lay down any general rules for his guidance in believing or disbelieving testimony. If a witness has told a lie on one point, but the court nevertheless conscientiously believes the witness to be speaking the truth on another point, it is useless to quote a general rule to the court that the witness should be disbelieved on every point. Belief of this sort does not, or at least should not, yield to the dictates of authority, and any general observations purporting to fetter the discretion of trial courts in the matter of believing or disbelieving witnesses are to be viewed with distrust.

The ascertainment of the truth is the primary duty imposed upon criminal courts, and a court is not absolved from attempting to perform that duty merely because (as usually happens in riot cases) neither side puts forward the plain and unvarnished truth, but only a distorted or exaggerated version.

Mr. *Vishwa Mitra*, for the appellants.

The Government Pleader (Mr. *Sankar Saran*) for the Crown.

YOUNG, J.:—Asmatullah, Majid, Asghar, Karan Khan, Mumtaz, Kallu and Wahid were charged before the Sessions Judge of Bijnor under sections 395, 325 and 149 of the Indian Penal Code. The learned Sessions Judge acquitted no less than 22 persons but convicted 7 under section 325 read with 149. He sentenced the 7 accused found guilty to five weeks' rigorous imprisonment each. These 7 accused appeal to this Court and we have before us two applications for revision by the party of the complainants; one is against the setting aside of the order of acquittal of the 22 persons and the other is for the enhancement of the sentence of the 7 persons found guilty. I may say that as regards these applications in revision counsel for the applicants has very properly refused to press them and they are dismissed.

On the 27th of July, 1932, there was a riot in the neighbourhood of village Mandaoli. The first information report was made by one Karim Bakhsh Teli at the nearest thana which was about 6 miles from the place of occurrence. That first information report is of vital importance in this case. Karim Bakhsh relates that

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another Karim Bakhsh, a Jhojha of Mandaoli, had taken a lease of certain jungle land. That the neighbouring villagers used to graze their cattle on this jungle land; that Karim Bakhsh not unnaturally wished to collect fees for the grazing of this cattle; that the villagers strongly objected to this; with the result that on the 24th of July, 1932, the thekadar and some of his adherents drove 106 cattle from the jungle to a cattle pound; that on the 27th of July, at a time about four *gharis* before sunset, four of the complainants' party were engaged in cutting grass in a sugarcane field; that a small party of the accused, moved by ill-feeling against the complainants' party because of the cattle, attacked these four persons and drove them away; that thereafter these four persons collected others and returned; that a large party of the accused, numbering 100 to 150 persons, had then collected and had proceeded to chase the complainants' party to village Mandaoli, and there in a lane had thoroughly beaten them. This was the whole case as presented by the first information report It is to be noted that it was made some six hours after the occurrence took place. The complainant had ample time to consult his friends in the village and obtain information. The case as produced, however, by the prosecution both in the Magistrate's court and in the sessions court was very different. In the first place, the *locus in quo* was changed. No longer does the sugar field figure in the story. The place where the riot commenced was now a *nim* tree near Mandaoli. This change the Judge finds was made because the defence story, as set up in a statement made by one of the accused in the first court, was in agreement with the first information report, namely that the beating had commenced in the sugar field belonging to the accused. This fact would justify a defence that the accused were within their rights in beating trespassers upon their land. Therefore the scene of the occurrence was changed by the prosecution. Secondly, the time was altered.

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In the first information report the time was clear, namely four *gharis* before sunset. In both the lower courts the time was changed to after sunset. It is clear that this change contradicts vitally the first information report. No one goes to cut grass in a field after sunset. The alteration in the time was necessary for a very good reason. Various material changes were made in the prosecution case; for instance, there was a charge made of dacoity. A number of the prosecution witnesses also gave evidence that several mosques in the village had been desecrated. Further, a large party of Jats, who were not mentioned in the first information report, were charged in the lower courts. It is perfectly obvious that if the time as given in the first information report was adhered to, namely four *gharis* before sunset, and the informant had six hours to consider his report before he made it, there could be no answer to the objection that all these other charges were not included in the first information report. If however the time was changed to after sunset, the informant might possibly have run to the police station to make his report without consulting other people in the village, and he might have reported only what he himself had seen.

The learned Judge in an extremely careful and able judgment as to the facts comes to the following conclusion. He says: "I am decidedly of the opinion that this alleged dacoity never took place and that it is nothing else but a fiction and creation of the subsequently developed imagination of the prosecution witnesses and their advisers." As to the desecration of the mosques he finds that the desecration "seems to be very improbable; the alleged riot was not a communal one and Muslims are supposed to have taken part in it on the side of the accused, and with their help such a thing could not have been allowed to take place." He finds that the time as given in his court was false. He finds that the evidence as to the place where the riot took place was false. He finds that the Jats did not take

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part in the riot. He says that the thekadar "had a grudge against them for the non-payment of the '*punchhi*' dues and after this alleged riot between the Rangars and the Jhojhas, he welcomed this opportunity to implicate the Jats as well in it to bring them to their knees for not paying their grazing charges."

It is unnecessary to go through the judgment in detail. All I need to say is that the facts, which are so minutely and clearly stated, make it clear beyond doubt that the learned Judge was correct in his findings.

The result was that out of the 29 accused it has been proved to demonstration that 13 Jats were falsely implicated; one Nat, who fortunately for himself was a history-sheeter and under the surveillance of the police, was falsely implicated. The police themselves gave evidence that this Nat at the time of the occurrence had been noted as having left his village; had been noted as having arrived at a village some 16 miles distant, and was noted as having been in this distant village the whole time of the riot. In the case of one of the Jats the Judge finds that he was a member of the local District Board, that he had been properly engaged in fighting an encroachment made upon the public highway by the buildings of the complainants; and that he had taken the necessary steps and had these buildings demolished; that the reason he was implicated was that the complainants thought that he was a very undesirable member of the District Board. No less than 14 of these accused have therefore been falsely implicated in this case. The prosecution case has been proved to the hilt to have been false in two out of the three charges made against the accused. Further, the false case was supported entirely by deliberately manufactured and perjured evidence.

It appears then to be curious that in spite of these facts seven accused were found guilty. The learned Sessions Judge has found them guilty by the following process. One of them made a statement in the Magis-

trate's court. That statement was that some of the complainants' party had been engaged in cutting grass in the sugarcane field belonging to the accused. Some of the accused therefore protested, and were met with abuse, and thereupon they used their right to evict the trespassers. They beat the complainants' party with sticks and chased them out of the field. Thereafter, the complainants' party collected fifteen men and returned to the sugarcane field. The accused thereupon beat the complainants' party again and chased them away. It is to be noted that this statement agrees with the first information report. Two of the other accused adhered to this statement and in it four other accused are mentioned. This statement therefore applies to the seven accused who have been found guilty. The learned Sessions Judge uses this statement as corroboration of the perjured evidence for the Crown. He thinks that as there is corroboration he can rely upon this perjured evidence and convict these seven accused. The evidence of the Crown witnesses, being perjured, is in my opinion of no value whatever. It amounts to nothing. Nothing can neither be multiplied nor corroborated. There is therefore no evidence against the accused except their own statement which remains uncontradicted. This statement does not amount to an admission of any offence and therefore the accused are entitled to an acquittal.

Young, J.

How has this false case and perjured evidence been produced? More than a hint is contained in the evidence of H. Abdul Ghafoor, the Pesh Imam of a mosque in this village. He was asked in cross-examination how he came to know of the Jats being implicated in this riot. He said as follows: "*Jis waqt hamare vakil ne hamko aur gawahan ko samjhaya us waqt mujhko malum hua ki is muqadma men Jat bhi mulziman hain. Muktalif mowaziat ke Jat bhi is muqadma men mulziman hain. Hamko aur gawahan ko hamare vakil ne samjhaya tha. Vakil saheb ne hamko apne makan*

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par Bijnor men samjhaya tha. Hamko aur gawahan ko vakil saheb ne apne makan par Bijnor men samjhaya tha." In plain English this means that this witness did not know of the Jats being in the riot until the vakil saheb had tutored him.

Young, J.

In India, in a case such as this, the practice undoubtedly has been for the court laboriously and anxiously to search with a microscope for some truth which might be buried in the evidence. In my opinion such procedure is wrong, a waste of valuable time, and a danger to the public. It must frequently result in innocent persons being convicted. A conviction in such a case must largely be the result of guesswork. The plain duty of the court when it finds the prosecution case false and manufactured in material and vital particulars, and supported by perjured evidence, is to throw the whole case out without delay.

This case is a notable example of the danger of the practice of relying upon false evidence even if "corroborated". The result of this practice in this case was that seven persons were wrongly convicted. The same result must inevitably occur in other—and more serious—cases. The final issue might not always be so happy for the accused. No one, however gifted, can, by any process, be certain of discovering beyond reasonable doubt the truth in a lying witness. It is unnecessary here to discuss the point further. It has been dealt with fully by me and THOM, J., in *Emperor* v. *Shukul* (1) and by myself sitting alone in *Man Singh* v. *Emperor* (2).

I find that the view expressed in these cases as to the value of perjured witnesses has been powerfully supported. PETHERAM, C. J., of the Calcutta High Court in *Jaspath Singh* v. *Queen-Empress* (3) said as follows: "They (the jury) found a verdict which showed that they disbelieved the evidence for the prosecution in

(1) (1933) I.L.R., 55 All., 379. (2) [1933] A.L.J., 581.
(3) (1886) I.L.R., 14 Cal., 164.

certain parts as to which they thought the witnesses were committing perjury, and they say that story is untrue, but they accepted that evidence in other parts, and convicted one of the prisoners upon it. The charge of the Judge shows that that was unsafe, and, speaking for myself, I quite agree with him. I think it absolutely unsafe to take the story of certain witnesses which is shown to be perjured as to a portion and to accept their statements and act upon it in others."

In *Emperor* v. *Satyendra Kumar* (1) WALMSLEY, J., remarked: "The fact remains however that the witness was cross-examined by the prosecution, and the question is whether the whole of his evidence must be rejected or the court can believe it in part and disbelieve it in part. In the case of *Faulkner* v. *Brine* (2) defendant's counsel asked for permission to question his own witness as to the statement which he had made to defendant's attorney, because it was much more favourable to the defendant than the version given in court, and LORD CAMPBELL, C. J., in allowing the question to be put said: 'It must be understood that it must be done to discredit the witness altogether, and not merely to get rid of part of his testimony. If that which is suggested shall be elicited it will show that he is not trustworthy at all.' The result is that Padma Lochan's evidence must be excluded altogether."

It is to be noted in the above case that Lord CAMPBELL, one of the greatest of the Lords Chief Justices of England, made it clear that when a witness is discredited, he is discredited *in toto* and not in part. I do not think it would ever be suggested in England that perjured evidence could, under any circumstances, be relied upon at all.

There is one further fact to be noted. The learned Judge says as follows: "Thus evidently these Jhojhas of Mandaoli instead of going to court and getting their title established to that land had taken the law in their

(1) (1922) 37 C. L. J., 173. (2) (1858) 1 F and F., 254.

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own hands and taken the initiative which had led to this riot. This action of theirs certainly minimises the gravity of the offence which the aforesaid accused have committed." This finding instead of being the basis of a conviction ought to have resulted in the acquittal of the accused. The learned Judge does not find anywhere that the accused had exceeded their right of private defence.

The result is that the appeal succeeds, the conviction of all the 7 accused is set aside and they must be set at liberty forthwith. Their bail bonds are cancelled.

KING, J.:—I agree that the appeal should be allowed. The learned Sessions Judge has written a well reasoned and admirable judgment and I fully accept his findings of fact. On his own findings, however, I think that no offence has been clearly established. He found that the complainants' party took the initiative and were the aggressors. In the first place, the complainants' party trespassed on the lands of the accused in small numbers and were driven away. Then they returned to the land of the accused in larger numbers, to enforce their supposed right of cutting grass, and were again driven away by the party of the accused and a number of the complainants' party suffered injuries. On this finding it is clear that the accused were acting in exercise of their right of private defence of property. The only justification for their conviction would have been a finding that they had exceeded their right of private defence. Unfortunately, the learned Sessions Judge has not discussed this aspect of the case, namely whether they exceeded their right of private defence. Considering that the complainants' party came in large numbers as the aggressors, and only one of them suffered grievous hurt and a number of others suffered only simple hurts, I am not prepared to hold that the accused exceeded their right of private defence. In my opinion, therefore, the accused are entitled to an acquittal.

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King, J.

It is perfectly clear that a lot of false evidence has been given in this case, as the learned Sessions Judge and my learned brother have pointed out. Certain incidents were alleged such as the looting of property, and desecration of the mosque, which were false and were only added in order to aggravate the charges against the accused. It is also perfectly clear that a large number of persons were falsely implicated as having taken part in the occurrence. I am not prepared, however, to associate myself with certain general observations made by my learned brother which seem intended for the guidance of trial courts in cases of this sort. I view with profound distrust any general observations purporting to fetter the discretion of trial courts in the matter of believing or disbelieving witnesses. If a witness has told a lie on one point, but the court nevertheless conscientiously believes the witness to be speaking the truth on another point, it is useless to tell the court that, according to a general observation made by a learned Judge (with reference to a totally different state of facts), the witness should be disbelieved on every point. Belief of this sort does not, or at least should not, yield to the dictates of authority. The trial Judge must decide each case on its merits and I think it is impossible to lay down any general rules for his guidance in believing or disbelieving testimony.

Moreover I consider the ascertainment of the truth to be the primary duty imposed upon criminal courts. A court is not absolved from attempting to perform that duty merely because (as usually happens in riot cases) neither side puts forward the plain unvarnished truth, but only a distorted or exaggerated version. I think the trial court adopted a perfectly correct method, and this case furnishes a good example of a difficult duty well performed.

I concur in allowing the appeal and in rejecting the revisional applications.