REVISIONAL CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

1930 *September*, 8.

ABDUL KARIM AND OTHERS (ACCUSED-APPLICANTS) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY.)*

Indian Penal Code (Act XLV of 1860), *sections* 114, 340, 342 *and* 347—*Wrongful confinement, essential elements of—Abetment of wrongful confinement, whether possible where the offence of wrongful confinement not established—Offence under section* 347, *essential elements of.*

Where it is found by the court that the accused did not take any valuable thing and no money passed from the person said to have been kept in confinement to the accused, *held*, that it cannot be said that extortion was the object of the confinement and the elements of an offence under section 347 were wanting.

Section 114 of the Indian Penal Code applies only to the case of one who stands by while another commits an offence on his instigation and, therefore, if no one committed the substantive offence of wrongful confinement with a view to extortion under section 347 of the Indian Penal Code nobody else could abet that offence and a conviction under section 347 read with section 114 is in such a case illegal.

Where no restraint is placed upon one's movements and no circumscribing limits are mentioned the offence of wrongful confinement as defined in section 340 of the Indian Penal Code cannot be said to have been committed.

A Sub-Inspector conducting an investigation is within the law when he sends for a person to the police station who can in his opinion give information about a crime and a constable and a chaukidar who did no more than bring such a person to the Sub-Inspector and tell him to sit down until the Sub-Inspector sees him are committing no offence whatever and their conviction under section 342 of the Indian Penal Code is erroneous.

Dr. *J. N. Misra* and Mr. *R. F. Bahadurji*, for the applicants.

The Assistant Government Advocate (Mr. *Ali Mohammad*), for the Crown.

*Criminal Revision No. 93 of 1930, against the order of Babu Shambhu Dayal, Sessions Judge of Fyzabad, dated the 4th of August, 1930.

1930

ABDUL KARIM v. KING-EMPEROR.

PULLAN, J. :—This is an application in revision of an order of the learned Sessions Judge of Fyzabad passed in appeal from an order of a Magistrate of the first class of the district. The case set for trial was despite the inordinate mass of irrelevant evidence recorded and the extremely lengthy judgments of the Magistrate and the Sessions Judge a very simple one. Sub-Inspector Abdul Karim is said to have called a man called Babu Ram first to the zila of a leading zamindar and secondly to the police station and released him only on receipt of Rs. 40 which was paid to him Mahadeo, Babu Ram's uncle. Two constables and a chaukidar are alleged to have assisted the Sub-Inspector in the matter and they also were charged with the offence of wrongful confinement. The Sub-Inspector himself was charged under sections 161 and 165 of the Indian Penal Code with accepting an illegal gratification. He was also charged with an offence under section 347 of the Indian Penal Code, namely, wrongful confinement to extort property. The Magistrate found that the story told by Babu Ram and his witnesses was true and he convicted the Sub-Inspector of offences under sections 161 and 165 and also under section 347 of the Indian Penal Code. He acquitted one of the constables but convicted Muneshar constable and Thakur Din chaukidar of offences under section 342 of the Indian Penal Code, namely, wrongful confinement. The learned Sessions Judge accepted the findings of the lower court as to the offence committed by Thakur Din and Muneshar but as to the Sub-Inspector Abdul Karim he recorded the following finding :—

> "He is certainly not guilty of an offence under section 165 of the Indian Penal Code as he did not take any valuable thing without consideration or for an inadequate consideration. I think the offence committed by him falls under section 347/114

1930

ABDUL KARIM v. KING-EMPEROR.

rather than under section 161 of the Indian Penal Code."

He accordingly set aside the conviction and sentence passed under sections 161 and 165, altered the conviction under section 347 to one under section 347/114 and upheld the sentence passed under that section. In revision one of the grounds stated is that "the conviction under section 161/165 of the Indian Penal Code having been set aside by the learned Sessions Judge the conviction under section 347/114 of the Indian Penal Code cannot be maintained in law." This is a sufficient ground for the admission of the application in revision but it raises something more than a mere technical question. The learned Sessions Judge by committing himself to the statement that Sub-Inspector Abdul Karim did not take any valuable thing must be held to disbelieve the story told by the witness Mahadeo that he gave the Sub-Inspector Rs. 40. If no money passed I can find no evidence that extortion was the object with which Babu Ram was confined, if it can be held that he was confined, and the elements of an offence under section 347 are wanting. Furthermore by importing section 114 into the case the learned Judge implies that some other person, not Sub-Inspector Abdul Karim, committed the substantive offence under section 347, for section 114 applies only to the case of one who stands by while another commits an offence on his instigation. Had it been found that either the constable or the chaukidar had committed an offence under section 347 I could have understood the conviction of the Sub-Inspector under section 347 read with section 114 but as there is no such finding I am of opinion that a conviction under section 347 read with section 114 is illegal. If no one committed the offence of wrongful confinement with a view to extortion nobody else could abet that offence and on this simple question of law I would be prepared to set aside the conviction of Abdul Karim. But the matter must be taken further because I have

Pullan, J.

still to consider the question of the conviction of Thakur Din and Muneshar. These persons were convicted under section 342 of the Indian Penal Code of the offence of wrongful confinement. Wrongful confinement is defined in section 340 of the Indian Penal Code in the following terms :—

> "Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said wrongfully to confine that person"

and there are two illustrations given (*a*) *A* causes *Z* to go within a walled space and locks *Z* in. *Z* is thus prevented from proceeding in any direction beyond the circumscribing line of wall. *A* wrongfully confines *Z*. (*b*) *A* places men with firearms at the outlets of a building and tells *Z* that they will fire at *Z* if *Z* attempts to leave the building. *A* wrongfully confines *Z*. Now in this case the first act alleged against Thakur Din chaukidar is that he called Babu Ram to see the Sub-Inspector and told him to sit under a tree outside the zamindar's zila. So far no circumscribing limits are mentioned and as far as I understand the evidence there is not even that element of voluntary obstruction which would amount to restraint within the meaning of the Code. Secondly it is alleged that the chaukidar and the constable Muneshar took Babu Ram on the orders of the Sub-Inspector to the police station and told him to sit there until the Sub-Inspector interviewed him. Again there is not the slightest suggestion that any restraint was placed upon Babu Ram's movement. He was not placed in the *havalat* and although he himself said that he was assaulted by Muneshar on the orders of the Sub-Inspector this evidence does not appear to have been believed by the lower courts and does not form part of the charge. Apart from the fact that

1930

ABDUL KARIM v. KING-EMPEROR.

Pullan, J.

no offence under section 342 was committed by Thakur Din or Muneshar I would point out that if a constable and a chaukidar are to be sent to jail for six months for taking a man to the police station in order that a Sub-Inspector conducting an investigation into a burglary might ask him some questions, it would be impossible for the police administration of the country to be carried on. It is perfectly certain that Babu Ram was taken to the police station and that he was there questioned as to the whereabouts of one Ram Sewak who was suspected in a burglary case. Not only is this fact noted in the police diary but Babu Ram himself admits that he was asked these questions. Babu Ram may have supposed that he was himself under suspicion but there is no evidence that this is the case and it appears that both the Magistrate and the Judge believed that the Sub-Inspector had heard of the association between Babu Ram and Ram Sewak and wished to make inquiries from Babu Ram which might help him in the investigation of the burglary case. A Sub-Inspector conducting an investigation is within the law when he sends for a person to the police station who can in his opinion give information about a crime and a constable and a chaukidar who did no more than bring such a person to the Sub-Inspector and tell him to sit down until the Sub-Inspector sees him are comitting no offence whatever. They are merely obeying the lawful order of their superior officer. Possibly if the court held that there was a conspiracy between the Sub-Inspector and his underlings to extort money as the price of the release of such a person a conviction of all those concerned in the affair would be legal. But the Magistrate himself finds specifically that there is no evidence that the constable or the chaukidar had any intention of extorting money or that they were in league with the Sub-Inspector or that they had knowledge of the intention of the Sub-Inspector.

Thus the conviction of Muneshar and Thakur Din of the offence under section 342 of the Indian Penal Code is as erroneous as the conviction of Sub-Inspector Abdul Karim of an offence under section 347 read with section 114 of the Indian Penal Code.

Pullan, J.

It is not necessary for me to consider whether the evidence in the case would have justified the conviction of any of these persons under some other section of the Indian Penal Code, but as the point has been raised by the learned Government Advocate, I think it proper to observe that in my opinion the whole of the evidence adduced for the prosecution was defective. Babu Ram said that he had been taken to the zila, that Thakur Din remained with him the whole time, that the Sub-Inspector came out at 1 o'clock, that they then went to the thana and that he was first questioned by the Sub-Inspector at 3 o'clock and subsequently at 8 o'clock in the thana. He also said that the Rs. 40 given to the Sub-Inspector was part of a sum of Rs. 50 which he had recently received from his father in Rangoon for the purchase of bullocks. Now the station diary of the police station shows that Thakur Din chaukidar came and made a report of the burglary at 2 o'clock in the afternoon in question, that the Sub-Inspector arrived at 5 o'clock and that he questioned Babu Ram later. The lower courts think it proper to doubt the genuineness of the police diary and the Magistrate in particular refers to what he calls interpolations and suggests *pesh bandi*. The Magistrate's own judgment is full of interpolations but they do not arouse in my mind any suspicion that they were made subsequently with some sinister motive. The same applies to the interpolations in these diaries. It cannot be supposed that Abdul Karim set about making interpolations in his diary on the very day on which he had exacted Rs. 40 from Mahadeo as believed by the Magistrate, but not by the Judge, for he could not foresee that proceedings were subsequently going to be instituted on an anonymous petition some weeks later. In my opinion the entries in the diary disprove part at least of the statement made

1930

ABDUL KARIM v. KING-EMPEROR.

Pullan, J.

by Babu Ram and they give full support to Abdul Karim's explanation of Babu Ram's visit to the police station. Both the courts below agree that Babu Ram's statement that Rs. 40 was part of a sum of Rs. 50 which he had received from his father is false because the sum of Rs. 50 was not received until some days after Babu Ram's visit to the police station. Thus wherever the statement of Babu Ram could be disproved by other evidence it has been disproved and it is worthy of remark that the Circle Inspector of Police who first inquired into the matter found the charges untrue and Deputy Magistrate who visited the village also discovered nothing against the Sub-Inspector.

One other point was raised in the grounds for revisions, namely that the Magistrate did not allow copies of the statements recorded by the Circle Inspector to be given to the accused. *Prima facie* this was an inquiry made by a police officer into a criminal offence and if he recorded any evidence in writing copies of such statements should have been allowed to the accused under section 162 of the Code of Criminal Procedure. The view taken by the Magistrate that this was merely a private inquiry cannot be supported for a moment, but I find that in his order dated the 2nd of April, 1930, he gave the best of all possible reasons for not giving copies of the statements and that was that no statement was reduced to writing. I cannot therefore hold that the accused were prejudiced by not being given copies of the statements made before the Circle Inspector, but his report should certainly have been placed on the record, if the accused so desired.

In my opinion this is one of those cases in which the courts have been too ready to believe allegations made against a police officer which are not supported by reliable evidence and apart from the illegality of the convictions under the sections employed by the learned Sessions Judge I am of opinion that these persons deserve an acquittal and this is emphatically not a case

1930

ABDUL KARIM v. KING-EMPEROR.

in which this court should be deterred from proceeding by the provisions of section 537 of the Code of Criminal Procedure. I allow this application, set aside the convictions and sentences of all the three applicants. Thakur Din and Muneshar will be released forthwith and Abdul Karim, who is on bail, will not be required to surrender. All fines, if paid, will be returned.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice A. G. P. Pullan.

1930
September, 16.

SANT BAKHSH SINGH AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* BHAGWAN BAKHSH SINGH (DEFENDANT-RESPONDENT.)*

Construction of documents—Wajib-ul-arz, *construction of*—*Custom in derogation of ordinary law, proof of*—*Hindu law*—*Joint Hindu family*—*Widow entering into possession of her husband's share while his brothers living*—*Adverse possession*—*Hindu widow's possession, when adverse*—*Terms in a* wajib-ul-arz *that "widow shall succeed as owner with power of transfer and after her, collaterals of her husband will get possession," whether conferred absolute estate on the widow.*

Held, that when a construction can be put on a *wajib-ul-arz* which is compatible with the rules of Hindu law, that is the proper construction to be placed upon the *wajib-ul-arz*. *Dhonde Singh* v. *Sant Bakhsh Singh*, (1) *and Durga* v. *Lal Bahadur* (2), relied on. *Musammat Punni* v. *Chet Ram* (3) dissented from.

Where, therefore, the terms of a *wajib-ul-arz* were that if the widows are sonless, then they will all remain in possession as owners with power of transfer *(malikana baikhtiyar*

*Second Civil Appeal No. 118 of 1930, against the decree of L. S. White, District Judge of Lucknow, dated the 22nd of February, 1930, reversing the decree of Mirza Mohammad Munim Bakht, Subordinate Judge of Malihabad at Lucknow, dated the 18th of August, 1929.

(1) (1892) 3 O.C., 181. (2) (1928) 5 O.W.N., 992.
(3) (1914) 1 O.L.J., 319.