REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty and Mr. Justice G. H. Thomas

JAGANNATH (ACCUSED-APPLICANT) *v.* KING-EMPEROR THROUGH BANDHU (COMPLAINANT-OPPOSITE PARTY)* 1934 *July*, 30

Evidence Act (I of 1872), section 132—Indian Penal Code (Act XLV of 1860), sections 499 and 500—Defamatory statements made by a witness in a criminal case in answer to question put by court—Witness, if entitled to the benefit of section 132.

A witness is not protected by the proviso to section 132 of the Indian Evidence Act in cases where he had not objected to answering the question put to him. But where the question, the answer to which had laid open the witness to a criminal prosecution under section 500 of the Indian Penal Code, had been put by the Court itself, which considered it relevant and pertinent for the decision of the case before it, the witness must be deemed to have been compelled to answer that question and is, therefore, entitled to the benefit of section 132 of the Indian Evidence Act apart from any question as to whether the witness was absolutely privileged under the English common law or whether he only had a qualified privilege to the extent conferred upon him by the exceptions to section 499 of the Indian Penal Code.

The case was originally heard by Mr. Justice G. H. Thomas who, thinking the question involved to be of considerable importance, referred it to a Bench for decision. His order of reference is as follows:

THOMAS, J.:—Jagannath, accused, was convicted by a special first class Magistrate of Partabgarh under section 500 of the Indian Penal Code and sentenced to pay a fine of Rs.100 or in default to undergo simple imprisonment for two months. He appealed to the learned Sessions Judge of Rae Bareli who upheld the conviction but reduced the fine to Re.1.

There was a case between Musammat Sheoraja and Bandhu under section 323 of the Indian Penal Code. The accused was examined as a witness on behalf of

*Criminal Revision No. 59 of 1934, against the order of Mr. K. N. Wanchoo, I. C. S., Sessions Judge of Rae Bareli, dated the 28th of February, 1934.

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Musammat Sheoraja. In the course of his statement the accused said that Bandhu had kept the daughter-in-law of his *guru* as his mistress. It is on the basis of this statement that Bandhu has filed the present complaint under section 500 of the Indian Penal Code for defamation against Jagannath. Bandhu's case is that the statement made by Jagannath is false and that he (Bandhu) has been injured by this false statement and has suffered much mental worry and has been outcasted. The defence of the accused is that the statement which he made in that case was a true one. The complainant has produced evidence to prove that the allegation is false. Jagannath accused has also examined some witnesses to prove that his statement was true. The learned Sessions Judge after weighing the evidence of both the parties has decided that the statement of Jagannath was true. He says "I am of opinion that there can be no doubt that Bandhu has kept the widow of one Ram Khelawan who was the son of one Madho who was a sort of *guru* of Bandhu".

It may be pointed out that the accused made the defamatory statement in Musammat Sheoraja's case in reply to a question put by the court. The question to be decided is whether the accused is protected under section 132 of the Evidence Act. In other words, whether the accused is liable to be prosecuted for defamation for making a statement, which is now found to be true, but which is *prima facie* defamatory. It is true that the accused did not object to answer the question which was put by the court. It is also to be considered whether the witness was "compelled" to give the answer.

The fine is very nominal and the case is of a very petty nature, but in view of the importance of the point of law involved, I consider it necessary to refer the point raised in the case for decision by a Bench of this Court. There are conflicting views of different High Courts. The High Courts of Calcutta and Bombay are of one

view, vide *Satish Chandra Chakravarti* v. *Ram Doyal De* (1); *Bai Shanta* v. *Umrao Amir Malik* (2). The High Courts of Madras and Allahabad hold a different view, *vide In Re Venkata Reddy* (3); *Emperor* v. *Ganga Sahai* (4) and *Emperor* v. *Chatur Singh and others* (5). There is a single Judge decision of this Court which has followed the view taken by the Bombay High Court, *vide Ram Dayal* v. *King-Emperor* (6).

I think the question involved is of considerable importance and, therefore, under section 14(2) of the Oudh Courts Act, I refer the case for decision to a Bench of this Court.

Mr. *Ganesh Prasad*, for the applicant.

Mr. *Brij Bahadur*, for the opposite party.

NANAVUTTY and THOMAS, JJ.:—This is an application for revision under section 439 of the Code of Criminal Procedure of an order of the learned Sessions Judge of Rae Bareli upholding the conviction of the applicant Jagannath Bhatt for an offence under section 500 of the Indian Penal Code but reducing the sentence passed upon him by the trial Magistrate to a fine of Re.1 only. This revision came up for hearing before a learned Judge of this Court sitting singly, who passed an order dated the 17th of May, 1934, referring the case for decision to a Bench of this Court under the provisions of section 14(2) of the Oudh Courts Act.

We have heard the learned Counsel of both parties at great length, and have carefully considered the rulings cited by the Counsel of both parties in support of their respective contentions, and have taken time to consider our judgment.

The facts out of which this application for revision arises are briefly as follows:

One Musammat Sheoraja filed a criminal complaint against Bandhu in respect of an offence of voluntarily causing simple hurt punishable under section 323 of

(1) (1920) I.L.R., 48 Cal., 383(F.B.). (2) (1925) I.L.R., 50 Bom., 162 (F.B.).
(3) (1911) I.L.R., 36 Mad., 216. (4) (1920) I.L.R., 42 All., 257.
(5) (1920) I.L.R., 43 All., 92. (6) (1933) 10 O.W.N., 735.

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the Indian Penal Code. In the course of that trial Jagannath Bhatt was examined as a witness on behalf of the complainant Musammat Sheoraja. While giving his evidence in that case the trial Magistrate asked Jagannath a question concerning the relationship of the accused Bandhu with the daughter-in-law of his *guru*, and thereupon Jagannath replied that Bandhu had kept the daughter-in-law of his *guru* as his mistress. It is this reply given by Jagannath in answer to a question put by the Court, which has been made the subject-matter of the complaint by Bandhu under section 500 of the Indian Penal Code against Jagannath. In this complaint under section 500 of the Indian Penal Code Bandhu alleged that this statement made by Jagannath was false and that he had thereby been defamed. Jagannath in his defence stated that the statement complained of was a true one and that he had made that statement in answer to a question put by the Court. The learned Sessions Judge of Rae Bareli was of opinion that it was true that Bandhu had kept the widow of Ram Khilawan, who was the son of one Madho, who was a sort of *guru* of Bandhu. He, however, held that Jagannath was not protected by section 132 of the Indian Evidence Act, and he accordingly upheld the conviction of Jagannath but reduced the fine to a nominal sum of Re.1.

The sole question for determination in this application for revision is whether the applicant Jagannath is protected by the exceptions to section 499 of the Indian Penal Code as well as by section 132 of the Indian Evidence Act. Section 132 of the Indian Evidence Act lays down as follows:

"A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose, or tend directly or

indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

Nanavutty and Thomas, JJ.

In the present case the statement which has been made the subject of defamation was not made voluntarily by the witness Jagannath but was obviously made in answer to a question put by the Court. Jagannath is an illiterate villager, and when a question was put by the Court itself in the midst of the examination-in-chief by the complainant's counsel, it is obvious that he felt that he was bound to answer it. It was for the trying Magistrate to determine the question of the relevancy as well as the question of compelling the witness to answer the question put to him, and having put the question we hold that the trying Magistrate decided that the question was relevant and that the witness was bound to answer it. In these circumstances we are of opinion that the witness was amply protected by the provisions of section 132 of the Indian Evidence Act. Had the question been put in examination-in-chief by Musammat Sheoraja's Counsel, then the witness Jagannath would not have been protected under section 132 of the Indian Evidence Act, unless he objected to answer the question and was compelled to do so by the Court. In the present case the question was not put by Musammat Sheoraja's Counsel but it was put by the Magistrate himself, who in the exercise of his judicial powers considered the question relevant and also considered that the witness was bound to answer it.

In *Emperor* v. *Chatur Singh and others* (1) it was held by the Allahabad High Court that although a voluntary statement made by a witness might stand on a different footing, and answer given by a witness in a

(1) (1920) I.L.R., 43 All., 92.

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criminal case on oath to a question put to him either by the court or by counsel on either side, specially when the question was on a point which was relevant to the case, was within the protection under section 132 of the Indian Evidence Act, whether or not the witness objected to the question asked of him.

Again in *Emperor* v. *Ganga Sahai* (1) it was held by another learned Judge of the Allahabad High Court that a witness in a civil suit could not be prosecuted for defamation in respect of an answer given by him to a question asked by the Court.

Nanavutty and Thomas, JJ.

Again in *Emperor* v. *Pramatha Nath Bose* (2) it was held that an incriminating statement in a deposition made by a party to the suit in cross-examination in answer to a question relevant only as affecting his credit, and objected to, not by the deponent himself but by his pleader, was not admissible against him on his subsequent trial for giving false evidence, inasmuch as the witness was in fact "compelled to answer" within the meaning of section 132 of the Indian Evidence Act. In the present case we hold that Jagannath was compelled by the trying Magistrate to answer the question, which was made the subject-matter of defamation in a subsequent trial.

The learned Counsel of parties have referred to conflicting rulings of the Calcutta and Bombay High Courts on the one hand and of the Madras and Allahabad High Courts on the other hand in respect of the question, whether defamatory statements made by a party during proceedings in court are absolutely privileged or are only privileged to the extent laid down in the exceptions to section 499 of the Indian Penal Code. In the Full Bench ruling of the Calcutta High Court reported in *Satish Chandra Chakravarti* v. *Ram Doyal De* (3) it was held that a defamatory statement, on oath or otherwise, by a party to a judicial proceeding, fell within section

(1) (1920) I.L.R., 42 All., 237. (2) (1910) I.L.R., 37 Cal., 878.
(3) (1920) I.L.R., 48 Cal., 388.

499 of the Indian Penal Code and was not absolutely privileged. The same view was taken by the Full Bench of the Bombay High Court in *Bai Shanta* v. *Umrao Amir Malik* (1). On the other hand the Madras High Court *In re P. Venkata Reddy* (2) held that a statement made by an accused person in reply to a question asked of him by a Magistrate was absolutely privileged and that he was not liable to punishment in respect thereof for an offence under section 499 of the Indian Penal Code, and that although the English doctrine of absolute privilege was not expressly recognized in section 499 of the Indian Penal Code, it did not necessarily follow that it was the intention of the legislature to exclude its application from the law of this country.

Similarly in *Matadin* v. *Queen-Empress* (3) it was held by the late Court of the Judicial Commissioner of Oudh that the statement of an accused person made before a Deputy Commissioner in the course of a criminal trial fell within the purview of section 132 of the Indian Evidence Act and was a privileged statement and the accused could not be proceeded against for any defamatory statement contained therein.

It is not necessary for the purpose of this application for revision to decide which view of the law on this point should be accepted by this Court. In *Ram Dayal* v. *King-Emperor* (4) it was held by a learned Judge of this Court that a witness was not protected by the proviso to section 132 of the Indian Evidence Act in cases where he had not objected to answering the question put to him. We are in complete agreement with the general proposition of law laid down in that ruling but we would add that where, as in the present case, the question, the answer to which had laid open the witness to a criminal prosecution under section 500 of the Indian Penal Code, had been put by the Court itself, which considered it relevant and pertinent for the decision of the case before it, the witness must be deemed to have

(1)((1925) I.L.R., 50 Bom., 152. (2) (1911) I.L.R., 36 Mad., 216.
(3) (1899) 3 O.C., 80. (4) (1933) 10 O.W.N., 735.

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been compelled to answer that question and was, therefore, entitled to the benefit of section 132 of the Indian Evidence Act apart from any question as to whether the witness was absolutely privileged under the English common law or whether he only had a qualified privilege to the extent conferred upon him by the exceptions to section 499 of the Indian Penal Code.

Nanavutty and Thomas, JJ.

For the reasons given above we allow this application for revision, set aside the conviction and sentence passed upon the applicant Jagannath, acquit him of the offence charged and direct that the fine if paid be refunded to him.

Application allowed.

FULL BENCH

Before Mr. Justice Bisheshwar Nath Srivastava, Acting Chief Judge, Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith

1934 *August*, 22

MOHAMMAD RAMZAN (DEFENDANT-APPELLANT) *v.* MUNICIPAL BOARD, TANDA (PLAINTIFF-RESPONDENT)*

United Provinces Municipalities Act (II of 1916), *section* 96(1)—*Contract of night-soil by Municipal Board—Municipal Board sanctioning contract but entering the name of applicant's nephew—Contract, whether* benami *and valid*—Benami *transaction, whether forbidden in the case of public corporation.*

(*Per* SRIVASTAVA, A.C.J. and ZIAUL HASAN, J.—SMITH J. dissenting.) For the validity of a contract by a Municipal Board it is necessary that there should be a resolution of the Board sanctioning it.

Where a Municipal Board passed a resolution sanctioning a contract for night-soil, and the name of the nephew of the applicant was entered as a benamidar in the resolution, the contract cannot be held as invalid on account of not having been sanctioned in the name of the applicant by the Board as required by section 96(1) of the United Provinces Municipalities Act.

*Second Civil Appeal No. 258 of 1932, against the decree of M. Zia-uddin Ahmad, Subordinate Judge of Fyzabad, dated the 17th of August, 1932, reversing the decree of S. Hasan Irshad, Munsif of Akbarpur, Fyzabad, dated the 30th of January, 1932.