

APPELLATE CRIMINAL.

Before Mullick and Bucknill, J.J.

PARMESHWAR LAL

v.

KING-EMPEROR.*

1925.

Jan., 20.

Penal Code, 1860 (Act XLV of 1860), section 211—false charge to police—alleged offender named.

Where a person who gives false information as to the commission of an offence merely states that he suspects a certain other person to be the offender, it may be that he would not be liable under section 211, Indian Penal Code, but where it is clear that the informant's intention was not merely that the police should follow up a clue but that they should put the alleged offender on trial, the informant is guilty of an offence under section 211.

[*Cf. Emperor v. Kashi Ram* (1). Rep.].

A charge laid before the police is a criminal proceeding within the meaning of section 211.

Queen Empress v. Bisheshar (2), dissented from.

Karim Buksh v. Queen Empress (3), followed.

On the 22nd of May 1924, the appellant Parmeshwar Lal, laid an information before the Sub-Inspector of police at Daltonganj charging one Munsaf Ram with having set fire to a hut belonging to the appellant's master, Gajadhar Prasad, with the intention of causing wrongful loss. The case was investigated and was found to be false. A complaint was then lodged by the Sub-Inspector in the Court of the Magistrate of Daltonganj against the appellant for an offence under section 211, Penal Code, with the result that the appellant was committed to the Court of Session and was convicted by the Sessions Judge of an offence under the latter part of section 211 and sentenced to rigorous imprisonment for four years. One of the assessors

* Criminal Appeal no. 227 of 1924, from a decision of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 2nd December, 1924.

(1) (1924) I. L. R. 46 All. 906.

(2) (1894) I. L. R. 16 All. 124.

(3) (1890) I. L. R. 17 Cal. 574, F. B.

returned a verdict of guilty while the other three were of opinion that the case was doubtful.

K. P. Jayaswal (with him *Kailaspati*) for the appellant.

Lachmi Narain Sinha, Government Pleader, for the Crown.

MULLICK, J. (after stating the facts set out above, proceeded as follows :)

The appellant lives in the Gaya District and his master Bajadhar Prasad who also resides in that district, appears to have assisted the Rani of Deo who is the niece of one Thakurai Jagat Prasad Singh of *mauza* Burhibir in the Palamau district in a litigation with her husband, the Raja of Deo. That litigation was eventually settled by the Raja's making over a property worth Rs. 5,000 *per annum* to the Rani and paying a sum of Rs. 10,000 in cash to Gajadhar Prasad. Subsequently Gajadhar Prasad lent money to Thakurai Jagat Prasad in a litigation with his brother Ramsunder and took from Jagat Prasad a *zarpeeshgi* of a two-anna eight-pies share in certain *mauzas* of which Burhibir was one. In consequence of Gajadhar Prasad's realizing the rent of a five-anna four-pies share of the villages instead of a two-anna eight pies share disputes arose between him and Jagat Prasad in or about September 1923, and Ramsunder having by this time settled his dispute with Jagat Prasad and joined Jagat Prasad in resisting Gajadhar, a complaint was lodged by one of the servants of Gajadhar against Ramsunder and his servants alleging that they were threatening a breach of the peace and requesting that action should be taken to bind them down. Munsaf Ram was one of the persons thus complained against. In consequence of that complaint the Sub-Inspector of Police at Daltonganj which is eight miles from Burhibir stationed constable Ramgulam Tewari at Burhibir to see that no breach of the peace took place between Gajadhar's men and Ramsunder's men. The constable who had taken up his residence in the village

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about ten days earlier states that on the day of the fire he cooked his food at an open *chulha* (fire place) near the hut in question, and after pouring some water on the fire he went to rest in the *thakurbari* (temple) of Jagat Prasad. About 3 p.m. a dust storm arose and immediately afterwards he saw the hut in flames; among others Munsaf Ram came to the place but the appellant Parmeshwar Lal was not in the village at all that day.

Prosecution witness Ram Lal Singh, a peon in the service of the Rani of Deo, who was at the time residing with her uncle Jagat Prasad, had been sleeping in the hut after his midday meal. He says that about 4 p.m. he got up and went to wash his face. Then came the dust storm and immediately afterwards he found that the hut was on fire. He suggests that the fire came from the embers in the open fire place where he had cooked his food and near which there was a quantity of jute sticks. He says that Munsaf Ram arrived after the hut was completely burnt out about five minutes after the fire began, and that he assisted in extinguishing the fire in a neighbouring house, namely that of Nanki Dusadin, to which the fire had spread.

Ram Lal is corroborated by Jawadhan whose house is immediately east of the hut.

Surajnath Pathak, who is Jagat Prasad's priest and was in the *thakurbari* about 30 paces to the west, Ramdhari Lohar, Jamaluddin, the grandson of Jawadhan and Mussammat. Nanki also corroborate Ram Lal.

All these witnesses prove that Munsaf Ram did not set fire to the hut, came after the fire began and that he assisted in putting it out.

The witness Lalji proves that at the time of the fire Munsaf Ram was working with other coolies at a wall which was being built for his master Ramsunder Singh to the west of the hut and that on hearing shouts of fire Munsaf ran to the place, and that he returned about half an hour later. This witness states

that the hut is some distance from where he was working and that he did not go to it.

In my opinion the learned Sessions Judge was right in holding that Munsaf did not set fire to the hut and that the appellants' information to the Police was maliciously false.

With regard to the ownership of the hut, the evidence is that it was built by the Rani's men with wood, straw and leaves taken from Jagat Prasad's jungle. At that time the Rani had already given Gajadhar Prasad the managership of her properties in the Gaya district and the prosecution witnesses seem to have looked upon the Rani's servants as Gajadhar's servants. It appears that after Gajadhar obtained the *zarpushqi* from Jagat Prasad he appointed one Audh Behari as his *dewan* at Burhibir for making collections. About eight days before the fire the appellant Parmeshwar succeeded Audh Behari. The hut in question was built about two months before the fire. Gajadhar's own servants used at first to live in a tent, but after the hut was built Ram Lal Singh and Bulaki Singh, two peons of the Rani, and Jhari Singh, the *tahsildar* of Gajadhar, used to sleep in it. Ram Lal says that he used at first to sleep in a room in Jagat Prasad's house which is to the west, but owing to shortness of accommodation he came over to the newly built hut. He was paid by the Rani through her manager Gajadhar Prasad, and it is clear from the evidence of the *chaukidar* Faujdar that the villagers made no distinction between the servants of Gajadhar and the servants of the Rani.

I think therefore that it is established that the hut was not the property of Gajadhar and in the circumstances it is difficult to see why Munsaf Ram, the servant of Ramsunder, should set fire to it.

In the first information it is stated that the value of the hut was Rs. 25 and that the articles destroyed consisted of rice, *dal*, salt, clothes and aluminium pots worth Rs. 21. It is not stated to whom these properties belonged, but the evidence is that some of them

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belonged to Ram Lal Singh and the constable Ram Tewari. Jhari Singh, the *tahsildar*, was at Daltonganj that day with his master Gajadhar Prasad who had come there from Gaya. Bulaki was also away and it does not appear that any property belonging to Gajadhar's own servants was in the hut. Parmeshwar certainly had nothing there. That this should have been so is natural for Parmeshwar was only appointed eight days before the fire and he had only paid one visit to Burhibir. I accept the statement of Ram Lal when he says that Parmeshwar came to Burhibir on Sunday, the 30th *Baisakh* and went away on the next day and that the fire took place the following Wednesday. Parmeshwar Lal's statement that he was in the hut at the time of the fire is, in my opinion, wholly and intentionally false. I cannot accept his explanation that he could not leave the village immediately after the fire because there was nobody else to look after his master's interests. I do not think it is likely that he would have stayed in the village alone that night if this had been a real case of arson. Next, if Parmeshwar had himself seen Munsaf setting fire to the hut, I do not understand why on the following morning Ram Lal should have been ordered by Audh Behari to go to Daltonganj to inform Gajadhar Prasad. There would have been no necessity for Audh Behari to interfere. I am satisfied that Ram Lal was sent by Audh Behari and the *chaukidar* Faujdar by the constable and that at Daltonganj they had an interview with Gajadhar and Parmeshwar and that under Gajadhar's orders Parmeshwar went afterwards to the *thana* to lodge an information against Munsaf Ram.

It has been contended that the first information contains details which it would not have been possible for Parmeshwar to give if he had not himself seen Munsaf in the act. I am not impressed by this argument. The story that Munsaf was running away and that Jagat Prasad was standing near the *thakurbari* might easily have been invented by one who was not at the place of occurrence at all.

It is next contended that at most the information is a mistake of fact and does not amount to a false information within the meaning of section 211, Penal Code. If the appellant had said to the police that he suspected Munsaf Ram and if he had not deliberately charged Munsaf Ram with having set fire to the hut, there might have been some substance in this plea, but here it is clear that the appellant's intention was not merely that the police should follow up a clue but that the police should put Munsaf Ram on his trial. It was clearly the appellant's intention to set the criminal law in motion against Munsaf Ram and to injure Ramsunder and Jagat Prasad.

Next it is contended that the case does not come within the latter part of section 211. It is urged that a false information given to the police is not a proceeding instituted on a false charge within the meaning of the second part of the section. In my opinion a charge laid before the police is a criminal proceeding, and notwithstanding the authority of *Queen Empress v. Bisheshar*(¹), I think that the decision of the Full Bench of the Calcutta High Court in *Karim Buksh v. Queen Empress*(²), contains a correct statement of the law.

Finally, there remains the question of sentence. Having regard to the fact that the hut was a very flimsy and temporary structure and that it was worth only Rs. 25 and that the total value of property destroyed was less than Rs. 50, a sentence of four years' rigorous imprisonment seems to be unduly severe. There might have been a suspicion in the mind of Parmeshwar that Ram Sunder's men had had a hand in causing the fire and the false charge does not bear any indication of any deep laid plot. In the circumstances I think that a sentence of two years' rigorous imprisonment will meet the ends of justice. The sentence is accordingly reduced.

BUCKNILL, J.—I agree.

Sentence reduced.

(1) (1894) I. L. R. 16 All. 124.

(2) (1890) I. L. R. 17 Cal. 574, F.B.

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