

1927.

LALJI
DUSADH
v.
KING-
EMPEROR.

MULLICK,
A.C.J.

but they provide for different and distinct conditions. A statement for instance which would not be admissible under section 8 may be admissible under section 32.

The result, therefore, is that in my opinion the assessors and the jury were right in the view which they took of the guilt of the appellant. The appellant is guilty both of robbery and murder. Having regard to the injuries there can be no doubt that it was his intention to cause such injuries as would in the ordinary course cause death. His motive was robbery and he appears to have attacked his victim from behind without giving him a chance of protecting himself. I agree with the learned Sessions Judge that the sentence of death is the only possible sentence and the order of the learned Judge must therefore be confirmed.

The conviction for the offences under sections 392 and 397 are also affirmed but it is unnecessary to pass any separate sentence for these offences.

The appeal is dismissed.

WORT, J.—I agree.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mullick, A. C. J., and Wort, J.

KARI GOPE

v.

MAHANTH MANMOHAN DAS.*

Penal Code, 1860 (Act XLV of 1860), sections 193 and 199—false affidavit by identifier, whether deponent punishable—Code of Civil Procedure, 1908 (Act V of 1908), Order XIX—service of summons, proof of by identifier's affidavit.

Under Order XIX of the Code of Civil Procedure, 1908, and under the General Rules and Circular Orders of the

*Criminal Appeal no. 55 of 1927, against an order dated the 6th February, 1927, passed by H. B. Beevor, Esq., Sessions Judge of Darbhanga.

1927.

May, 6, 9.

Patna High Court, the court issuing a summons has authority to receive an affidavit from an identifier as evidence of the fact of service of summons.

Held, that a false statement in an affidavit by an identifier is punishable under section 193 of the Penal Code if the intention of the deponent was that it should be used in a judicial proceeding.

Held, further, that the making of a false affidavit by an identifier is also punishable under section 199 which is wider than section 192 and applies to any affidavit which the court is bound or authorised to receive.

The facts of the case material to this report are stated in the judgment of Mullick, A. C. J.

L. K. Jha and *K. N. Jha*, for the appellant.

C. M. Agarwala, Assistant Government Advocate (with him *R. K. Jha*), for the Crown.

9th May,
1927.

MULLICK, A. C. J.—This is an appeal under section 476B of the Code of Criminal Procedure. The appellant Kari Gope was an applicant in a proceeding under Act XIV of 1920 in which the respondent Mahanth Manmohan Das was summoned to appear before the Court on the 13th November, 1926.

It is alleged by the appellant that on the 11th November, 1926, summons was duly served upon the respondent and was refused by him. The respondent denies service and says that he was not at home and that the affidavit of the peon as well as the affidavit of the identifier were intentionally false.

The learned District Judge has after inquiry found that the appellant who was the identifier intentionally made a false affidavit and he has filed a complaint for his prosecution for an offence under section 193 of the Indian Penal Code.

There is evidence to show that the affidavit made by the appellant was false. All the witnesses for the prosecution were not examined by the court and it is not necessary at this stage to say more than this that there is a *prima facie* case which must be investigated.

1927.

KARI GOPE
v.
MAHANTH
MANMOHAN
DAS.

1927.

KARI GOPH

v.

MAHANTH
MANMOHAN
DAS.MULLICK,
A C.J.

There is, however, a point of law taken which requires notice. It is urged that the affidavit of the identifier was not required for the purpose of proving service of summons upon the defendant, that it was a voluntary declaration and that no prosecution for giving false evidence can be based upon it. Anything that we may say will not debar the appellant from raising the point at his trial, and, therefore, it will be sufficient here to say that our present view is that the prosecution for offences under sections 193 and 199 of the Indian Penal Code will lie. The affidavit was sworn before an officer competent to take affidavits and the appellant was bound to state the truth. It may be that the peon's affidavit was sufficient and that no affidavit was required from an identifier; but if the affidavit was intended to be used in a judicial proceeding, then the offence of fabricating false evidence within the meaning of section 193 was complete. It makes no difference that the affidavit was voluntary. Voluntary statements made without any intention that the statement may appear in evidence in a judicial proceeding are not offences; so it has been held that a verification in a document not requiring to be verified is no offence; also that false statements made in an application for rehearing of an ex parte decree or for a new trial in a small cause court were not criminally punishable. The statements in themselves were not evidence and acquired no extra weight by being verified.

The affidavit in question is also punishable under section 199. It is clear that the court was authorised under the Circular Orders of the High Court and Order XIX of the Civil Procedure Code to receive an affidavit from an identifier as evidence of the fact of service of summons. Section 199 is wider than section 192 and applies to every kind of affidavit which the court is bound or authorised to receive. The Civil Procedure Code and the Circular Orders of the High Court authorise the court in this instance to receive the affidavit in question.

The result, therefore, is that the appeal will be dismissed and the proceedings will be continued from the stage at which they were left.

WORT, J.—I agree and have nothing to add.

Appeal dismissed.

1927.

KARI GOPE
v.MAHANTH
MANMOHAN
DAS.

REVISIONAL CRIMINAL.

Before Mullick, A.C.J., and Wort, J.

MAHANTH BABA BADRI DAS

v.

KING-EMPEROR.*

1927.

May, 13.

Police Act, 1861 (Act V of 1861), sections 30, 30A and 32—Licence for procession subject to conditions—breach of conditions by processionists—liability of licensee.

Where an application for a licence to take a procession through the town of Patna was granted subject to the condition that no member of the procession carried a lathi or sword,

Held, that it was the duty of the licensee to see not only that no member of the procession was carrying a lathi at the time when the procession started but also that no one subsequently joined the procession with a lathi.

The mere fact that section 30A confers upon certain officers the power to stop a procession which violates the condition of a licence does not relieve the licensee from his duty of strictly complying with the terms of the licence.

The facts of the case material to this report are stated in the order of Mullick, A. C. J.

S. Sinha (with him *S. P. Varma* and *D. P. Varma*), for the petitioner.

Sultan Ahmed, Government Advocate, for the Crown.

MULLICK, A. C. J.—The petitioner has been sentenced to a fine of Rs. 100 under section 32 of

*Criminal Revision no. 106 of 1927, against an order of G. E. Owen, Esq., i.c.s., District Magistrate of Patna, dated the 2nd February, 1927, confirming an order of Mr. Fazle Rahman, 2nd Class Magistrate, Patna City, dated the 14th December, 1926.