REVISIONAL CRIMINAL.

Before Mr. Justice Fforde.

1924

July 18.

AMAR NATH, Petitioner,

versus

THE CROWN, Respondent.

Criminal Revision No. 888 of 1924.

Application for revision—by a witness whose evidence has been stigmatized as false by the Sessions Judge, to have the remarks expunged from the record—Necessity of showing the falsity of the evidence by legal proof.

The Sessions Judge in his judgment in an appeal from the order of the District Magistrate commented upon the evidence given by the petitioner, a Sub-Inspector of Police, who was one of the witnesses for the prosecution in the case and stigmatized it as false. The English record of petitioner's evidence prepared by the District Magistrate shewed that he was present at Sial Sharif from the 4th to the 6th October 1923, and that on the night between the 5th and 6th accused made an abusive speech against the Golra Pir. The Sessions Judge being doubtful about the correctness of the latter statement sent for the *roznamcha* of the petitioner's police station and from it ascertained that from 7 P.M. on the 5th October until 6 A.M. on the 6th the petitioner was at his police station and therefore could not have been present on the occasion of the speech on the night of the 5th/6th.

Held, that before the learned Sessions Judge was justified in commenting adversely upon the petitioner's evidence he should have established the particular fact warranting such criticism by proper evidence in Court and not by reference to a document which was not properly on the record. He had no right to put the *roznamcha* on the record as an Exhibit. A Judge has no right to test evidence given in Court by material which has not legally been made evidence.

Also, that if the Judge considered that the petitioner intended to convey that he was personally present on the night of the 5th-6th at Sial Sharif and himself heard the

abusive speech he should have asked him for an explanation before charging him with the crime of perjury. No person should be condemned without being given an opportunity of being heard in his own defence.

Held further, that the remarks complained of were entirely unfounded and must be expunged from the record.

Application for revision of the order of Khan Bahadur Munshi *Rahim Bakhsh, Sessions Judge, Shahpur, at Sargodha, dated the 10th January 1924.*

RAM LAL, for Petitioner.

JAI LAL, Government Advocate, for Respondent.

FFORDE J.—This is a petition by *Pandit* Amar Nath, Sub-Inspector of Police at Sahiwal Police Station, in the District of Shahpur, praying that certain remarks of the Sessions Judge of Shahpur appearing in his judgment in the case of *Muhammad Ishaq* versus *The Crown*, should be expunged from the record. The words complained of are as follows :—

" The Public Prosecutor laid great stress on the evidence of *Pandit* Amar Nath, but I am afraid the police officer is clearly guilty of perjury. He made the District Magistrate believe, as appears from his statements before him and from the judgment, that he was present at Sial Sharif from 4th to 6th and that he heard the speeches made on these two nights. His first report, Exhibit C-1, made me suspect that he was not present at least during the previous night at Sial Sharif, and hence I sent for his *roznamcha*, Exhibit C-2, which shows beyond all doubt that *Pandit* Amar Nath was not at Sial Sharif but at Sahiwal on the night of the 5th-6th October, and therefore he could not have heard the speeches the said *Maulvi* made on the evening of the 5th. The *roznamcha* of the 5th-6th shows that he arrived back at the Police Station Sahiwal, at about 7 P.M. on the 5th and left again on the

1924.

AMAR NATH
v.
THE CROWN.

morning of the 6th at 6 A.M. This Sub-Inspector's testimony therefore could not be relied on and it is a fit case, I think, in which the District Magistrate may call upon him to explain why he made such a false statement." The Sub-Inspector in giving his evidence before the District Magistrate states, according to the English record, that he was present at Sial Sharif from 4th to 6th October 1923 during the gathering connected with the *Urs* of *Khawaja* Shams-ud-Din, and further on in his evidence he states that " On the night between the 5th and 6th accused again made an abusive speech against the Golra Pir."

The learned Sessions Judge concluded from this evidence that the petitioner was intending to convey that he was at this *Urs* continuously from the 4th to 6th October, inclusive, and also that he himself heard the speech made on the night of the 5th/6th. There was no cross-examination of this witness to clear up the question as to whether or not he was speaking of his own knowledge with regard to these speeches and other matters, and whether or not he was present at the *Urs* for the whole period between the 4th and 6th October. Nor did the learned Sessions Judge question him on these matters, but it appears that the learned Sessions Judge sent for the *roznamcha* of the petitioner's police station and from it ascertained that from 7 P.M. on the 5th of October until 6 A.M. on the 6th the petitioner was at his police station, and, therefore, could not have been present on the occasion of the speech of the night of the 5th-6th.

Now, if the learned Sessions Judge had come to the conclusion that the petitioner intended to convey that he was in fact present on the night of the 5th-6th, he should, on ascertaining that this was not the case, have given him an opportunity of explaining how it

was he came to make such a statement. Instead of doing this the Sessions Judge proceeded, as a result of a comparison of the police report with the petitioner's evidence given in Court, to stigmatize him as a perjurer. Such conduct on the part of the Sessions Judge was obviously highly improper. A Judge has no right to test evidence given in Court by material which has not legally been made evidence. He has the right and the duty to test a witness's evidence by putting questions to him for the purpose of clearing up any matters which may be ambiguous or doubtful. But before he is justified in commenting adversely upon a witness's evidence, he must establish the particular fact warranting such criticism by proper evidence in Court and not by reference to documents which are not properly on the record. The learned Sessions Judge had no right whatsoever to put the *roznamcha* referred to in his judgment, which he describes as Exhibit C-2, upon the record of the proceedings. Such a procedure on his part is not only highly irregular but is entirely illegal, and may, as has happened in the present case, lead to grave injustice being done to the reputation and character of a witness. It is admitted by the petitioner that he was at his police station between 7 P.M. on the 5th and 6 A.M. on the 6th and was not present when the speech made on the night of the 5th or early morning of the 6th was uttered. Had the learned Sessions Judge come to the conclusion that this was the case, he should have asked the witness for an explanation before charging him with the crime of perjury.

It is an elementary principle of justice that no person should be condemned without being given an opportunity of being heard in his own defence.

In the present case there is no doubt that the learned Sessions Judge was justified in coming to the

1924

AMAR NATH
v.
THE CROWN.

conclusion that the petitioner did purport to speak of his own personal knowledge, but as soon as the learned Sessions Judge had occasion to believe that this was not so, he should have given the petitioner the opportunity of explaining the matter. As already stated the impropriety of the learned Sessions Judge consists in condemning the witness upon the strength of a document which was not in evidence, and which could not be made evidence ; and without giving him an opportunity of explaining the matter. I am satisfied that the petitioner had no intention to mislead the Court and the *Urdu* record, which is somewhat at variance with the English translation, gives support to this view. In the *Urdu* record the petitioner stated " I went to the *Urs* Sial Sharif for the purpose of making arrangements there, which *Urs* is from the 4th October onwards." He did not state, nor did he mean to state, that he was present at this gathering continuously from the 4th to the 6th of October inclusively. Had he been cross-examined by counsel for the defence, or questioned by the Judge in the trial Court, the matter would have been cleared up at once. The evidence of the petitioner appeared before the Sessions Judge on paper. He was not himself present and he had no opportunity to explain any ambiguities which might appear in his evidence. Nor did the Sessions Judge give him any opportunity at any subsequent time to explain matters. I am satisfied that very serious injustice has been done to the petitioner and that the remarks complained of are entirely unwarranted. I accordingly order that the words objected to ; namely, " But I am afraid this police officer is clearly guilty of perjury. He made the District Magistrate believe, as appears from his statements before him and from the judgment, that he was

present at Sial Sharif from 4th to 6th and that he heard the speeches made on these two nights," and the words " This Sub-Inspector's testimony therefore could not be relied on and it is a fit case, I think, in which the District Magistrate may call upon him to explain why he made such a false statement," and the passage towards the conclusion of his judgment, " As I find that the only independent witness had made a false statement in Court," be expunged from the record.

C. H. O.

Revision accepted.

FULL BENCH.

Before Mr. Justice Martineau, Mr. Justice Moti Sagar and Mr. Justice Zafar Ali.

SUNDAR DAS (PLAINTIFF) Appellant,

versus

Mst. UMDA JAN AND OTHERS (DEFENDANTS) Respondents.

1924

July 19.

Civil Appeal No. 829 of 1921.

Valuation of suit—for purpose of jurisdiction—Suit for possession of land in Killa Gujar Singh—Whether market value as determined by the Court or valuation as stated by plaintiff in his plaint.

The plaintiff bought 2 *kanals* 3 *marlas* of land from defendants for Rs. 4,300 in Gowal Mandi, in Killa Gujar Singh. He obtained possession of 1 *kanal* 12 *marlas* and paid Rs. 3,800, out of the price. He brought the present suit for possession of the remaining 11 *marlas* on payment of Rs. 500. The plaintiff valued his suit for purposes of Court-fees and jurisdiction at Rs. 5,500. The defendants objected to the valuation and alleged that the correct value was only Rs. 1,100. The question of the market value was put in issue and the trial Court's finding on the point was in favour of the defendants. The suit was dismissed and plaintiff appealed to the High Court. The defendant-res-