

CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. BA'BA'JI.*

1892.

April 8.

*Penal Code (Act XLV of 1860), Sec. 500—Defamation—Statement by
a witness—Privileged.*

A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding.

THE accused was examined as a witness in a suit pending in the Mámlatdár's Court. In his deposition he stated that the complainant had once been convicted of an offence by a Criminal Court.

For this statement the complainant prosecuted the accused on a charge of defamation, under section 500 of the Indian Penal Code, before a Bench of Magistrates at Poona.

The accused was convicted of defamation, and sentenced to pay a fine of Rs. 15, or, in default, to suffer simple imprisonment for fifteen days.

The High Court sent for the record and proceedings of this case in the exercise of its revisional jurisdiction.

There was no appearance for the Crown, or for the accused.

The judgment of the Court (Birdwood and Parsons, JJ.) was as follows:—

In *Báboo Gunnesh Dutt v. Mugneerám*⁽¹⁾ the Privy Council decided that witnesses cannot be sued in a Civil Court for damages in respect of evidence given by them upon oath in a judicial proceeding. The judgment in that case contains the following observations:—

“Their Lordships hold this maxim, which certainly has been recognized by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public, and the administration of justice, that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by

* Criminal Revision, No. 133 of 1891.

(1) 11 B. L. R. (P. C.), 321.

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suits for damages; but that the only penalty they should incur, if they give evidence falsely, should be an indictment for perjury.”

With reference to this judgment Mr. Justice Shepherd observed in *Manjaya v. Shesha Shetti*⁽¹⁾, that public policy must no less require that witnesses should not be exposed to the fear of prosecution, except the prosecution for perjury. And the learned Chief Justice of the Madras High Court applied in that case, (which, like the present, was one where a witness was prosecuted for defamation in respect of a statement made by him when giving evidence in a judicial proceeding), the observations of Cockburn, C. J., in *Seaman v. Netherclift*⁽²⁾ and of Field, J., in *Goffin v. Donnelly*⁽³⁾ as to the rules of public policy which subordinated the interest of the individual to that of a higher interest, *viz.*, public justice. With reference to the case of *Hinde v. Baudry*⁽⁴⁾ Sir Arther Collins remarked:—

“The Judges there said that the principle of public policy guards the statements of a witness against an action, whether the statements are malicious or not. I think the same observation will apply if the criminal law is set in motion and proceedings are taken under section 500 of the Indian Penal Code. If the petitioner gave false evidence, he can be punished for that offence. I, therefore, hold that the petitioner was wrongfully convicted of defamation.”

Following this ruling, and having regard also to *Dawan Singh v. Mahip Singh*⁽⁵⁾ and *Bhikumber Singh v. Becharám Sirkar*⁽⁶⁾, we reverse the conviction and sentence, and acquit the accused of the offence of defamation of which he has been convicted, and we direct that the fine, if paid, be refunded to him.

(1) I. L. R., 11 Mad., 477.

(2) 2 C. P. D., 53.

(3) 6 Q. B. D., 307.

(4) I. L. R., 2 Mad., 13.

(5) I. L. R., 10 All., 423.

(6) I. L. R., 15 Calc., 264.