Appellate Jurisdiction (a)

Criminal Petition No. 225 of 1867.

PALANY CHETTY...*Appellant (Prisoner).*

Proof of contradictory statements on oath, or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under Section 72 of the Indian Penal Code and Sections 242, 381 and 382 of the Criminal Procedure Code.

The English Law upon the subject stated.

1868. *May* 18. *C. P. No.* 225 *of* 1867.

THIS was an appeal against the sentence of the Court of Madura in Case No. 86 of the Calendar for 1867.

This appeal coming on for re-hearing, the Court delivered the following

JUDGMENT:—This is an appeal against a conviction on the charge that the appellant, being a witness in a judicial proceeding before the Subordinate Magistrate of Tirumangalam, and afterwards before the Session Court of Madura, knowingly gave two depositions on solemn affirmation directly opposed to one another, and that he thereby committed the offence of giving false evidence in a Judicial Proceeding contrary to Section 193 of the Penal Code. The evidence proves that the appellant was examined as a witness on solemn affirmation in an inquiry before the Subordinate Magistrate into the charge of criminal misappropriation of certain jewels against one Ramanadha Pillay, and then made a material statement as to the said Ramanadha Pillay and two other persons having come to his shop on a particular day with jewels which they sold to him, and that he knowingly and deliberately deposed directly the contrary when examined on solemn affirmation as a witness on the trial of the same charge before the Session Court. One or other of the statements must be intentionally untrue, but which is left quite uncertain, and the question for determination is, whether the contradictory statements without more are sufficient to sustain the conviction. The case has not been argued, but the arguments of Counsel in two recent cases in which it became unnecessary to decide the point have been considered.

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The rule of the Criminal Law of England as laid down before the decision in *The King* v. *Harris* (5 Barn & Ald, 296), admitted of a conviction of the offence of perjury charged on one of two opposing statements on oath, being supported by proof simply of the two statements: but the rule was rested on the technical and not satisfactory principle that whichever happened to be charged as false, the defendant was estopped by his oath from averring that the other was not true, applying it seems the maxim "*nemo allegans turpitudinem suam est audiendus.*" Since, however, the case of *The King* v. *Harris* (which decided that a count setting out two opposing statements and charging inferentially the falsity of one or the other of them was bad) the contrary has been held to be the rule on the sound principle that though it may accurately be predicated of two statements of a person diametrically opposed to one another—that one is false, it cannot be said decisively which is the false one without other evidence. The law requiring that the falsity of one or other of the statements should be specifically charged and found by the jury, proof of the contradictory statements without more is justly considered insufficient to support a conviction:—and the same rule we should at once have held applicable to this case (Regulation III of 1826 having been repealed) if the same precision had been required by the law of Criminal Procedure here.

Distinct charges in cases in which the circumstances admit of two or more alleged offences are clearly requisite when it is doubtful which will be proved. But the provisions in Sections 242, 381 and 382, Clauses 5 and 11 of the Code of Criminal Procedure and Section 72 of the Penal Code read together plainly do away with the necessity of a specific finding in such cases, and admit of the alternative finding that either of two or more of the offences specified in the charges has been committed, whether the charges are framed on the same Section or different Sections of the Penal Code. It is on the applicability of this mode of procedure to the case that the validity of the conviction depends; for, as this Court has recently ruled on the revision of two cases of convictions of the offence of

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giving false evidence, where there is only a single charge alleging the falsity of one of two contradictory statements, a conviction on proof simply of the statements is not sustainable. And if the procedure is applicable, all objection to a conviction supported by such proof alone is removed. It is proof of a satisfactory description and the alternative conviction becomes a legal bar to any other criminal proceeding against the same person on either of the charges to which the conviction relates. And that justice demands the punishment of a witness who is proved to have so foresworn himself no one can doubt. Such false evidence is often of a much graver character and of more serious effect on the administration of the Criminal Law than when a single statement is made, and it would be strange to find the provisions of the very law which led to the repeal of Regulation III of 1826 defective to punish so vicious an instance of perjury.

The contention in the cases that were argued was that the procedure provided for by the abovementioned Sections applied only to cases in which two or more offences appear to have been committed, but it was doubtful which would be proved, and that here there could not have appeared at any time more than a single *offence*. For this contention some show of reason is afforded by the words "two or more *offences*" in Section 242. But when the whole enactment is given effect to, we think it clear that the Section applies to cases in which only one offence appears to have been committed, and there is a doubt within which of two or more Sections it will be brought; or which admit of two or more alleged offences within the same Section, and it is doubtful which one will be proved. The essentials are—evidence of a case shewing an offence to have been committed but admitting of charges of two or more offences and doubts as to which of those charges the offence committed will be proved to be. In this case the offence of giving false evidence appeared, and either statements might have been proved to be that offence, but it was quite in doubt which was false. We are consequently of opinion that Section 242 applies, and the case being one in which charges on both statements were pro-

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per under that Section, it follows clearly, we think, that the conviction in the alternative is regular and valid.

Sections 381 and 382, Clauses 5 and 11 have distinct reference to the offences specified in the charges, and the statements of particular offences given in the forms are obviously given only as examples. For these reasons our judgment is that satisfactory proof of contradictory statements on oath or solemn affirmation is sufficient to justify an alternative finding, and that the conviction and sentence in this case must be upheld. It is satisfactory to find that our view of the law is supported by the decisions of a full Bench of the High Court at Calcutta in *The Queen* v. *Mussemut Zameeru* reported in 2 *Rev. Cr. Reports* 49.

It is necessary to observe, with reference to the charge and finding of the Session Court, that neither is strictly regular. In every similar case there should be a separate head of charge in respect of each statement, and the finding and sentence should be in conformity with the form given in Section 382 of the Criminal Procedure Code.

Conviction affirmed.

Appellate Jurisdiction (a)

Special Appeal No. 312 *of* 1868.

RAMANUJA CHARIYAR..... *Special Appellant.*

VENKATAVARADHAIYANGAR and another..... } *Special Respondents.*

The effect of Section 11, Act XIV of 1859, is to provide a distinct period of limitation applicable to every case in which, but for legal disability, the suit would be barred.

In other words to add three years from the time the disability ceases to the period of limitation made applicable by the Act to the particular case.

1868. *July* 29. *S. A. No.* 312 *of* 1868.

THIS was a special appeal against the decree of A. Annusami Mudaliar, the Acting Principal Sadr Amin of Tanjore, in Regular Appeal No. 12 of 1868, confirming the decree of the Court of the District Munsif of Tiruvady in

(a) Present: Scotland, C. J. and Ellis, J.