

Appellate Jurisdiction. (a)*Criminal Regular Appeal No. 116 of 1870.*

KEILASUM PUTTER.....1st Prisoner.

The prisoner, a vakil, presented a vakalutnamah in the District Munsif's Court signed by the defendant in a Civil suit authorising the prisoner to appear for the defendant. The vakalutnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under Section 193 of the Penal Code.

Held, that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody.

THIS was a petition against the sentence of the Court of Session of Calicut, in Case No. 29 of the Calendar for 1870. 1870.
July 11.
C.R.A.No.116
of 1870.

The prisoner and another person were charged under Section 193 of the Penal Code for that they, on or about the 10th December 1869, at Palghaut, did fabricate false evidence for the purpose of being used in a stage of a judicial proceeding.

The facts were that the 1st prisoner, who was a vakil in the Munsif's Court at Palghaut, filed in that Court a vakalutnamah executed to him by the 2nd prisoner, a wealthy Brahmin merchant of that town. The vakalutnamah contained a statement that the document had been signed in the presence of the Adighari of the Amshom and purported to be signed by the Adighari. It was not signed by the Adighari nor was the vakalutnamah signed in his presence.

The 1st prisoner was convicted (the other prisoner having been acquitted) upon the facts. The following is taken from the Calendar of the Session Court :—

The only remaining question is does forging an Adighari's attestation to a vakalutnamah constitute an offence punishable under Section 193 of the Indian Penal Code. I have no hesitation in saying that it does.

The charge is "fabricating false evidence for the purpose of being used in a judicial proceeding." The Legislature have laid down that a party cannot be heard by a vakil unless there be a written vakalutnamah filed in Court.

The Rules of practice have further declared that in order to ensure the trustworthiness of such vakalutnamahs,

(a) Present :—Scotland, C. J. and Innes, J.

1870.
July 11.
C.R.A. No. 116
of 1870.

they must be signed before, and attested by, a judicial officer. The filing of such vakalutnamah in Court is certainly a stage in a judicial proceeding, and a proceeding taken by Law before a public servant, and the false attestation if believed would be the cause of the Munsif, who, in such proceeding is to form the opinion that the vakalutnamah has been legally executed, to entertain the erroneous opinion that it has been executed before, and attested by, the Adighari, which is a point material and essential to such proceeding, viz., the filing of the vakalutnamah, for unless such attestation were affixed, the document could not be filed in Court.

I have no doubt therefore that to forge such attestation is to fabricate false evidence.

Mayne, for the prisoner.

The Court delivered the following

JUDGMENT:—There is no doubt in this case that the prisoner was a party to obtaining the signature to the vakalutnamah falsely purporting to be that of the Adighari, and the only question is whether this and the other facts proved make out the offence of which the prisoner has been convicted under Section 193 of the Penal Code. The other material fact is that, having obtained the signature, he, in his capacity of vakil of the District Munsif's Court, filed it in a suit then instituted.

We are of opinion that the case is not brought within the section. The essentials of the offence are to be found in the previous Section 192, and substantially it appears to us necessary to prove that it was intended that the false circumstance should appear in evidence in a judicial proceeding, that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance was of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case.

In the present case the evidence shows that the vakalutnamah was intended to be used in a judicial proceeding, but it fails altogether to make out the other essentials. We are therefore of opinion that the conviction is wrong and must be annulled and the prisoner set at liberty.