APPELLATE CRIMINAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Mookerjee.

1909
June 1.

RAKHAL CHANDRA LAHA
v.
EMPEROR.*

Sanction for prosecution, terms of—Perjury, assignment of—Charges relating to several false statements in the same deposition—Mis-joinder—Reading deposition to witness in the presence of a pleader for one of several accused—Interpreter, omission to administer oath to—Admissibility of Deposition and proof of Statement of the Witness on a subsequent trial for Perjury—Criminal Procedure Code (Act V of 1898) ss. 195 cl. (4), 234, 360 cl. (1) and 537—Penal Code (Act XLV of 1860) s. 193—Oaths Act (X of 1873) ss. 5 (b), 13.

Although s. 195, cl. (4), does not in express terms render an assignment of perjury necessary, the application for sanction and the order granting it, in respect of statements contained in a lengthy deposition, should specify the particular statements alleged to be false, but the omission to do so is a defect cured by s. 537, unless a failure of justice has in fact been established.

Where the alleged false statements were not set out in the order of sanction but were specified in the application for it and also in the charges subsequently framed :—

Held, that the accused was not prejudiced by the omission in the sanction.

Balwant Singh v. *Umed Singh* (1), *Queen* v. *Kartick Chunder Holdar* (2), *Queen* v. *Gobind Chunder Ghose* (3), *Queen* v. *Boodhun Ahir* (4), *In re Jivan Ambaidas* (5), *Goberdhone Chowkidar* v. *Habibullah* (6) and *Queen* v. *Soonder Mohooree* (7) referred to.

The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and such charges cannot be multiplied according to the number of false statements contained in a deposition.

Mad. H. C. Pro., 1st May 1871 (8) followed.

Section 360 (1) is sufficiently complied with if the deposition of a witness is read over to him in the presence of a pleader for one out of twenty-seven

* Criminal Appeal, No. 334 of 1909, against the order of E. E. Forrester, Sessions Judge of Midnapore, dated March 29, 1909.

(1) (1896) I. L. R. 18 All. 203.
(2) (1868) 9 W. R. Cr. 58.
(3) (1868) 10 W. R. Cr. 41
(4) (1872) 17 W. R. Cr. 32.
(5) (1894) I. L. R. 19 Bom 362.
(6) (1897) 3 C. W. N. 35.
(7) (1868) 9 W. R. Cr. 25.
(8) (1871) 6 Mad. H. C. xxvii.

accused. A deposition so read over is admissible against the witness on his trial subsequently for giving false evidence.

Kamatchinathan Chetty v. *Emperor* (1) and *Mohendra Nath Misser* v. *Emperor* (2) distinguished.

The omission to administer an oath to an interpreter, under s. 5 (*b*) of the Oaths Act (X of 1873), does not, by reason of s. 13, render the evidence of a witness whose evidence was interpreted by him inadmissible against the latter on his subsequent trial for giving false evidence. The only effect of the omission is to make it incumbent on the prosecution to prove the accuracy of the translation.

Queen v. *Ramsodoy Chuckerbutty* (3) approved.

THE appellant, Rakhal Chandra Laha, was tried before Mr. E. E. Forrester, Sessions Judge of Midnapore, who agreeing with the assessors found him guilty under section 193 of the Penal Code, on the 29th March 1909, and sentenced him to rigorous imprisonment for five years and to a fine of Rs. 3,000, and, in default, to a further term of rigorous imprisonment for one year and nine months.

The story of the prosecution was that the accused was employed as a police spy in Midnapore from May to September 1908, on a salary of Rs. 25 and expenses, for the purpose of obtaining information regarding a widespread conspiracy, which was believed by the authorities to exist, for the murder of officials in Midnapore and elsewhere by bombs and other violent means. He brought reports almost daily which were reduced to writing by one Asadullah, a head constable of police, and after being read over to Moulvi Mazharul Huq, the Deputy Superintendent of Police, were signed by the appellant. In consequence of the information so given by him, the houses of Santosh Chunder Das and Baroda Dutt were searched and two bombs discovered, and proceedings under the Explosive Substances Act (VI of 1908) were ultimately taken against some 27 persons.

The appellant was examined-in-chief on oath as a prosecution witness, but having turned hostile was cross-examined by the Crown, on the 4th and 5th November 1908, during the preliminary inquiry held by Mr. C. H. Reid, Joint Magistrate of

(1) (1904) I. L. R. 28 Mad. 308. (2) (1908) 12 C. W. N. 845.
(3) (1873) 20 W. R. Cr. 19.

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Midnapore, in the case of *Emperor* v. *Santosh Chunder Das and Others*. At the close of his evidence the whole of his deposition was read over and translated to him by Mr. Mahendra Chandra Sen, vakil, in the presence of the Magistrate and a pleader for one of the accused, and he admitted its correctness and did not suggest any alterations. On the 23rd November, Mazharul Huq filed an application for sanction, under section 195 of the Criminal Procedure Code, before Mr. Reid setting forth *verbatim*, in 22 paragraphs, the statements alleged to be false. On the next day Mr. Reid granted sanction without, however, specifying in his order any particular statements. On the 25th instant Mazharul Huq lodged a complaint before the Additional District Magistrate putting in and referring to the application for sanction as containing the false statements alleged. The appellant was, after a preliminary inquiry, committed to the Sessions Court and tried by it on a charge which set forth *verbatim* seven specific instances of perjury divided into three sets of statements, relating (i) to the circumstances under which he became an informer, (ii) to the alleged inducements offered him by Mr. Weston, and (iii) to the manner in which exhibit 56 was prepared.

It appeared that during the inquiry before Mr. Reid in the original case Mr. Jogendra Nath Mukerjee, a vakil, acted as interpreter, with the consent of both sides, but that he interpreted the appellant's evidence without having been sworn. At the Sessions trial Mr. Mukerjee was examined for the prosecution and deposed that he had interpreted the questions put to the appellant and his answers correctly, to the best of his ability, though he admitted that he did not remember all the questions and answers, but only one or two sentences here and there. Mr. Reid was also examined, and proved that the appellant's deposition was correctly recorded by him in accordance with the translation of Mr. Mukerjee.

Babu Narendra Kumar Bose, for the appellant.

The Officiating Advocate-General (*Mr. Gregory*), for the Crown.

JENKINS C.J. AND MOOKERJEE J. The appellant, Rakhal Chandra Laha, has been convicted, under section 193 of the Indian Penal Code, of perjury in a judicial proceeding, and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 3,000, and, in default of payment of the fine, he has been sentenced to undergo rigorous imprisonment for an additional term of one year and nine months.

The case for the prosecution may be briefly stated. Rakhal Chandra was employed as a spy by the police at Midnapore, from May to September 1908, in order to gather information about a conspiracy believed to exist for the murder of officials by the use of explosives and otherwise. It is stated that he generally brought reports from day to day which were taken down by the head constable, Asadullah. The entries were subsequently read over to the Deputy Superintendent of Police, Moulvi Mazharul Huq, and then signed by the informer. It is alleged that on some occasions the reports were written out by the informer himself. The effect of the informations so recorded was to implicate a large number of persons in the alleged conspiracy, and on the basis thereof, proceedings were commenced under the Explosive Substances Act against twenty-seven persons. On the 4th November 1908 Rakhal was examined in the Court of the Joint Magistrate before whom these proceedings were pending. He did not depose in support of the previous statements. On the other hand, he gave a detailed account of the circumstances under which he had been compelled to act as an informer, and described minutely the inducements which, he alleged, had been held out to him by the District Magistrate, Mr. Weston. In his deposition he further stated that exhibit 56, which purports to be the record of the informations given by him to the police, was not written out from day to day, but had been prepared in one sitting and had been signed by him practically under compulsion from the police. On the 23rd November 1908 the Deputy Superintendent of Police applied to the Joint Magistrate for sanction under section 195 of the Criminal Procedure Code to prosecute Rakhal for an

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offence under section 193 of the Indian Penal Code. This application specified the statements in the deposition which were alleged to be false. On the day following, sanction was granted by the Joint Magistrate. Proceedings were then commenced in the Court of the Additional Magistrate, and, on the 9th March 1909, Rakhal was committed to take his trial in the Court of Sessions. On the 29th March the Sessions Judge, in agreement with the two assessors, found Rakhal guilty of an offence under section 193, and sentenced him as already described.

The propriety of this conviction has been challenged substantially on five grounds, namely, *first*, that the sanction, on the basis of which the proceedings were instituted, was bad, inasmuch as the alleged false statements were not specified in the sanction; *secondly*, that the charges were illegal, inasmuch as, although there were nominally three heads, there were in substance at least seven charges; *thirdly*, that the deposition containing the alleged false statements was not legally proved; *fourthly*, that the statements in question had not been proved to be false; and *fifthly*, that a proper opportunity was not afforded to the counsel for the accused either to cross-examine the witnesses or to place his case fully before the Court. It has further been argued by the learned vakil for the appellant that, if the conviction is sustained, the sentence is too severe and should be reduced.

In support of the first ground taken on behalf of the appellant it has been argued that it was obligatory upon the Joint Magistrate, who granted the sanction under section 195, to specify the statements which in his opinion were false. This contention, it is conceded, is not supported by sub-section (4) of section 195, which prescribes that "the sanction referred to in the section may be expressed in general terms and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed." Reliance, however, has been placed upon a number of judicial decisions which, when examined, are found to fall into three classes. In the

first class of cases, of which the case of *Balwant Singh* v. *Umed Singh* (1) may be taken as the type, it was ruled that an application for sanction to prosecute for perjury ought to set out in detail the statements which are alleged to be false. In the second class of cases, of which the decisions in *Queen* v. *Kartick Chunder Holdar* (2), *Queen* v. *Gobind Chunder Ghose* (3), *Queen* v. *Boodhun Ahir* (4), *In re Jivan Ambaidas* (5), and *Goberdhone Chowkidar* v. *Habibullah* (6) may be taken as instances, it was ruled that when sanction is granted to prosecute a person for perjury, the order should set out the precise words which are false in the opinion of the authority granting the sanction. In the third class of cases, of which the case of *Queen* v. *Sunder Mohooree* (7) may be taken as the type, it was ruled that a charge framed for the prosecution of a person for perjury, should set out in detail the alleged false statements. The principle upon which these decisions are based appears to be that section 195 should be used in such a way as to give the person, against whom sanction is asked for, or granted, the means of knowing precisely of what the alleged criminal act consists. It is right, therefore, when sanction is sought or granted, in respect of statements contained in a long deposition, that the particular statements alleged to be false should be specified. Tested from this point of view it may be conceded that the sanction in this particular case was defective. But in answer to this argument it has been contended by the learned Advocate-General that this is not decisive of the validity of the conviction, because, under section 537 of the Criminal Procedure Code, a conviction cannot be set aside on account of a defect of this description in the sanction unless it is established that there has in fact been "a failure of justice." Two of the cases relied upon by the appellant furnish illustrations of the application of this principle: *Queen* v. *Kartick Chunder Holdar* (2) and *Queen* v. *Boodhun Ahir* (4). In the circumstances of the present

(1) (1896) I. L. R. 18 All. 203.
(2) (1868) 9 W. R. Cr. 58.
(3) (1868) 10 W. R. Cr. 41.
(4) (1872) 17 W. R. Cr. 32.
(5) (1894) I. L. R. 19 Bom. 362.
(6) (1897) 3 C. W. N. 35.
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case, then, can it be seriously contended that the accused has been unfairly affected as to his defence on the merits by reason of any defect in the sanction? Clearly the answer must be in the negative. The statements which are alleged to be false were set out in full detail in the application on the basis of which the sanction was granted. They were also specified in the charge which was subsequently framed. There is no reason to suppose, therefore, that the accused had not full opportunity of knowing what were the specific statements made by him which were alleged by the prosecution to be false. The first ground taken on behalf of the appellant cannot, therefore, be supported.

In support of the second ground it has been argued that the charge was multifarious, for, although there were three sets of statements mentioned in the charge, they may be analysed into at least seven distinct statements, each of which is practically alleged to be false. It has, in substance, been argued by the learned vakil for the appellant that the form in which the charge was drawn up was an evasion of the provisions of section 234 of the Criminal Procedure Code, and that a separate charge ought to have been drawn up in respect of every single utterance of the accused which was alleged to be false. In our opinion this contention is clearly unfounded. The view we take is supported by the decision of the Madras High Court, in *H. C. Pro., 1st May 1871* (1). It was there ruled that the making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and that charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition. In that case the person who had given false evidence was sought to be prosecuted and punished separately for two statements made in the course of the same deposition; this was not allowed, and it was held that "tested by the law of evidence, the whole deposition must be looked at and one part qualified by the other." Moreover, there can be no doubt that the three statements which have been

(1) (1871) 6 Mad. H. C. xxvii.

selected from the deposition of the appellant in the present case, and which are alleged to be false, related to incidents closely connected with one another, and that they could not properly be analysed so as to expand the charge into seven distinct charges against the accused. The second ground, therefore, cannot be supported.

In support of the third contention of the appellant it has been argued that, as the provisions of section 360, sub-section (*1*), of the Criminal Procedure Code, were not complied with, when the original deposition was recorded, the deposition cannot be legally received in evidence. Section 360, sub-section (*1*), provides that "as the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected." It is pointed out that at the original trial there were twenty-seven accused persons, that the deposition of Rakhal appears to have been read over to him in the presence of the pleader of one of the accused persons, and that there is no evidence to show that the pleaders for any of the other accused persons were present when the deposition was so read over. On this basis it is contended that section 360 was contravened, and that, therefore, on the authority of the cases of *Kamatchinathan Chetty* v. *Emperor* (1) and *Mohendra Nath Misser* v. *Emperor* (2), the deposition cannot be received in evidence. The cases relied upon, however, are clearly distinguishable. In each of those cases, there was only one accused person, and the deposition of the witness appears to have been read over by the Court-clerk at a place where neither the Judge nor the vakil for the accused was present. In the case before us, so far at least as one of the original accused persons was concerned, the deposition was read over in the presence of his pleader, and was undoubtedly admissible in evidence as against that accused. In our opinion it is immaterial for the purposes of the present prosecution that it is not proved that the deposition was read

(1) (1904) I. L. R. 28 Mad. 308. (2) (1908) 12 C. W. N. 845.

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over to the witness in the presence of the other accused persons as well as of their pleaders. The third ground taken on behalf of the appellant must, therefore, fail.

In support of the fourth ground it has been pointed out that the evidence given by Rakhal was interpreted by a gentleman who was not put on his oath. It appears from the record that the deposition of Rakhal was interpreted by Mr. Jogendra Nath Mukerjee, one of the vakils of this Court, and apparently the provisions of section 5, sub-section (*b*), of the Indian Oaths Act, were not followed. The provisions of section 13 of the Indian Oaths Act, however, furnish a complete answer to the argument of the appellant. That section provides that "no omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth." We were invited by the learned vakil for the appellant to put a narrow construction upon this section, and to hold that the effect of the concluding words of the section is to restrict its application to the case of witnesses only. A plain reading of the section, however, negatives the suggested interpretation. It is clear from the language used by the Legislature that the omission to take any oath, as prescribed by the Act, does not render inadmissible any evidence whatever in respect of which such omission took place, and this omissions to take the oath may happen not only on the part of a witness but also on the part of the interpreter of the question put to and evidence given by the witness. It may be observed that a wider construction than the one suggested on behalf of the appellant was put upon the section, so far back as 1873, by one of the learned Judges who decided the case of *Queen* v. *Ramsodoy Chuckerbutty* (1), when he held that section 13 was applicable in the case of Jurors. In our opinion the only effect of the

(1) (1873) 20 W. R. Cr. 19.

omission of the interpreter to take the oath was to render it necessary for the prosecution to prove that the interpretation was made accurately. This has been done inasmuch as Mr. Mukerjee has been called: he has deposed that he rendered the statements made by Rakhal quite accurately, and in this he is supported by Mr. Reid. It is clear, therefore, that the deposition must be taken to contain an accurate record of the statements actually made by Rakhal Chandra. The question, therefore, arises whether the statements as specified in the charge are false within the meaning of section 193 of the Indian Penal Code. The whole of the evidence on the record has been placed before us and discussed at considerable length, and in our opinion there can be no reasonable doubt that the statements in question are false. As regards the first set of statements, which relate to the circumstances under which Rakhal became an informer, it is clear from the evidence of the Moulvi, as also of Asadullah, that the statements are untrue. It may further be observed that the story that Rakhal now gives is an extremely improbable one. There can be no conceivable reason why of all persons at Midnapore taken to the police, while drunk, he should be selected as the most appropriate one to act as an informer. In respect of the second set of statements, which relate to the inducements said to have been held out by Mr. Weston, we have the evidence of Mr. Weston as also of the Moulvi: and, in our opinion, there is no reason why this testimony should not be accepted. It was faintly suggested on behalf of the appellant that the informer may not have understood Mr. Weston correctly, or that the Moulvi in interpreting to him what Mr. Weston said may have exaggerated, and may thus have led him to believe a great deal more than what Mr. Weston actually said. No foundation, however, for such a case was laid in the Court below, and the contention which has been advanced in this Court is nothing more than a mere suggestion unsupported by the evidence. As regards the third set of statements, regarding the preparation of exhibit 56, the case may not be quite so clear. But we have the evidence of the Moulvi and of Asadullah that, as the

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informer made statements from day to day, they were taken down by Asadullah, read over to the Moulvi, and signed by the informer. Taking the three sets of statements as a whole, therefore, there is no room for reasonable doubt that the evidence given by Rakhal Chandra in the Court of the Joint Magistrate was false in material particulars, and that he is guilty of an offence under section 193 of the Indian Penal Code.

The fifth ground taken on behalf of the appellant is to the effect that sufficient opportunity was not given to the counsel in the Court below to cross-examine the witnesses or to address the Court. This allegation has not been made out, and, in fact, this part of the case was lightly passed over by the learned vakil for the appellant.

It is clear, therefore, that the five grounds upon which the conviction is assailed must fail, and the conviction must be affirmed. There remains only the question of sentence, which no doubt is severe. The learned Sessions Judge sentenced the accused to pay a fine of Rs. 3,000 on the ground that he had committed perjury because he had been bribed. The record, however, does not support this view of the case. No doubt, it is not explained under what circumstances exhibit G, which was prepared by the police to enable Rakhal to refresh his memory while in the witness box, found its way into the hands of the legal advisers of the accused in the original trial. At the same time there is not a tittle of evidence to show that Rakhal has received any bribe. The sentence of fine, therefore, must be set aside. So far as the sentence of imprisonment is concerned, it is in our opinion also unduly severe. At the same time it must be remembered that the offence of which the accused has been proved guilty is a serious one, and in the interests of justice a substantial term of imprisonment is necessary. We, therefore, reduce the term of imprisonment from five years to three years and six months.

The result, therefore, is that the conviction is affirmed, and the appellant is directed to be rigorously imprisoned for three years and six months. The fine, if paid, will be refunded.

E. H. M. *Conviction affirmed.*