

Kashi Ram Vs. Emperor

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Court : Allahabad

Decided On : Mar-27-1930

Reported in : AIR1930All493; 129Ind.Cas.707

Appellant : Kashi Ram

Respondent : Emperor

Judgement :

Dalal, J.

1. Kashi Ram has come here in revision from his conviction by a Magistrate of the First Class for an offence under Section 500, I.P.C. The conviction was upheld by the Sessions Judge. Kashi Ram was a plaintiff in a civil suit where the basis of his claim was that Sheoraj was not the daughter's son of Prithi Singh but was the child of some other woman and Prithi Singh's daughter Mt. Bishan Devi pretended that Sheoraj was her own child. The plaintiff was examined as a witness on 18th March and in his statement he elaborated a long story of inquiries made by Mt. Bishan Devi of a likely boy to be smuggled in as her own and finally, the choice falling on a son of ML Jamna of Amritsar. He stated that three women were approached, one was Bal Mukand's wife another Mt. Jamna of Amritsar and a third Mt. Jaggo's husband's sister. This was in examination-in-chief when his own counsel was examining him. He further elaborated how Mt. Jamna's boy had to be smuggled in. He said that Bal Makund's wife gave birth to a female child which could not be

taken, and Mt. Jaggo's husband's sister had a miscarriage (the word used in the record of the evidence is abortion), so Mt. Jamna's child who happened to be a boy was the one taken advantage of. The defamation alleged against the applicant Kashi Ram is with reference to his statement that Mt. Jaggo's husband's sister had a miscarriage. It turned out that the girl, the daughter of one Ram Karan Das, was only a child of 12 and not married. Kashi Ram was thereupon prosecuted for defaming the girl. In this Court it was argued:

(1) that the statement did not come within the definition of defamation given in Section 499, I.P.C., and (2) that the statement was privileged under Section 132, Evidence Act.

2. It was admitted, as it could not be otherwise after the decision of the Full Bench of this Court in *Emperor v. Ganga Prasad* I.L.R. 29 All. 685, that a witness did not have complete privilege when he made a statement in the witness-box. It was sought to keep the statement out of the definition of defamation on the ground that Kashi Ram himself knew nothing at all about the matter of this woman, that he had received information from one Kishori and that he merely made statements at random without any intention of harming the reputation of any person. I have not examined the record myself, but I was told by Mr. Saila Nath that Kishori denied having given any information to Kashi Ram. The statement, therefore, of Kashi Ram was merely imaginary. A long story was invented by him in order to bolster up his allegation that Sheoraj was not the son of Mt. Bishan Devi. In the definition intending is not the only circumstance of mind of the offender that is included. It is further stated that it will be enough if the offender had knowledge or reasonable belief that such imputation would harm the reputation of any person. To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation because the person who makes the statement would have reasonable belief that such imputation would harm the reputation of the woman in case she was not married. In cross-examination Kashi Ram went to the length of making a reckless statement that he had no knowledge whether Mt. Jaggo's husband's sister was married or not. Obviously what he desired to detail was not an ordinary instance of a miscarriage by a married woman. He was prepared to give out that even if the woman was not married there was certainly a

miscarriage. The statement would come within the definition because Kashi Ram being presumably a man of ordinary sense would know that such an imputation about a woman would harm her reputation.

3. Next we come to the provisions of Section 132, Evidence Act. Two matters are to be kept in mind:

(1) That the matter about which the witness makes a statement is relevant to the matter in issue in any suit; and (2) that the witness was compelled to make the statement which is held to be defamatory.

4. In my opinion the statement is not protected under either ground. The character of Mt. Jaggo's husband's sister was in no way relevant to the question whether Sheoraj was a son or not a son of Mt. Bishan Devi. There was no allegation that Sheoraj was really the son of Mt. Jaggo's husband's sister. This woman was dragged in merely to give verisimilitude to Kashi Ram's false details of an elaborate story. Even if Sheoraj was really the son of Mt. Jamna, there was no necessity for him to drag in two other women as being ready to offer their children to Mt. Bishan Devi. Kashi Ram's statement was a tissue of lies as regards Mt. Jaggo's husband's sister and lies were in no way relevant. In *Haidar Ali v. Abru Mia* [1905] 32 Cal. 756, two learned Judges of the Calcutta High Court dwelt on the relevancy of the matter in determining whether a particular statement was protected under Section 132 or not. The question there was whether one Haidar Ali was in possession of false weights or not, and a witness stated during the trial that Haidar admitted in the panchayat that Kannu beat him with a wooden shoe. The learned Judges pointed out that this statement had no relevancy whatsoever to the possession of false weights and did not make the possession of false weight more or less probable because of the shoe beating. They, therefore, held that the statement was not covered by the provisions of Section 132. In the present case also I have given reasons why I do not consider the statement or even the mention of Mt. Jaggo's husband's sister in the suit as in any way relevant. Secondly, the statement was made in examination-in-chief when there could be no compulsion for Kashi Ram to make any particular statement. His counsel must have examined him on instructions given by him to counsel. Counsel himself presumably did not

invent the story of Mt. Jaggo's husband's sister. There may be cases where questions by one's own counsel may also be taken to be questions to which a witness is compelled to give answers. The present is not such a case. I hold the statement to have been a voluntary statement. Reference was made to the case of Ganga Sahai v. King Emperor [1920] 42 All. 257. That was a case where the Court itself put a question to the witness. The Judge himself asked the witness why he was suing for his money. The witness replied that he did not desire to leave it with the defendant who was a badmash and a thief. In such a case where the Court itself asked a question the presumption would be that the witness was compelled to answer it. Such a presumption would not exist when the client himself had given instructions to his counsel and the counsel put questions in accordance with those instructions. The statement in such a case would be considered to be voluntary.

5. I dismiss this application.

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