

Bhola Nath Vs. Emperor

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Court : Allahabad

Decided On : Jul-12-1928

Reported in : AIR1929All1; 113Ind.Cas.213

Appellant : Bhola Nath

Respondent : Emperor

Judgement :

Mukerji, J.

1. The appellant, Col. Bholanath, has been convicted of the offence of defamation under Section 500, I.P.C. and has been sentenced to pay a fine of Rs. 500. The prosecution was started on two complaints filed by his own daughter-in-law, Mrs. Bishesharnath, in the following circumstances. The complainant was married to one Mr. Thomson, a well-known and wealthy manufacturer of tiles etc. carrying on business at Allahabad and Cawnpore. She came to be introduced to the family of the appellant, while he was stationed at Allahabad, and there, at Allahabad, she met the son of the appellant, Lt. Bishesharnath. According to the complaint filed on 26th June 1927 (the first complaint) the complainant and Bishesharnath grew to be intimate friends. Mr. Thomson removed to Cawnpore permanently and then the complainant and Bishesharnath often met secretly. On the death of Mr. Thomson the parties met openly, and according to the complainant herself the two began to live as husband and wife from December 1924. Bisheshar Nath was posted to

Quetta, and, at his request, the complainant went to live with him there, with her illegitimate baby, of whom Bishesharnath was the father. The baby died in Quetta, and thereafter Bishesharnath was sent to Moradabad for his training, having been transferred to the Political Department. The complainant lived with Bishesharnath there and passed for a friend of Bishesharnath's mother. The Roman Catholic priest at Moradabad to whom the complainant used to pay visits deprecated her living with Bishesharnath without her being married to him. Bishesharnath changed his religion, and adopted the Roman Catholic Christian faith. Then, the two were married, secretly, at Moradabad in August 1926. The fact of the marriage was kept secret, the reason being, according to the complainant this. It was feared that the disclosure of the fact of the marriage would affect adversely the employment of Bishesharnath in the Political Department. It is, however, a fact that according to either a will or a deed executed by the late Mr. Thomson, his widow could enjoy the income of the estate, amounting to Rs. 4000 to 6000 a month, for her life, subject to loss of the income, on remarriage. The marriage was kept secret, and the income from the estate of Mr. Thomson was enjoyed by the complainant. In December 1926 Mr. Stewart, I.C.S., the head of the Training Institution, having come to know that Bishesharnath was living with a European lady, who was reputed not to be his wife, pressed Bishesharnath to disclose the nature of relationship that existed between the two. In spite of further attempts at concealment, the fact of the marriage was disclosed in December 1926. On 14th March 1926, a telegram was received from the Government, by the Training College authorities, directing the reversion of Bishesharnath to the regular Military Department. This seems to have upset him considerably. Frantic efforts were made by him to obtain intercession of friends and high officers.

2. The appellant and his son were not on good terms, yet Bishesharnath and his wife went to Delhi, where Bishesharnath's father was, in order to see him This was on or about 19th March 1927. There, at Delhi, Bishesharnath obtained an interview with the Viceroy, but nothing came out of it. The couple then returned to Moradabad. On 27th March 1927, Col. Bholanath arrived at Moradabad, and stopped at the dak bungalow. The previous day he had wired to Mr. Abu Mohammad, an officer of the Provincial Service who was then in charge of the Training Institution, Mr. Stewart having, in the meantime, left Moradabad, on leave.

Mr. Abu Mohammad brought Col. Bholanath to his own house, and sent for Bishesnarnath. The latter and his wife both came. They had a talk with Mr. Abu Mohammad, and they left. Mr. Abu Mohammad then took the appellant to the house of Mr. Collett, the District Magistrate. Col. Bholanath had some talk with him, and then on his way back to the house of Mr. Abu Mohammad Col. Bholanath saw the Superintendent of Police Mr. Field and then left for Delhi the next day.

3. It is said for the prosecution that during his interview with Mr. Abu Mohammad and Mr. Collett the appellant defamed the complainant by stating that she was of unsound mind and likely to murder her husband, that she was of loose character, 'man-mad' and had a very bad reputation for being immoral at Cawnpore and at Allahabad.

4. It is on these two charges that the prosecution was based. For the prosecution Mr. A.P. Collett and Mr. Abu Mohammad and a few more witnesses were examined, as also the complainant. The appellant made his statement before the Committing Magistrate and the Sessions Judge. He examined two witnesses.

5. The learned Sessions Judge found that the prosecution witnesses failed to give the exact words, which, it is said, defamed the complainant. This, he thought, did not affect the prosecution, adversely, because, he thought, Col. Bholanath

to all intents and purposes, admitted the offences with which he had been charged.

6. Then the learned Judge discussed the statement of the appellant and arrived at the conclusion that Col. Bholanath did make a statement as to the want of sanity of the complainant to the extent of alleging that his son's life was not safe at her hands. Then the Judge expressed his belief that the statement was made 'in good faith' but not within the meaning of the definition of that expression as given in the Indian Penal Code, that he acted on the statement of his son and that he was not justified in doing so, without further inquiry. The Judge accordingly convicted the appellant on the first count.

7. On the second count the learned Judge found that whatever might be the character of the complainant, the imputation after the marriage, could serve nobody's purpose and the information given to Messrs. Collett and Abu Mohammad brought the appellant outside Excep. 9, Section 499, I.P.C.

8. While I am not prepared to lay down, as a universal proposition, that in no case where the actual words used have not been proved, a conviction for defamation, by word of mouth, cannot be maintained, it must be conceded that in majority of cases it should be so. Defamation is defined as follows:

Whoever by-words... makes or publishes any imputation concerning any person intended to harm, or knowing or having reason to believe that some such imputation will harm, the reputation... is said... to defame that person.

9. When the question arises as to whether the words used were intended to harm or had the effect of harming the reputation, the Court must be put in possession not only of the words used, but also of the context in which they were used, in order to find the intention and the effect of the words. If the Court should accept, instead of the words and the context, the 'impression' (of the words used, and of the general conversation) 'left on the minds of the witness', it will be yielding its own duty to witnesses with the result that the accused person will have no benefit of the opinion of the Court itself. The observations of their Lordships of the Privy Council, in the case of *Rainy v. Bravo* [1872] 4 P.C. 287, at p. 295 and subsequent pages are highly relevant to this case. In the case itself, a retrial was ordered on the ground that the principal witness Metzger, attempted to state the words used in the note destroyed (containing the libel), and not merely his impression of the purport.

10. In this particular case, it will be remembered, the conversation between the appellant and the two witnesses took place on 27th March 1927. No record of the conversation was made at the time, nay, no notes were ever made. None of the witnesses say that they made an entry of the substance of the conversation in their diary. The witnesses were examined on 19th July 1927, some 4 months after the conversation. It would, therefore, be difficult for the witnesses to give any coherent and cogent narrative of the interview. Let us compare the evidence

actually given by the two witnesses whose honesty and independence is above suspicion.

11. Mr. Collett's statement, in the examination-in-chief, is very short. The reason evidently is that he did not remember, as he himself says, most of the conversation that passed between him and the appellant. In his examination-in-chief he said:

He (the appellant) said she (the complainant) was not in her senses or words to that effect and spoke of her as a woman of loose character.

12. In cross-examination he said, 'that was the purport of his conversation.' He could not give the sequence of the conversation, what preceded and what followed these statements. After this I may safely say that his evidence affords little assistance to the Court. That Mr. Collett has a poor recollection of what passed in the interview will be clear from the following facts. Col. Bholanath's whole case is that he was anxious for the safety of his son at the hands of his wife, and that was why he sought assistance of the witnesses Messrs. Abu Mohammad and Collett, the authorities at the place, although they were utter strangers to him. While he said that was the object of his visit and while Mr. Abu Mohammad supports him on this point, Mr. Collett has not the slightest recollection, on this important subject. He says,

I cannot say whether he (the appellant) was anxious for his son's safety.

13. According to Mr. Abu Mohammad when the appellant saw, at the witness' request, Mr. Collett, he (the appellant)

repeated almost the same allegations against the complainant and said he was anxious about his son's safety.

14. As to the complainant's moral character, Mr. Collett simply remembers that Col. Bholanath mentioned her as a woman of loose character. He, however, has a definite recollection that Col. Bholanath mentioned that his son had been living with the complainant before their marriage. The complainant, however, charges the appellant with having said something more or less definite and more serious.

15. Coming to Mr. Abu Mohammad, the witness says not a word about the appellant having spoken to him about the mental condition of his daughter-in-law. On the other hand, he says that he does not remember that the appellant ever mentioned that the complainant was insane. As to her moral character Mr. Abu Mohammad certainly gives his own impression of the interview and not the words used, except the word 'man-mad' as having been used by the appellant. The witness does say that he understood Col. Bholanath as having said that the complainant was of a bad character and that her bad character was well known at Cawnpore and at Allahabad. We have to remember that the second complaint, which complained of the attack said to have been made on her character was filed on 28th October 1927 after the complainant had seen Mr. Abu Mohammad at Bijnor. It was on information supplied by the witness himself, several months after the occurrence that the complaint is based. In the circumstances, it would be unsafe to base a conviction on the unaided memory of the witness.

16. I am of opinion that there was ample justification for the Court below for discarding the prosecution evidence and for considering whether there were sufficient materials on the admission of the appellant to justify a conviction.

17. This brings me to a consideration of the law relating to the statement of the accused person, viz., how far it can be used against him.

18. It is established law that when a previous statement of a party is put into the evidence against him, as an admission made by him, you must tender into evidence the whole of it, including the portion which goes in his favour. In order to understand what the person meant, you must consider the whole of that statement. This will not preclude you from finding, on the basis of evidence on the record, how far the statement is correct and how far it is untrue; see Phipson's Manual of Evidence, 3rd edn. p. 79. The same principle will apply where the statement is made in the course of the trial, whether it be a civil or criminal trial. I need hardly point out that the statement under discussion, is not the same thing as a deposition given in the case, by a party, for the purpose of furnishing evidence in it. Such being the general law, let us consider the law as laid down by the Criminal Procedure Code as regards the statement of an accused person.

19. There is no provision, in the Indian law, by which an accused person may give his sworn testimony in support of his case. Indeed, the Section 342, Criminal P.C. prohibits the swearing of an accused person. The purpose and use of the examination of the accused person is laid down in the Criminal Procedure Code and no one has a right to travel outside it. The rule says that the accused person may be questioned, from time to time, by the Court, during the progress of the inquiry or trial for the purpose of enabling him to explain the circumstances appearing in the evidence against him. It further lays down that, for the same purpose, the Court shall examine him after the evidence for the prosecution has been closed. It is clear that the examination of the accused person is not meant to supply any deficiency that there may exist in the prosecution evidence.

20. As to the use of the statement the Section 342 simply says the Court, may take the same into consideration. This is purposely wide. The Court is invited to come to the proper conclusion by taking into consideration not only the evidence adduced for the prosecution and defence (if any) but also the statement of the accused person. If the statement of the accused person satisfactorily explains the prosecution evidence, there can be no conviction. If the statement as also the defence evidence (if any) do not rebut the prosecution evidence, and the Court feels justified in acting on the latter, it will convict. It is clear and follows from what has gone before that, if there be no sufficient evidence for the conviction, or, if from the vagueness of the prosecution evidence, the Court is not prepared to act on it, it should not be open to the Court to supplement the prosecution evidence by selecting, out of the statement of the accused person, passages, which might corroborate the prosecution evidence and to reject those passages, which go to exonerate the accused person. Cases on the principle enunciated above are numerous and the following may be usefully read: *King-Emperor v. Bhutanath Ghosh* [1908] 7 C.W.N. 345 *Abibullah Ravuthan, In re* [1916] 39 Mad. 770 and the cases cited there.

21. If, on the whole of the statement of the accused person, taken together, his guilt is established, and his plea, say, of acting in self-defence or of the case falling within any of the general or special exceptions are not made out on the facts admitted, there cannot be any bar to a conviction, simply because the prosecution

evidence, by itself, would not have secured a conviction. Let us take this example:

22. A is charged with murder. The prosecution evidence is vague and not conclusive. A on being questioned makes the following statement:

The deceased, two days before the murder, insulted me, in open market, by abusing me and by beating me with a shoe. On the day of occurrence, I found him returning to his house alone and I struck him with a lathi, he fell from the high ground on which he stood and thereby broke his head.

23. The medical evidence, let us suppose, points to only one lathi blow on the back of the deceased and is consistent with the accused's statement. Can the accused person be convicted of murder? Let us assume, there is no eye-witness worthy of belief and the Court is bound to disbelieve the witnesses. I suppose it would be impossible to convict A of murder. But A may surely be held guilty of causing simple hurt, on his own statement. He has nothing to complain of, if his whole statement be accepted and he is convicted on it. He need not have made a statement, but having made one, he may be held guilty, on it.

24. In this view of the law, I proceed to examine the statement of the appellant.

25. The appellant was examined by the Committing Magistrate on 22nd December 1927. He was again examined before the Court of Session. On 22nd December 1927, the appellant stated that he never described the complainant as a woman of unsound or unbalanced mind, that he did say that his son's life was in danger at her hands, and that he criticized the moral character of the complainant adversely, but only in so far as it affected him and his family. He denied that he used the words man-mad.

26. So far as the complaint is that the appellant stated that the complainant was insane, fit for a lunatic asylum, we have already shown that the exact words used are not known. Mr. Collett. gives only his impression, and Mr. Abu Mohammad does not remember anything like that as having been mentioned before him. The appellant denies that he ever made any such statement. In the circumstances there can be no conviction for defamation on the ground that the appellant called

the complainant as a woman of unsound mind, etc.

27. The second imputation, which is really connected with the earlier charge of having called the complainant of unsound mind, is that the life of her husband was not safe in the hands of the complainant, and that she was likely to murder her husband. For this, there is ample reason to suppose that the appellant believed in good faith that such was the case. In bringing this matter before the two witnesses Messrs. Abu Mohammad and Collett the appellant acted in the protection of his son's interest, and therefore did not commit the offence of defamation.

28. The complainant would make us believe that before the telegram arrived on 14th March 1927, reverting her husband to the military career and before she and her husband went to Delhi on 19th or 20th March she and her husband were on the best of terms. This is not true. Her suggestion that it was the parents of her husband, who alienated her husband's affection from her, is not true. Bisheshar Nath has not given his evidence, and we cannot expect others to know much about the domestic affairs of the complainant and her husband. Still there is ample material on the record to establish that the complainant's story about her and her husband's living a peaceful and happy life is not true. The complainant and her husband returned from Delhi on 20th March or thereabout, and the latter left the former, finally, on 12th April. According to the complainant the trouble arose between the two dates, and the final separation came on 12th April. Let us see if it is so. According to the appellant, when his son visited Delhi on or about 20th March 1927, Bisheshar Nath told him that he and his wife had been living a 'cat and dog life.' This statement receives support from several sources. The complainant herself says:

My husband's behaviour between January and March 1927 almost killed me.

29. If this was so, it is not right and true that Bishesharnath and his wife were living happily till their visit to Delhi on 19th March or 20th March 1927. Mr. Collett says that at one time he gave advice to the complainant to go to Cawnpore and she did go. From Cawnpore she brought a nurse or an old servant, and Mr. Collett told Bishesharnath that as there was then a third party, it would be easier for them to live together. According to the complainant he did not go to Cawnpore, after 20th

March 1927, till 13th April, the day after her husband had left her. Thereafter, she and her husband did not live together. It follows, the incident, Mr. Collett speaks of, must have taken place before 19th March. Further, Mr. Collett tells us that before Col. Bholanath saw him, Mr. Beatty, the District Judge, came to him and told him that there was a row at the house of the complainant, and Mr. Collett understood, from what Mr. Beatty told him, that the row was because either the complainant was going to commit suicide or was going to murder her husband. Again, Mr. Collett says, he wrote one or two letters to Mr. Shakespeare (said to be a son-in-law of the complainant) about the affairs of the complainant and her husband, and Mr. Shakespeare wrote back that the officials at Moradabad were interfering too much in the matter. This would go to show that the trouble between the complainant and her husband was of a longer standing than the former would make out. Lastly, Col. Bholanath says that his son told him that the complainant had once borrowed a razor from a barber. The complainant admits that she did borrow one, but she says that she did so later, in April 1927. If so, how could the appellant come to know of the episode of the razor from his son on or about 19th March? There cannot be any manner of doubt that about 19th March 1927 the couple were living a very unhappy life and Bishesharnath did tell his father that he apprehended danger to his life.

30. The learned Sessions Judge thinks that Col. Bholanath should not have believed Bishesharnath for he was an undutiful son. Bishesharnath fell into the bad graces of his father owing to his intimacy with the complainant, and, if it was against her that he was then complaining, there would be every reason for Col. Bholanath to accept his son's story as true. We have already shown that Bishesharnath's story about the unhappy life was, as a matter of fact, true. Thereafter, the appellant learnt from his bearer that while at Delhi, the complainant has tried to purchase a revolver?. This fact is now admitted and the explanation of the complainant that the husband wanted the revolver is untrustworthy. Col. Bholanath says that his wife was entirely upset, and this fact is amply proved by the incident that Col. Bholanath made an inquiry and found that the story of the attempt at purchase of a revolver was true. He made a report to the police-station. The report is on the record and is Ex. F. It was made on 22nd March 1927. In it, Col. Bholanath stated that the complainant, on account of her bad temper, had

several times threatened to kill his son. The man who took down the report states, in cross-examination, that the appellant was at the time of making the report much disturbed'. Thereafter Col. Bholanath saw Mr. Stewart, who was then at Delhi, on his way home. Mr. Stewart told him that he did not see his son when leaving Moradabad. He (Mr. Stewart) then wired to Moradabad inquiring if Bishesharnath was there. No reply having been received from Moradabad, Col. Bholanath wired to Mr. Abu Mohammad that he was leaving for Moradabad. All this is ample evidence of honest behaviour and good faith on the part of Col. Bholanath. No further inquiry was needed; see *Abdul Hakim v. Tej Chander* [1881] 3 A11. 815.

31. Col. Bholanath's anxiety was only to take away his son from his wife and to place him out of danger. If this was so he was bound to tell Mr. Abu Mohammad, the head of the institution in which the son was being trained and to tell the District Magistrate all his fears and to seek his and Mr. Abu Mohammad's aid. At about the end of his cross-examination, Mr. Collett realized and admitted that the visit of the appellant to him could have been only as a District Magistrate, and not as a mere third party. Col. Bholanath's visit to the Superintendent of Police points to the same conclusion. The imputation complained of, in the circumstances, namely the life of Bishesharnath was not safe in the hands of his wife, was amply protected by Excep. 9, to Section 499, I.P.C.

32. Next comes, what is, virtually, the second charge. The complaint is that the appellant told the witnesses Messrs. Collett and Abu Mohammad that the complainant was of loose character, 'man-mad' and had very bad reputation for being immoral at Cawnpore and at Allahabad. Col. Bholanath states:

I criticized the complainant's character so far as such character affected me adversely as a father-in-law. What I said was that we were Rajputs, whose chief pride was that we never mixed our blood. That I belonged to the old school and that I did not approve of mixed marriages, that the complainant was older than my son, that she had been married twice before and had two lots of children, the eldest of whom was that older than my boy, that she had lived in adultery with my son during the lifetime of her second husband, the late Mr. Thomson and in open immorality at Allahabad, Cawnpore and Quetta with my son. That a woman of that

character cannot be tolerated in a Rajput and Hindu family as a daughter-in-law. I made these remarks as this affected me adversely as a father-in-law, and as far as it affected my son and my family generally.

33. This statement there can be no doubt, is a clear and honest statement of what was actually said by the appellant to the witnesses Messrs. Abu Mohammad and Collett. This speaks before the Court a good deal more than the witnesses could possibly do from their memory. Undoubtedly, the statement made by Col. Bholanath to the witnesses was a defamatory statement and came within the purview of Section 499, I.P.C.

34. If the case came within any of the Exceptions of the Section 499, I.P.C., it would be for the appellant to show that it did come. No doubt if the evidence for the prosecution afforded any assistance to the appellant, in proving that he came within one of the exceptions to Section 499, he was welcome to take advantage of any such evidence. There is, however, not much to be found in the prosecution evidence which can be of assistance to the appellant.

35. It was argued on behalf of the appellant by Pandit Moti Lal Nehru that the statement came within the Exception. 9 to Section 499, I.P.C., and he asked us to read the exception as bearing the following meaning. An imputation which would be otherwise defamatory would not be defamation if it was made in good faith, and the person making the imputation believed that he was making it for the protection of his own interest or the interest of any other person. He referred to Section 79, I.P.C., as supporting his argument. I have considered the point carefully, and I am of opinion that the contention is not sound.

36. The expression 'good faith' is defined in Section 52, I.P.C., as follows:

Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

37. It will be noticed that the expression 'good faith' can be used both in connexion with something done' and in connexion with something 'believed.' For example in Section 300, Excep. 3, the expression 'good faith' has been used in connexion

with a belief. The expression is found in Excep. 9, in connexion with an act'. Further, the expression good faith' has been used only once. I can, therefore, read the Excep. 9, as meaning only this, that a man who makes an imputation in good faith and makes that imputation for the protection of the interest of himself or any other person is outside the operation of Section 499, I.P.C. There is no justification, in my opinion, for reading the Exception as meaning that if the person making the imputation believes in good faith that he has been acting for the protection of the interest of himself or any other person, he is not liable. It will be a question of law, and not of fact for decision, in a particular case, by the Court, whether the man making the imputation in good faith was or was not acting for the protection of the interest of himself or any other person. This view in no way militates against the view taken in the case in *Abdul Hakim v. Tej Chancier* [1881] 3 A11. 815, cited above.

38. That being my reading of the law, the question is whether Col. Bholanath had any interest of himself or of his son to protect, in making the imputation against the complainant. It will be noticed that Col. Bholanath himself gives no explanation as to the circumstances in which he made the imputation, quoted at length above. In the statement of Mr. Abu Mohammad, we have got a single sentence, which might or might not furnish us with a clue as to what led Col. Bholanath to make the imputation. Mr Abu. Mohammad says:

It was to justify this refusal that he attacked her character.

39. The refusal referred to, was as to Mrs. Bishesharnath being received by the appellant as his daughter-in-law. It may be that there was some suggestion on behalf of the witnesses Messrs. Collett and Abu Mohommad or of one of them that the appellant should accept the complainant as his daughter-in-law, the marriage being a hard fact. Or it may be that Col. Bholanath, in stating how he was afraid of the complainant's possible violence towards her husband, could not restrain himself and came out with a story as to the complainant's past life. If we take the most charitably view of the appellant's case (as to which, however, there is no evidence) the appellant gave out the past history or supposed past history of the complainant's life to satisfy what must be taken as idle curiosities of the witnesses,

Messrs. Collett and Abu Mohammad. It was enough to tell those gentlemen that the appellant's son's life was in danger at the complainant's hand. The alleged past history of the complainant's life could not, in any way, justify a conclusion that she was of a violent temperament, and it was unsafe for Bishesharnath to live with her. As it turns out, the imputation made by the appellant served nobody's purpose, and the appellant is not entitled to come within Excep. 9, Section 499, Penal Code.

40. The result of my deliberations, therefore, is that while the first charge cannot be sustained, the second charge cannot be refuted.

41. Like the learned Session Judge, who tried the case, I have every sympathy for Col. Bholanath, in his distress, but I have to administer the law, and he has, certainly, been found having done something which the law did not permit him to do.

42. For the appellant, his counsel has not urged anything about the sentence. The reason is perfectly clear. The appellant cares little for the amount of fine inflicted on him. What he cares for is a conviction. Having regard, however, to the circumstances of the case, and to the fact, that on one of the two counts the appellant has been acquitted, I think it right and proper, though unasked, to reduce the sentence to the sum of Rs. 250.

King, J.

43. I concur in the proposed, order, which is the outcome of our previous consultations, but consider it desirable to state my reasons independently.

44. The accused is charged with having made certain defamatory statements to Mr. Collett, the District Magistrate and to Khan Bahadur Syed Abu Mohammad, Deputy Collector, on 27th March 1927. It is convenient to split up the charge into two separate parts or charges.

45. The first charge is that the accused stated that the complainant was of unsound mind and likely to murder her husband. If the accused spoke of the

complainant as a lunatic with homicidal tendencies, his remarks were obviously highly defamatory.

46. There is no evidence that the accused described the complainant as positively insane in the sense of being a fit subject for detention in a lunatic asylum. The accused never suggested that any action should be taken against her under the Indian Lunacy Act. Mr. Collett deposes briefly, without any amplification or explanatory details, that the accused stated that the lady was 'not in her senses.' The accused admits making this statement and explains that in referring to the lady's eccentric conduct in jumping into a river, and trying to buy a revolver, and so forth, he stated that this was not the conduct of a woman in her senses. I am prepared to accept this explanation, as Syed Abu Mohammad who was present at the interview, deposes that he has no recollection of any allegation of insanity against the lady. Evidently the accused made no imputation of insanity in sufficiently definite terms to justify a conviction for defamation on that ground alone. He did, however, mention that the lady had on certain occasions behaved like a person out of her senses, so much so that he feared that his son's life was in danger at her hands.

47. I may here remark that in my opinion it is unnecessary to prove the exact words used by the accused for the purpose of supporting a conviction for oral defamation. It is sufficient to prove the purport or substance of the defamatory imputations. No honest witness would profess to remember the exact words used by a person who has been speaking for even 15 minutes. At the most he may remember some striking phrase or expression. But a witness' failure to recall the exact words used, or the exact context in which they were spoken, is immaterial, provided that he can give a sufficiently clear account of the purport of the defamatory remarks. Although the learned Counsel for the appellant argued that no conviction could be sustained unless the exact words were proved, he was unable to quote any authority for his proposition, and I am not prepared to accept it. English rulings on the English law of libel seem beside the point when the task before us is to apply the provisions of Section 499, I.P.C., to a case of alleged defamation by spoken words.

48. The next question is whether the accused represented that the lady was likely to murder her husband. According to Syed Abu Mohemmad the accused stated that he was anxious about his son's safety, and that the complainant was 'a dangerous woman,' and it was a source of great anxiety to his parents that Bisheshar Nath should continue to live with her. The accused represented the dangerous position his son was in, and requested Mr. Collett's help as District Magistrate. Mr. Collett does not remember whether the accused said that the complainant was likely to commit murder or suicide or whether the accused was anxious about his son's safety, but says that the accused came to see him in his capacity as District Magistrate. In view of the explanations given by the accused it is clear that Mr. Collett's memory is at fault, and that Syed Abu Mohammad is right in stating that the accused represented that the complainant was a dangerous woman and that he was anxious for his son's safety if he continued to live with the complainant. The accused frankly admits:

I did say to Mr. Collect that my son's life was in danger at the complaint's hands. The reason I went to Mr. Collect was that I feared for my son's safety, and I must have made some statement of that kind though I do not remember the exact words.

49. The accused explains that he had good reason to fear for his son's safety. His son saw him at Delhi on 20th March 1927, and stated that he and the complainant had been leading a cat and dog life' for some time, and he was always in fear of some sort of violence at her hands. He mentioned that the lady had tried to throw herself into a river at Moradabad. He also mentioned that she had roused his suspicions by getting possession of a razor. After hearing all this, the accused got information that the complainant had tried to buy a revolver from Manton's at Delhi. He verified this fact by personal inquiry at Manton's establishment. Then for the first time he became seriously alarmed. He made a report at the police station on 22nd March that the complainant had several times threatened to kill his son, and that she had tried to buy a revolver from Manton's. His son and the complainant had meanwhile returned to Moradabad, but the accused failed to get any news of his son for several days. Even a reply paid telegram failed to bring an answer. The accused and his wife were by this time in a state of frantic anxiety about their son's

safety, and on 26th March the accused went to Moradabad, and on the following day he poured forth his worries and apprehensions firstly to the Khan Bahadur and then to Mr. Collett, the District Magistrate.

50. I believe this explanation to be substantially correct. Bisheshar Nath made similar statements about his wife's eccentric and suspicious behaviour, and about his fears for his own safety, both to Mr. Collett and to the Khan Bahadur. It is certain that the accused was genuinely anxious for his son's safety and that was the reason why he approached the District Magistrate. The learned Sessions Judge also accepts this view but holds that the accused did not make the imputations against the complainant in good faith' (in the technical sense of those words), because he should not have acted upon information given by his son without verification.

51. I think this is putting an unreasonably strict interpretation upon the requirements of 'good faith.' Bishesharnath had no doubt tried to conceal his immoral connexion and subsequent marriage with the complainant from his father. He is no George Washington but after all he is a commissioned officer, and I do not understand why his father should be expected to disbelieve every word he says. Evidently he had convinced his father that his life was in some danger. But it was the complainant's attempted purchase of the revolver that brought things to a climax. The accused verified this fact for himself and took it as a striking confirmation of his darkest suspicions. In all the circumstances was his belief unreasonable? I am not at all satisfied with the complainant's explanation of the revolver incident. When an officer wants a service revolver he would not usually ask his wife, who is utterly ignorant of fire-arms, to write and order it. Without Bishesharnath's evidence this point cannot be cleared up, but I am doubtful whether the complainant did not try to get a revolver on her own account. The complainant is shown to be liable to outbursts of hysterical excitement. Mr. Beatty speaks of seeing her in a state of great excitement and talking incoherently, and the Khan Bahadur describes her as not of unsound mind but excitable.' She had a miscarriage in March 1927 which may have affected her mental condition at about that time. The morbid sentimentality which she displayed with regard to this miscarriage suggests a temporary loss of mental balance. If a woman in that state

of mind, tries to get possession of a revolver one might reasonably fear that she is contemplating some desperate act of violence.

52. The mere fact that the accused interviewed the head of the training school, and the District Magistrate, and the Superintendent of Police at Moradabad raises an inference of his sincerity and his genuine fear for his son's safety. He undoubtedly made the imputation, which we are now considering, for the protection of his interests and his son's interests.

53. If one puts a very strict construction upon 'good faith,' one might well hold that Father Jucundus and Mr. Beatty were also guilty of defamation. Father Jucundus had been present at some quarrel between Bisheshar Nath and his wife and was so frightened that he rushed to implore Mr. Beatty's help, representing that Bisheshar Nath's murder at his wife's hands was imminent. Mr. Beatty went and told Mr. Collett as District Magistrate that the complainant was reported to be likely to murder her husband. No one doubts that Father Jucundus and Mr. Beatty acted honestly and for the sole purpose of averting an anticipated murder. But did they act 'with due care and attention?' Did not Father Jucundus at least act somewhat precipitately? One must not exact a standard of caution and attention higher than could be reasonably expected of an average person placed in the same situation.

54. Having regard to all the facts of this case I hold that the accused did state that the complainant was likely to murder her husband, or words to that effect, but the accused is entitled to the protection of Excep. 9, Section 499.

55. Lastly we have to consider the second charge, namely the imputation that the complainant was of loose character, man-mad' and had a very bad reputation for being immoral at Cawnpore and Allahabad.

56. Mr. Collett 'says the accused spoke of the lady as a woman of loose character and mentioned that his son had been living with her before their marriage. The Khan Bahadur deposes that the accused spoke of her as a woman of a very bad character and stated that she was well known for her bad reputation in Cawnpore and Allahabad. The accused certainly called her 'man-mad'. I take this expression as a popular rendering of the technical term nymphomaniac.

57. The accused admits stating that the lady had lived in adultery with his son during the lifetime of her second husband and in open immorality with him at Allahabad, Cawnpore and Quetta. He does not admit that he called her 'man-mad' or that he charged her with immoral conduct with other men.

58. I have no hesitation in accepting the Khan Bahadur's evidence that the accused used the expression 'man-mad'. It is a very unusual expression, and that is probably the reason why the witness remembered it.

59. The charge is, therefore, proved and partly admitted. There is no clear proof that the accused spoke of the complainant's misconduct with men other than Bisheshar Nath. So we must take it that he referred only to her ante-nuptial misconduct with his son although the expression 'man-mad' would seem to have a wider significance, and the defence made an ill-advised attempt to prove the complainant's misconduct with other men.

60. The complainant denies adultery with Bishesharnath during Mr. Thomson's lifetime, although they were admittedly intimate friends and she admittedly behaved in a manner likely to rouse suspicion. Soon after Mr. Thomson's death in 1924, the couple admittedly lived as husband and wife, and she bore at least one illegitimate child to him although they were not married until August 1926 when the complainant behaved in this way. I do not think she had much cause for complaint if her father-in-law told the District Magistrate the truth about her i.e. that she was guilty of antenuptial misconduct with her husband. Although the statement is defamatory, its publication would at the most, amount only to a very petty offence. The expression 'man-mad' however, is highly defamatory, and this greatly aggravates the offence.

61. I agree with my learned brother that the accused cannot claim the benefit of Excep. 9, with reference to this charge. The accused, when speaking to the District Magistrate, had no justification for charging the complainant with sexual immorality. The District Magistrate could only take action for the purpose of averting an apprehended murder or suicide. For that purpose he might use his influence to effect a temporary separation between husband and wife. From the District Magistrate's point of view it was quite irrelevant whether the complainant

was sexually moral or immoral. The imputation of immorality cannot be held to have been made for the protection of any one's interest. The conviction on the second charge must, therefore, be upheld. I agree that a fine of Rs. 250 will meet the case.

62. Although my learned brother and I have arrived at the same conclusion, we have done so on somewhat different grounds, and for that reason I have thought it necessary to write a separate judgment.

63. He holds that

there was ample justification for the Court below for discarding the prosecution evidence and for considering whether there were sufficient materials on the admission of the appellant to justify a conviction.

64. I must respectfully dissent from this view since in my opinion the prosecution evidence established a prima facie case on both charges.

65. If the prosecution evidence is to be discarded, as not making out even a prima facie case, then I am doubtful whether the appellant could be rightly convicted merely on his own admissions, as my learned brother seems to have done. He laid emphasis on the well-known statutory provision that an accused person should only be questioned for the purpose of enabling him to explain any circumstances appearing in the evidence against him. But if the prosecution evidence is discarded as worthless, then there was no justification for questioning him at all. There was nothing calling for an explanation. I quite agree that

the examination of an accused person is not meant to supply any deficiency that may exist in the prosecution evidence.

66. Bearing this in mind, I have not been able to follow the line of reasoning adopted by my learned brother in finding both charges proved, merely on the strength of admissions elicited by questions which, *ex hypothesi*, should never have been put to the accused. The ruling in *Abibullah Ravuthan, In re* [1916] 39 Mad. 770, which he has cited seems to be an authority for holding that a conviction based on such grounds would not be justified. Nevertheless he agrees

in acquitting on the first charge, not because the defamatory statements are not proved, but because they are covered by Excep. 9. He agrees in convicting on the second charge because the defamatory statements are proved and are not covered by Excep. 9. I may remark that I accept his interpretation of that exception.

67. The appellant's case was argued before us for about two days by a most able and eminent counsel, yet he made no suggestion that any questions had been improperly put to the accused on the ground that there was no prima facie case for him to answer. In my opinion there would have been no justification for making such a suggestion.

68. Regarding the use which is to be made of the statement of an accused person in Court, I think it is difficult to make any useful general observations. Due consideration must of course be given to every part of the statement, but the Court must exercise its judgment and common sense in accepting or rejecting any part of the statement as true or untrue.