

Kallu Vs. Sital

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Court : Allahabad

Decided On : Jan-05-1917

Reported in : AIR1918All260; 43Ind.Cas.823

Judge : Piggott, J.

Appellant : Kallu

Respondent : Sital

Judgement :

Piggott, J.

1. The circumstances out of which this application for revision arises are as follows. One Sarju made a report to the Police in which he alleged that Sital, who is the respondent to the present application, had committed theft. Upon investigation this report was found to be false and a prosecution was instituted against Sarju under Section 182 of the Indian Penal Code for having given false information to a public servant. Sital appeared as a witness for the prosecution in this case. He began by deposing that he had not committed the theft of which Sarju had accused him. The next question put to him must have been, 'why then did Sarju make this false report against you?' He replied that Sarju bore him enmity and went on to explain the grounds of that enmity. He said, first, that there had been a quarrel between them about a partition wall between their courtyards. Apparently he felt it necessary to explain further, though it is impossible to say

whether or not this explanation was added in reply to a direct question. He said that there had been for some time an intrigue between himself and an aunt of Sarju named Musammat Chhotki. It appears that this Chhotki is a married woman, and the result of the statement made by Sital in Court was to bring social discredit on Kallu, the husband of the said Chhotki. It is in evidence that proceedings were taken by a panchayat of the brotherhood to which Kallu and Sital both belonged. It is quite clear, therefore, and is not denied that Sital's statement with regard to his intrigue with Musammat Chhotki was defamatory of Kallu within the meaning of Section 499 of the Indian Penal Code. It is also quite impossible to hold that at the time when he made this statement Sital had no reason to believe that this imputation would be harmful to the reputation of Kallu. It may be that before this matter can be completely disposed of, the trial Court will have to direct its mind to the question whether Sital made this statement intending to harm Kallu's reputation or whether the harm thus resulting to Kallu's reputation was present to his mind when he made the statement so that he could be said to have made the same 'knowing that it was likely' to do harm. These considerations would be relevant on the question of sentence. But at the very lowest it cannot be denied that Sital had reason to believe that the imputation would do harm. If Kallu had believed the assertion made by Sital as to the unchastity of Musammat Chhotki to be true, he could have prosecuted him on his own admission for having committed an offence punishable under Section 497 of the Indian Penal Code. Apparently Kallu believes that imputation to be false, in fact he has accordingly instituted a prosecution against Sital for the offence of defamation punishable under Section 499 of the Indian Penal Code. The Magistrate who tried the case seems to have thought that he had only to consider whether the imputation made by Sital against the chastity of Kallu's wife had been made maliciously and, as he says, 'merely with a view to disgrace Kallu,' or whether it was made as a necessary part of the narrative which Sital had to lay before the Court in the course of his deposition. Holding it not to be proved that the imputation had been made 'with intent to cause disgrace,' the Magistrate passed an order of discharge. Kallu brought the matter before the Sessions Judge, asking that Court to set aside the order of discharge and to direct further enquiry. The learned Sessions Judge has disposed of the matter in an elaborate order, in which he has discussed the previous decisions of

this Court bearing on the questions of law involved. The conclusion which he comes to is that, if a witness makes a statement in the course of a deposition in Court, and the statement is one relevant to the matter in hand, the Court will presume the said statement to have been made 'in good faith for the protection of the interests of the person making it,' within the meaning of Exception 9 to Section 499 of the Indian Penal Code.

2. I do not myself think that this is a sound proposition of law and I am quite certain that it is not to be reconciled with the decision of the majority of a Full Bench of this Court in the case of *Emperor v. Ganga Prosad* 29 A. 685 : A.W.N. (1907) 235 : 4 A.L.J. 605 : 6 Cr. L.J. 97. I do not altogether agree with the learned Sessions Judge when he says that the ninth exception to Section 499 of the Indian Penal Code is the only one to which a witness could apply for protection in respect of a defamatory statement made by him under the sanction of the oath in the course of a judicial proceeding. The ninth exception is intended primarily to apply to statements which the accused cannot prove to have been true in fact, or which are mere expressions of opinion, or otherwise of such a nature that the question whether they are or are not true in fact does not arise. Ordinarily, the first exception would apply to statements made by witnesses in the course of judicial proceedings, provided those statements are true. They must be true in fact, in order to come under the first exception at all, and if they are true in fact, and also relevant to the matter under investigation, it is obviously for the public good that they should be made. In the present case these considerations are not of great importance, because as the learned Sessions Judge himself rightly points out, Sital's allegation against the chastity of Musammat Chhotki could not have been made in good faith unless it was in fact true. If there were no other provision of the law to be considered except Section 499 of the Indian Penal Code, the position of a witness in respect of offences under that section would be a difficult one. He would be liable to prosecution with regard to any statement made by him of a defamatory nature and on such prosecution being instituted, the provisions of Section 105 of the Indian Evidence Act would throw upon him the burden of proving that the statements were in fact true. The Legislature, however, seems to me to have fully realised this difficulty and to have made adequate provision for the game by means of Section 132 of the Indian Evidence Act. To my mind the

real question in this case is one of the interpretation of that section and its application to the facts of this case. A witness giving evidence in a judicial proceeding is under an obligation by law to state nothing which is not true and, by reason of the oath or Solemn affirmation taken by him in the presence of the Court, to state, not merely the truth, but the whole truth touching the matter in question before the Court. Now under Section 132 of the Indian Evidence Act no answer which a witness is compelled to give when giving evidence as to any matter relevant to the matter in issue in any suit, or in any Civil or Criminal proceeding, can subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except on a prosecution for giving false evidence by such answer. A witness who has made a statement in the course of his deposition defamatory of another person, if he can claim the protection of this section, is absolutely safe so long as he has told the truth. If he has said what is not true, he can be prosecuted for giving false evidence and even as regards the institution of such prosecution he is under the protection of the Court before which his evidence was given. He cannot be prosecuted without the sanction of that Court. Now, if it could be argued that the defamatory statement in this case was one which Sital 'was compelled' to make, within the meaning of Section 132 of the Indian Evidence Act the present prosecution would necessarily fail, and the order of discharge passed by the Magistrate would be perfectly correct. The question of the meaning of the words no such answer which a witness is compelled to give in the latter part of the aforesaid Section 132 was considered by a Full Bench of the Madras High Court in *Queen v. Gopal Doss* 3 M 271 : 1 Weir 782 : 1 Ind. Dec. (N.S.) 741 and also by the Chief Justice of this Court in the case of *Queen Empress v. Moss* 16 A. 88 : A.W.N. (1894) : 23 : 8 Ind. Dec. (N.S.) 58. In both these cases it was laid down that the protection afforded by Section 132 of the Indian Evidence Act must be claimed by the witness before he makes the statement in respect of which a question is subsequently raised. Obviously no form of words can be prescribed in which this claim is to be made, and I conceive that cases may arise in which the Courts will be compelled to hold that the claim has been made by implication, or that the witness was placed under practical compulsion to answer certain questions by the mere fact of his appearance in the witness box. Whether this be so or not, I think the principle laid down in these rulings fully applies to the facts of

the present case. After Sital had stated that the charge brought against him by Sarju was false and made because of antecedent enmity existing between them, and that this enmity resulted from a quarrel about the partition wall, he should either have contented himself with that statement or have claimed protection of the Court. It is not obvious on the face of the record as it stands that Sital was under any real necessity to go further. It has been brought to my notice that Kallu was one of the witnesses summoned for the defence in the case in which Sarju was on his trial, and it is open to argument whether Sital's conduct in alleging the existence of an intrigue between himself and Musammat Chhotki may not have been in part at any rate intended to discount beforehand the value of any evidence which Kallu might give in Sarju's defence. If he really felt that the Court could not otherwise properly appreciate the nature of the grudge borne him by Sarju and the strength of the motives which impelled Sarju to make a false report to his disadvantage, he ought to have claimed the protection of the Court. The statement which he proceeded to make was one against the character of a woman. It was seriously injurious to that woman's husband, who was not a party to the proceedings then before the Court, and one cannot help remarking that it was a statement which a man with any sentiment of honour would have been very reluctant to make. Assuming in Sital's favour that this particular defamatory statement was extracted from him by some further question, I cannot avoid the feeling that it is a statement which he should naturally have shrunk from making. It would have been easy for him to reply that the quarrel about the partition wall was connected with another matter in respect of which he could not lay the entire facts before the Court without making a statement which would criminate him or expose him to prosecution or other penalty. It seems to me at least possible that, if he had said this, the Court would not have compelled him to answer the question, unless such answer had been pressed for by Sarju himself in the exercise of his rights as an accused person and, of course, if Sarju had chosen to press the question, the responsibility for the answer would have rested largely upon him and the witness would have been completely protected by the provisions of the Statute Law. In my opinion, the order of discharge in this case cannot be supported on legal grounds, nor am I prepared to allow that the ease is one in which the technicalities of the law should be regarded as bearing hardly upon the accused person.

3. I set aside the order of discharge in this case and send the case back, through the Sessions Judge, to the trial Court, directing the Magistrate to proceed with the trial of the case and to dispose of it in the light of the principles which I have taken it upon me to lay down. In reply to a suggestion made to me on behalf of the applicant that the case is one which might be more efficiently tried by a Magistrate with a knowledge of the English language, I think it sufficient to say that while it seems to me right and proper that the case should be sent back to the Magistrate who passed the order of discharge, my order is not to be interpreted as precluding the District Magistrate from exercising his power of transferring the case, if he should see adequate reason to do so.

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