

In Re: Narapa Reddi Sesha Reddi

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Court : Chennai

Decided On : Dec-17-1937

Reported in : (1938)1MLJ876

Appellant : In Re: Narapa Reddi Sesha Reddi

Judgement :

Venkataramana Rao, J.

1. The appellant Narapa Reddi Sesha Reddi was charged before the learned Sessions Judge of Cuddapah with having committed offences under Sections 218 and 219, Indian Penal Code, for framing an incorrect record, or writing with intent to cause loss or injury to one Chemarti Venkatasubbayya, P.W. 3, in the case, and for pronouncing a verdict which he knew to be contrary to law, and for offences under Sections 466 and 474, Indian Penal Code, for forgery of a record of a Court of Justice and using a document as genuine knowing it to be not genuine. During the course of the trial the learned Public Prosecutor in the Court below did not press the charges under Sections 466 and 474, Indian Penal Code, and the accused was acquitted in respect of those charges. The learned Sessions Judge, on a discussion of the entire evidence in the case, came to the conclusion that the accused was guilty of the offences under Sections 218 and 219, Indian Penal Code, and sentenced him to one year's rigorous imprisonment in respect of each of the charges, the sentences to run concurrently. He differed from the opinion of the assessors who thought that the accused was not guilty of any of the said

offences.

2. The accused is the Village Munsif of Mannur and as such a Judge of the Village Court of that village. The charge against him is that on the 12th September, 1934, he caused an entry Ex. B-1 to be made in the Suit Register Ex. B to the effect that a suit (V.C. No. 19 of 1934) was filed by two persons, Nagiah and Narayanaswami, P.Ws. 5 and 4, against the said Chamarthi Venkatasubbayya (P.W. 3) for recovery of a sum of Rs. 26 being the principal and interest due by him to them on account of the articles purchased in the shop of those two persons on the 20th October, 1932, that the accused caused a false return on the summons purporting to be issued to him to the effect that the summons though tendered to the said Venkatasubbayya (P.W. 3) he declined to receive it and that on the strength of this return he purported to pass a decree Ex. B-2 against the said Venkatasubbayya (P.W. 3) on the 29th September, 1934, for the sum of Rs. 26 with future interest at 0-8-0 per cent, per mensem. Ex. C dated 14th September, 1934, is the said summons and Ex. C-1 is the endorsement on the summons. The person who is supposed to have served the summons is P.W. 7 and he subscribed his name to the endorsement which is in the handwriting of P.W. 8. A year thereafter, the accused purported to issue a notice Ex. D to P.W. 3 to show cause why the decree passed against him should not be executed. The notice Ex. D is dated 7th September, 1935, and the return on it Ex. D-1, dated 20th September, 1935, is to the effect that P.W. 3 declined to receive the same and hence a copy of the notice was affixed to the wall of the house; the notice was again said to have been served on the 29th September, 1935, and the endorsement Ex. D-2 was to the same effect, namely, that P.W. 3 declined to receive the same, and hence a copy of the notice was affixed. The endorsement Ex. D-1 is signed by P.W. 9 and the endorsement Ex. D-2 is signed by P.W. 8. The accused subsequently sent a notice Ex. E dated 4th December, 1935, which was actually served upon P.W. 3 on the 7th December 1935, and the endorsement on it Ex. E-1 was made by P.W. 8. On receiving the notice, P.W. 3 went and enquired of P.Ws. 4 and 5 as to whether they did file a suit against him and they replied in the negative. He got from them affidavits Exs. J and K and instituted a complaint Ex. A before the District Magistrate of Cuddapah on which proceedings against the accused were taken with the sanction of the Local

Government. The motive for the offence as alleged by the prosecution is that P.W. 3 obtained a decree against the accused in S.C. No. 256 of 1934 on the file of the District Munsifs Court, Nandalur, and in execution thereof he had him arrested when he paid a portion of the amount due and executed a security for the balance and he desired to retaliate. This was before the 12th September, 1934, and the accused paid the amount of the decree in instalments and finally on the 20th September, 1935, he paid Rs. 10 in cash, got a remission of Rs. 2-12-0 and obtained full satisfaction of the decree from P.W. 3. The intention of the accused in making these entries in the Suit Register was to cause loss to P.W. 3 by having his movable property attached in execution of the decree which the accused purported to pass and thus cause disgrace to P.W. 3. The case as alleged by the prosecution is proved by P.Ws. 3 to 9. P.W. 3 denied any indebtedness to P.Ws. 4 and 5 and P.Ws. 4 and 5 denied that they had any dealings with P.W. 3 or that P.W. 3 was indebted to them in respect of any such dealings or that they filed any suit or obtained a decree against P.W. 3. The evidence of P.W. 8 is that he wrote the endorsements (Exs. C-1, D-1 and D-2) attributed to him at the dictation of the accused and that the recitals in the endorsements are all incorrect. P.W. 7 also similarly, stated that he was persuaded to subscribe to Ex. C-1 by the accused. The defence is that P.Ws. 4 and 5 did file a suit, that the records relating thereto were received by them on the 9th December, 1935, on the representation that P.W. 3 wanted to settle the matter with them and believing in that representation he returned the plaint, order, judgment and the plaintiff's deposition and they were not returned subsequently, that taking advantage of this, this prosecution was launched against him at the instance of P.W. 6, his enemy, and the said enmity is alleged to have been due to a District Board election contest which took place between' them, and that the practice of returning the records obtained in his Court and though it is irregular, there were several instances where the records were taken by the parties for the purpose of settlement. The learned Sessions Judge has accepted the evidence for the prosecution and found that the alleged District Board election took place somewhere in 1932 and it could hardly furnish a motive for the launching of this prosecution. The learned Sessions Judge went into the probabilities of the case and thought that it was hardly likely that P.W. 3 a well-to-do person, could have borrowed articles for the small sum of Rs. 26 from persons

like P.Ws. 4 and 5 and kept the debt outstanding for such a length of time. There is one other matter which the learned Sessions Judge might have adverted to, namely, that if as alleged in the endorsements on the summons and the notices P.W. 3 was actually served with the notice of summons of the suit and the notice of the intended execution, P.W. 3 would not have kept quiet without satisfying the debt when he must have known that the failure to comply at any rate with the requisition to show cause why the decree should not be executed would entail attachment of his movable property without any further notice. Nothing has been alleged against P.Ws. 4 and 5 as to why they should perjure themselves.

3. Mr. Jayarama Aiyar very strongly contends that P.Ws. 4 and 5 admitted in the witness-box that they were not quite intimate with the accused and if so, is it likely or probable that the accused would have thought of causing an entry to be made in the names of those two persons as plaintiffs for the object he had in view? No doubt, this is an argument which deserves some consideration, but it cannot outweigh the weight of the overwhelming evidence against the accused. It might be that the accused thought that they might be got at and that there would be no difficulty in persuading them to help him in his object; but the fact that it is not possible to understand why the accused hit upon these two persons as intending plaintiffs is no reason to discredit the testimony of the prosecution.

4. One other argument which has been advanced by Mr. Jayarama Aiyar is that if the accused had really intended to do harm to P.W. 3, would he have served the notice Ex. E and would it not have been more likely that he would have caused a similar return as in Ex. D-1 and got an attachment issued? It may be that the accused never anticipated that P.W. 3 would go and consult P.Ws. 4 and 5 and he naturally thought that on receipt of the requisition P.W. 3 might seek his aid when he intended that he might have his turn of subjecting P.W. 3 to some sort of disgrace, if he failed to comply with the decree.

5. Another argument advanced by Mr. Jayarama Aiyar is that it is not likely that by the entries alleged, any injury could be caused to P.W. 3 without the co-operation of P.Ws. 4 and 5, because before any attachment of movable property could be effected, they should be pointed out by the decree-holders. I do not think there is

any difficulty so far as this is concerned. The application for execution need not be in writing. The accused can send somebody purporting to be on behalf of the decree-holders to point out the properties which were intended to be attached. The question, is not whether the accused will be able to accomplish the object he had in view but whether he made the entries in question with the intention to cause or knowing it to be likely that he will thereby cause loss and injury to P.W. 3. There can be no doubt that the existence of such a decree would certainly cause loss or injury to P.W. 3' in that either he will be obliged to pay the sum of Rs. 26 or his movable property is liable to be attached in execution of the said decree. No doubt, no detriment has been caused to P.W. 3 in this case and it is very likely that he could not have caused any, if P.Ws. 4 and 5 were not willing to co-operate with him and their co-operation seems to be very unlikely having regard to the evidence given by them during the course of the trial. But the fact that the accused conceived a foolish plan of injuring P.W. 3 in retaliation of the disgrace inflicted upon him by his arrest is no ground for exculpating him from the offence which he has committed.

6. The question is what is the offence which the accused must be said to have committed? Is he liable under both the Sections 218 and 219, Indian Penal Code. On the facts as found there can be no question that the accused is liable under Section 218, Indian Penal Code. But is he also liable under Section 219, Indian Penal Code? The gravamen of the charge against the accused is that he being a Village Court Judge charged with the preparation of the register of suits filed in his Court framed that register in a manner which he knew to be incorrect, namely, by making an entry therein that a certain suit had been filed when in fact it was not so filed and also by making an entry of a judgment purported to have been pronounced when it was in fact not pronounced. This will bring him directly within Section 218; but in order to render him liable also under Section 219, it must be established that he made a report or pronounced an order, verdict or decision in a judicial proceeding which he knew to be contrary to law. The essence of the offence under that section is (1) that there must be a judicial proceeding, that is, a proceeding actually commenced and pending, wherein a party claims relief against another and invites the decision of the Court in regard thereto and not a fictitious one where there is no party litigating, and (2) that there must be the making of a

real report or a real pronouncement of an order, verdict or decision. In this case there is no judicial proceeding at all; everything was a make-believe; there is no making of a report nor a pronouncement of an order, verdict or decision except the making of an entry of such a pronouncement having been made when in fact it was not so made. The accused therefore in my opinion cannot be convicted under Section 219, Indian Penal Code, and it was very fairly conceded by the learned Public Prosecutor that it is so.

7. The only question that remains is as regards the sentence. Mr. Jayarama Aiyar submitted that in view of the accused having been acquitted under Section 219, Indian Penal Code and having regard to the circumstances adverted to by him, he would press for a lenient sentence. I heard the learned Public Prosecutor and he put it to me that the infliction of a heavy fine having regard to all the circumstances of the case might satisfy the ends of justice and that an award of a fine of Rs. 500 Would be an adequate one. I may also note that the learned Sessions Judge was also inclined to take a lenient view in regard to the punishment. I therefore acquit the accused under Section 219, Indian Penal Code, confirm the conviction under Section 218, Indian Penal Code and sentence him to pay a fine of Rs. 500; in default, to undergo six months' simple imprisonment. Time two weeks for payment of the fine from the date of this order. I direct the bail bonds to be cancelled.