In Re: Venkatasami Chetti

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SooperKanoon Citation : sooperkanoon.com/804294

Court : Chennai

Decided On : Mar-24-1927

Reported in : AIR1927Mad996

Appellant : In Re: Venkatasami Chetti

Judgement :

Jackson, J.

1. The petitioner seeks to set aside the order of the Sessions Judge of Madura under Section 476, Criminal P. C., complaining against him for perjury in that in Sessions Case No. 97 of 1925 he swore:

He told me in a very low tone that he had beaten him.

2. The learned Judge has not indicated in his complaint any reason for holding that this statement is false. He merely gives it as his opinion that it is false. In an order of a week previous, the learned Judge, quoting Queen v. Ahmed Ally 11 W. R. Cr. 25 agrees that the opinion of a medical witness should not be considered as conclusive against the testimony of eyewitnesses. He says that

in the present case there is no reliable evidence of eyewitnesses running counter to the evidence of the medical witness and .obviously there is a clear prima facie case against the petitioner.

3. From these two proceedings it would be impossible to discover why the petitioner is being prosecuted. But further light is thrown on the matter by reference to the judgment in the main case. Apparently the learned Judge, on referring to the post-mortem certificate, has discovered that there was a large clot of blood on the brain of the man alleged to have spoken to the petitioner and has inferred from that fact that the deceased could not speak. This point was never put to the medical witness when he was in the box, nor has the medical witness ever said in so many words that he could not speak, and, therefore, at this stage of the case, there is no reason to assume that the evidence of the medical witness is contrary to the evidence of the petitioner. Over and above that evidence, there are the statements of several witnesses which belie the reported statement of the deceased; but even then there is no direct proof that petitioner was the liar, and the charge rests only upon a presumption that the deceased himself was not lying. Even if there has been a statement directly contradicting the petitioner's statement it is not customary to prosecute persons under Section 476 in mere matters of oath against oath, which may be a question of public policy rather than a question of law. It would be manifestly absurd at the end of most criminal trials to send all the alibi witnesses up for trial under Section 476. It is not easy to understand the distinction which the learned Judge makes between the application of a principle at the trial and its application when the prosecution is under consideration. Before complaining against a person under Section 476, the Judge must be convinced in his own mind that the trial will end in a conviction and he can hardly say that, although the accused will probably ultimately be acquitted because there is no evidence that his statement is more than incredible, yet, at the same time, this is not a point to which he need direct his attention in framing a complaint.

4. In these circumstances the appeal is allowed and the complaint of the learned Sessions Judge should be withdrawn.