

The Empress Vs. Baikanta Bauri

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Court : Kolkata

Decided On : Mar-04-1889

Reported in : (1889)ILR16Cal350

Judge : Mitter and ;Macpherson, JJ.

Appellant : The Empress

Respondent : Baikanta Bauri

Judgement :

Mitter and Macpherson, JJ.

1. The Sessions Judge of Burdwan, dissenting from the verdict of acquittal of the jury, has referred this case under Section 307 of the Code of Criminal Procedure. The charge against the accused was under Section 193 of the Indian Penal Code, of giving false evidence, and is to the following effect: ' That he, on or about the 31st day of October 1888, at Purulia, Tharmah Eanigunge, in the course of the inquiry into the case of arson of Empress v. Rambandhu Glyise and others, before Anadinath Bundopadhya, head constable of outpost PaVid-pore, stated in evidence that he had seen Eambandhu Ghose set fire to the house, and that he, on or about the 23rd day of November 1888, at Bharra, Thannah Assensole, in the course of the inquiry into the case of arson Empress v. Rambandhii Ghose and Ors. before the Sub-Divisional Magistrate of Eanigunge, stated in evidence: ' I did nob see anybody set fire to the house. I was a mile off at home,' one of which

statements he either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under Section 193 of the Indian Penal Code, and within the cognizance of the Court of Sessions.'

2. The evidence that was given in this case does not show which of these statements is false, but the Sessions Judge is of opinion that the two statements are contradictory, that one of them must be false, and therefore that the accused should be found guilty under Section 193 of the Indian Penal Code. Now the statement made by the accused on the 31st day of October 1888 was made before one Anadinath Bundopadhya, head constable of an outpost called Faridpore. It appears to us that the Session-Judge, in his charge to the jury, has not at all referred to the question whether, if this statement be false, the accused would be guilty of giving false evidence under s.

193. In his charge to the jury he says : ' The jury had therefore to consider

(1) whether he had made such a statement before the head constable ;

(2) whether he had made such a statement before the Joint Magistrate; and

(3) whether the two statements were so contradictory as that one or other of them must be false, and both could not be true.' Then, in another part of his charge, he says: ' I then said on this evidence the jury must make up their minds on the three points previously alluded to. If they believed the witnesses and thought the two statements said to have been made by the accused were directly contradictory, so that both could not be true, the jury would be justified in convicting him under Section 193.' It seems to us that the Sessions Judge has overlooked a very important point in the case, viz., accepting that the statement made before the head constable was untrue, whether the accused could be found guilty of giving false evidence under Section

193. Section 193 says : ' Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished -with imprisonment of either description for a term which may extend'to seven years, and shall also be

liable to fine ; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.' Now it is evident that the statement before the head constable, if it at all comes within the section, must fall within the last part of it, viz., ' whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.' Section 191 of the Indian Penal Code says: 'Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.' Now the question is whether in this case the statement before the head constable was such as would bring it within the definition of false evidence given in Section 191 of the Indian Penal Code. The answer to this question will depend upon the construction we put Section 161 of the Code of Criminal Procedure. The second paragraph of that section declares that a person examined by a police officer under the provisions of it' shall be bound to answer truly all questions relating to such case put to him by such officer.' Before an accused person can be held guilty under Section 193, it is, therefore, necessary that it should be shown by the evidence that the statement which is set out in the charge was a statement in answer to questions put by the investigating police officer to the accused. That this statement was made in answer to any question put by the investigating police officer is not established by any evidence. The head constable before whom this statement was made only says: 'I examined the accused Baikanta Bauri as a witness in that case. He came to the outpost with the complainant. I examined him on the 31st October. I wrote down what he said. I wrote down exactly what he said. I produce the record of his statement, Exhibit C.' But he does not say that this statement, viz., Exhibit C, was in answer to any questions put by him to the accused. There is no other witness to establish that fact. That being so we cannot say that the statement in question is covered by paragraph 2 of Section 161 of the Code of Criminal Procedure. It is true that the record of the statement is headed: 'On being questioned said;' but that would be no evidence of the fact that the accused was questioned and in

answer to a question the statement was made, until that fact was proved by oral evidence. The statement in question is therefore one which upon the evidence we find was made by the accused to the head constable, Anadinath Bundo-padhya. Upon the establishment of this fact alone, without any proof that the statement was in answer to questions', put by the head constable, we are of opinion that the accused cannot be convicted of giving false evidence under Section 193 even if that statement be proved to be false. This is the main ground upon which we think that the verdict of acquittal is correct, but we desire also to point out that the evidence in this case is very meagre upon another point which it was necessary for the prosecution to establish, viz., that the aforesaid head constable, Anadinath Bundopadhya, was making an investigation under Chapter XIV of the Criminal Procedure Code. The charge, set out above, states that this statement before the head constable was made in the course of an inquiry in a case of arson of The Empress v. Rambandhu Ghose and Ors. A case of arson is certainly a cognizable case; but that Anadinath Bundopadhya was making an inquiry under Chapter XIV, when the statement in question was made, and that the case in which that inquiry was being made was a case of arson, is not at all clearly established by the evidence recorded in the case. All that the witnesses who speak upon that point say, is that an inquiry was being made in the case of Buloram Boy v. Rambandhu Ghose about the burning of a house. This evidence is not in our opinion sufficient to show that the inquiry was being made into a cognizable case, viz., arson. We are, therefore, of opinion that the verdict of the jury was right. We therefore acquit the accused of the charge framed against him and direct his release from custody.

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