

In Re: Bomanjee Cowasjee

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Court : Kolkata

Decided On : Dec-14-1906

Reported in : (1907)ILR34Cal129

Judge : Davey, ;Robertson, ;Andrew Scoble and ;Arthur Wilson, JJ.

Appellant : In Re: Bomanjee Cowasjee

Judgement :

Davey, J.

1. This is an appeal from an order, dated the 21st March 1906, of the Chief Court of Lower Burma, by which order the appellant was dismissed from his office as an advocate of that Court.
2. The appellant was called to the Bar by the Honourable Society of Lincoln's Inn on the 17th November 1891, having previously been admitted as an attorney of the Calcutta High Court in 1879, and from the year 1881 was an advocate of the Court of the Recorder of Rangoon, until the establishment of the Chief Court of Lower Burma, and from that date he has been an advocate of the last-named Court.
3. On the 9th March 1906 the appellant was served with an Order of the Chief Court, whereby he was called upon to show cause why he should not be dismissed or suspended from his office as advocate of the Court in the event of

two charges which had been framed by the Court, or either of them, being found to be true. These charges were as follows:

1. That you, whilst employed as an advocate for the prosecution of Maung E. Maung and others charged with having abducted Ma Nu, the daughter of Maung Ohn Ghine, C.I.E., and his wife, Ma Yeik, having been made aware that some letters had been received by members of Maung Ohn Ghine's family which purported to be Ma NU'S, advised the family to say nothing about such letters having been received, and designedly withheld from the police and from Mr. Eddis, the senior advocate conducting the prosecution, the fact that such letters had been received, and you were thereby guilty of gross professional misconduct.

2. That you, whilst the trial of the said Maung E. Maung and others was proceeding at the First Criminal Sessions of this Court in this year, and when you were acting as one of the advocates for the prosecution, suggested or hinted to the said Maung Ohn Ghine that he should influence or attempt to influence Mr. Hardless, a professed expert in handwriting, by improper means in order that Mr. Hardless might be induced to express opinions favourable to the prosecution's case in connection with certain letters produced during the course of the said case, and you were thereby guilty of gross professional misconduct.

4. The circumstances, in which these charges came to be made against the appellant, were shortly as follows. The appellant had been engaged as junior Counsel with another advocate (Mr. Eddis) to conduct the prosecution of certain persons charged with the abduction of a girl named Ma Nu, daughter of one Ohn Ghine, both in the Magistrate's Court and at the trial at the Criminal Sessions. Ohn Ghine was absent from Burma when the prosecution was commenced, and returned on the 17th August 1905, while the case was pending in the Magistrate's Court. A day or two previously some member of the family informed the appellant that letters purporting to come from Ma Nu had been received by her mother. And the appellant said they would go into them on Ohn Ghine's arrival, which he was told was expected in two days. After his arrival the letters were at once handed to the Commissioner of Police. This was the substratum of fact on which the first charge was founded. During the trial in the Sessions Court, which took place in

February 1906, certain other letters purporting to have been written by Ma Nu which, if genuine, tended to show that the case was one of voluntary elopement and not abduction, were produced for the defence. Mr. Hardless, who is described in the judgment of the Chief Court as 'the Government of India expert in handwriting,' happened to be in Rangoon, and was asked by the Commissioner of Police to give evidence as to the genuineness of these letters. Ohn Ghine was under the impression (without, it should be said, the slightest apparent foundation) that Mr. Hardless had been or would be bribed by the other side, and more than once pressed his fears upon both Mr. Eddis and the appellant. As they were going into Court on Friday, 2nd February, the appellant said something to Mr. Eddis, which conveyed to his mind the impression that the appellant had advised Ohn Ghine to bribe Mr. Hardless. Mr. Eddis did not profess to remember the words used by the appellant, but was certain that the appellant went on to say that he had never advised a client to do such a thing before, but in this case he thought it necessary. This hurried conversation was the foundation of the second charge.

5. The learned Judges held that it had not been proved that the appellant was guilty of the first charge. The evidence given in support of this charge is not directly material on the second charge, but it is not unimportant as showing a certain inexactness in Mr. Eddis' memory of spoken words, and a tendency in his mind to give a colour to words, used in conversation, which they do not necessarily bear. For example, Mr. Eddis stated in his evidence that he told Mr. McDonnell, the Commissioner of Police, that 'Cowasjee had known about the letters all the time,' and this was confirmed by McDonnell. But Mr. Eddis admitted that he had not asked the appellant how long he had known about them, and made no inquiries from him at all at any time as to when he got them. And the fact (as proved) was that the appellant had known of the existence of the letters only two days before they were produced.

6. On the second charge Mr. Eddis was corroborated by Mr. Lentaigne, his partner, Mr. Clifton, an assistant in his office, and Mr. McDonnell, who severally stated that Mr. Eddis had on the same day repeated to them his impression of the effect of his conversation with the appellant. This evidence was admissible under the Indian Evidence Act (Section 157), but it only tends to support the credibility of

Mr. Eddis, and does not carry the matter any further on the real issue, whether the appellant did in fact advise Ohn Ghine to bribe Mr. Hardless.

7. The appellant's story is thus stated in his evidence in chief:

I never had any conversation with Mr. Eddis in the Bar Library with regard to bribing Mr. Hardless. I had a conversation with him in his own chambers, and also in the corridor of this Court with regard to Hardless. Mr. McDonnell was then standing with his hand on the railing of the passage leading to the lavatory. The conversation in Mr. Eddis' chambers was on the previous day. In his chambers I told Mr. Eddis that Ohn Ghine told me that the defence were trying to bribe Hardless, and that Ohn Ghine wanted me to get the Commissioner of Police to set a watch on Hardless, and that I had told Ohn Ghine that this was impossible for me to do, unless there was some tangible proof of attempts being made by the defence. I did not on that occasion say anything to the effect that I would advise Ohn Ghine to bribe Hardless. Mr. Eddis told me on that occasion that Ohn Ghine had also spoken to him on the subject. From what has transpired in Court during this inquiry, I am inclined to think the conversation in the corridor was on the Friday. When I wrote my explanation I was in doubt whether it was on the Friday or on the Monday. When I came to Court that day I met Ohn Ghine, who told me that we had done nothing in the matter, and Hardless had been got over and was going to give evidence against the prosecution. I said I did not believe it. He insisted that this information was reliable. Before that I had told him that, if the bribery had taken place he would not have the means of knowing it. When he insisted I lost my temper to a certain extent, and said that 'if the other side could have done that, you could have done it too.' I then went and got my gown and went downstairs to the Original Civil Court, where I had something to do. When I came up I met Mr. Eddis at the top of the stairs as he was coming out of the Bar Library, and I told him all that had happened between me and Ohn Ghine. While we were finishing the conversation the Court gong sounded and we both went to the Sessions Court. When I was talking to Ohn Ghine in the corridor before going downstairs I did not see either Mr. Eddis or Mr. McDonnell near by. I spoke to Ohn Ghine near the Jury Room. I did not take Mr. Eddis aside. I spoke to him as one advocate would speak to another about a delicate matter. I never on that occasion

or at any time said to Mr. Eddis that I had never done such a thing before, but I had advised Ohn Ghine to bribe

Hardless, as I thought in that case it was necessary. In the Sessions Court Mr. Eddis said to me, 'This is a serious matter. You ought to speak to Mg. Ohn Ghine and tell him that there ought to be nothing of the kind in this case.' I laughed and said, 'Mg. Ohn Ghine is not such a fool as to misunderstand me,' That was all that passed between me and Mr. Eddis on that occasion. I never heard anything more about the matter, until Mr. Giles spoke to me on the 27th February. Mr. Eddis never referred to the matter again in my hearing. I have no recollection of having used the words, 'The bargain is not yet closed or completed.' I could not have used such words, because my information was definite that Hardless had been bribed, and that he was going to give evidence against the prosecution. Ohn Ghine told me definitely that Hardless had been bribed, and he insisted that his information was reliable.

8. Mr. Eddis' account of the conversation in Court was as follows:

When we got into Court I said that nothing of the kind he had just told me could possibly be allowed, and he must tell Ohn Ghine so. The case was then going on, and to the best of my knowledge I was standing up examining a witness. He made no reply.

9. It is, of course, quite possible that under these circumstances, when Mr. Eddis' attention was engrossed in the examination of a witness, he may not have heard the appellant's reply, or it may have failed to attract his attention.

10. The occasion and supposed effect of the statement alleged to have been made by the appellant that 'the bargain is not yet completed,' is veiled in some obscurity. It is put by McDonnell in a previous conversation between the appellant, Mr. Eddis, and himself on the same morning, Friday, the 2nd February, and that is confirmed by Mr. Eddis in his examination-in-chief:

There was a rumour flying about that Hardless' evidence would be in favour of the defence, and I cannot purport to give the whole of what occurred, but Cowasjee

said, if that was so, Hardless must have been bribed, and then went on to use these words, 'The bargain, however, is not yet completed.

11. In his cross-examination he enlarges the statement into 'the bargain is not yet completed. I do not say that Hardless is bribed; the bargain is not complete.' The appellant denies having made the statement at any time. No very definite meaning can be attached to the words, which, however, appear to refer to the apprehended action of Ohn Ghine's opponents. And Their Lordships do not attach any weight to them for the present purpose.

12. The Government Advocate in support of the case against the appellant called Ohn Ghine. After a few questions, the answers to which the learned Counsel considered unsatisfactory, he obtained leave to treat Ohn Ghine as a hostile witness and cross-examine him. But no admission was elicited from the witness that the appellant had advised him to bribe Hardless, and in fact he explicitly denied it. The Court expressed the opinion that Ohn Ghine was a witness in whom they could place no reliance.

13. Even before Ohn Ghine's examination, when there was no question of discrediting him, Mr. Eddis, in answer to questions from the Chief Judge, had stated the particulars of interviews he had with Ohn Ghine in the absence of the appellant, and repeated statements then made to him by Ohn Ghine. And after Ohn Ghine had been examined, the Government Advocate went himself into the witness-box and was allowed to state the particulars of a long conversation between Ohn Ghine and himself. The learned Judges in their judgment say:

The only reliable evidence as to what Mr. Cowasjee said to Ohn Ghine in the corridor on the morning of 2nd February is the statement of Mr. Eddis as to what Ohn Ghine admitted to him in the tiffin interval.

14. Their Lordships are of opinion that the evidence given by Mr. Eddis and by the Government Advocate was inadmissible for the purpose for which it was used, or as against the appellant. Even if it was admissible for the purpose of impeaching the credit of the witness under Section 155 (3) of the Indian Evidence Act what would it prove? It might prove that Ohn Ghine was an unreliable witness, who said

one thing one day and another thing another day, and tend to discredit his sworn statement, but it would not prove the truth of his unsworn statement or make it evidence against the third person. Ohn Ghine was questioned by the Government Advocate as to what he had said to Mr. Eddis, but he adhered to his statement that 'the hint' of which Mr. Eddis had spoken was a hint to have Mr. Hardless watched, and that the appellant had never advised him or hinted to him to have Mr. Hardless bribed. It appears that he did in fact take measures to have Hardless watched. Their Lordships are disposed to agree that Ohn Ghine's evidence cannot be implicitly relied on. On the other hand, they cannot accept Mr, Eddis' statement of his conversation with Ohn Ghine as admissible evidence against the appellant. But, in saying so, they think it fair to the appellant to say that the words attributed to Ohn Ghine by Mr. Eddis appear to them capable of a different construction from that put upon them by the learned Judges.

15. There is, therefore, no direct evidence that the appellant in fact advised Ohn Ghine to attempt to bribe Hardless, and the only evidence in support of the second charge against the appellant, which has to be considered, is Mr. Eddis' report of (1) a hurried conversation lasting some half minute, as to the greater part of which he cannot remember the words used, and as to the rest of which the words deposed to are innocent or otherwise according to the context, and

16. (2) a whispered conversation between two barristers in Court, whilst one of them was on his legs examining a witness.

17. Their Lordships are of opinion that such evidence is quite insufficient to support the grave charge made against the appellants.

18. In a case of this kind it is permissible for Judges of fact to consider the probabilities. It is improbable that a man of the appellant's experience could suppose that a witness like Mr. Hardless was amenable to be bribed to give false testimony, or not have known that any attempt to influence him in that way would recoil on him who made it. It is yet more improbable that a man in the appellant's professional position would imperil his whole future in such a manner or for such a purpose. And it is almost impossible to believe that if he did so he would at once go and tell it to a leading European Advocate, and that too in a public place, where

he might be overheard.

19. Mr. Eddis does not seem at first to have taken so serious a view of the matter as he afterwards did. His continuing to conduct the abduction case with the appellant may be explained by his unwillingness to inflict an injury on his client, but it is difficult to understand why, believing all he did about the appellant, he appeared in another case with him as his leader on the following 23rd February.

20. For these reasons Their Lordships thought it their duty, as they stated on the 14th November, humbly to advise His Majesty that the Order appealed from be reversed, and that the appellant, Mr. Bomanjee Cowasjee, be restored to his office as an advocate of the Chief Court of Lower Burma, as from the 21st March 1906. The appellant very properly does not ask for any costs of this appeal.

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