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Court : Kolkata

Decided On : Sep-12-1912

Reported in : 17Ind.Cas.993

Judge : Ashutosh Mookerjee, ;Carnduff and ;Imam, JJ.

Appellant : Ram Prosad

Respondent : Emperor

Judgement :

Carnduff, J.

1. The petitioner Ram Prosad charged one Padam Kunjra with assault and (sic). The charge of theft was declared to (sic) and the petitioner was prosecuted (sic) of it under Section 211 of the Penal Code. The trial Magistrate (sic) and sentenced him to six weeks (sic) his appeal to the Sessions Judge was dismissed. He then moved this Court in revision and obtained a Rule on two grounds.

2. The first ground is that 'the findings of the learned Judge are very doubtful.' As to this, it is true that the Judge his indicated doubts as to whether the petitioner was ever assaulted; but his findings regarding the alleged theft--and it is with these that we are concerned--appear to me to be the reverse of doubtful. He thinks 'there can be no doubt' as to a Munsif having been present at the time of the occurrence, whatever it was; and the fact that the Munsif heard nothing of any

such 'serious affair' as the theft charged, he considers 'an extremely strong reason for holding that no theft took place.' He records the opinion that, apart from the denial of the persons accused by the petitioner, the other circumstances of the case to his mind show clearly that no theft took place' and there cannot be the slightest doubt that the charge of theft was absolutely false'; and he conclude with the observation that 'even if the accusation of assault be true, it is clear that the present accused has committed an offence under Section 211 for bringing the accusation of theft.' In the face of these unequivocally expressed conclusions, the first ground must, I think, be held to fail.

3. The second of the grounds upon which the Rule was obtained, is that the Sessions Judge 'could not, on the finding that the defence evidence was suspicious, hold that the evidence of prosecution, which he before held not sufficient, thereby became sufficient.' Now, if the first half of the judgment be ignored and the second half (beginning with the words The three persons accused by Ram Prosad') be treated as if it were the whole, the criticism here suggested would be fair; although, even then, it would be open to the counter-criticism that the 'defence evidence' referred to, that is to say, the obviously interpolated entry in the account book of Jagan Ram, was produced by Jagan Ram, who was called by the prosecution for the purpose, and not by the defence. The investigating Police officer had examined the account book and noticed the suspicious entry, and, according to him, Jagan Ram then admitted that he had been told to add it, In these circumstances, Jagan Ram was very properly called as a witness by the prosecution; and, although he in Court denied that he had altered his book, the interpolation is there, and it cannot, in my opinion, be held that its existence is a matter to which the Courts below were not entitled to refer.

4. Returning however, to the judgment, I need scarcely say that it is impossible to ignore what precedes the passage on which evidently the entire judgment is assailed. 'The three persons accused by Ram Prosad,' so runs the condemned passage, 'have all given their evidence and denied that Padam snatched away any money from Ram Prosad. Their mere denial in itself does not count for much, but the other circumstances of the case to my mind show clearly that no theft took place.' The rest of the judgment is then devoted to the circumstance connected

with the interpolation' in the account book. But that is only one circumstance; the passage refers to 'the other circumstances' (in the plural); and in the paragraph preceding it, the learned Sessions Judge had just dealt with the circumstance of the Munsif's ignorance which seemed to him to 'be an extremely strong reason for holding that no theft took place.' And his reasoning in this connection commends itself to me. A trifling assault might easily have taken place without the Munsif's hearing anything about it; but not so a theft with violence. If the petitioner's story be accepted, he was robbed of the substantial sum of Rs. 101 in cash in a public place where there were a number of people collected; he raised no hue and cry, and persons or the spot, like the Munsif, knew nothing of it he let the robber escape; and he contented himself by going off and laying a charge at the thana. The trial Magistrate could not believe this story, which he characterised as 'palpably false;' the lower Appellate Court was of the same decided opinion and I am not only not prepared to say that they were wrong, but ready to go further than is necessary or usual in revision by expressing my concurrence with their findings of fact. I would add that it should be remembered that what we are criticising is an appellate judgment of affirmance and that there are other circumstances appearing from the record and the Magistrate's judgment, which the learned Sessions Judge doubtless had in mind, though he has not referred to them. Thus it would seem that the supposed thief Padam himself went to the thana after the occurrence and complained of having been assaulted by the petitioner. Then the appellant's cousin, who was with him at the time, had to a admit in cross-examination, that he had not seen the actual seizure, and there were a Mukhtar and several shop-keepers, who witnessed the occurrence and appear to have been as ignorant as the Munsif of anything like the theft of a hundred rupees having been committed. And the mere denials of Padam and his two alleged accomplices although they may not in themselves 'count for much,' count for something, and, if not displaced by credible evidence to the contrary, should, I venture to say, count for a great deal. As has recently been observed by the Judicial Committee in the case of Mirza Sajjad Husain v. Nawab Wazir Ali Khan 16 C.W.N. 889 : 10 A.L.J. 364 : 16 C(SIC) 14 Bom. L.R. 1055 : 23 M.L.J. 210 : 34 A. 4(SIC) T. 361 : (1912) 1 M.W.N. 976 : 15 C.C. 27(SIC) Cas. 197. Judges in India must not have 'impliedly the duty laid upon them of making their narrative of the

circumstances minutely and completely exhaustive, under the penalty that, if they failed to do so, the absence from their minds of elementary considerations might be presumed.' Their Lordships were, of course, there dealing with a civil appeal, but I venture to think that the observation, which I have quoted, may well be given a wider application, and is especially relevant in respect of judgments of affirmance even in criminal cases.

5. I would, therefore, discharge the Rule.

Imam, J.

6. This is a Rule calling on the District Magistrate of Shahabad to show cause why the conviction and sentence passed on the petitioner should not be set aside or the sentence reduced or such other order made as to this Court may seem fit, on the ground that the findings of the learned Judge are very doubtful and that on the finding that the defence evidence was suspicious, he could not hold that the evidence of prosecution which he before held not sufficient thereby became sufficient.

7. On the terms of the Rule, it would appear that, there are two points for consideration viz., (1) whether the learned Judge's find are doubtful, (2) whether the su(SIC) nature of defence evidence can supply the deficiency of the prosecution.

8. I have no hesitation in answering these points in favour of the petitioner, but I shall deal with them, as also with the whole case, after I have stated the case that has resulted in his conviction.

9. The petitioner has been convicted under Section 211 of the Indian Penal Code and sentenced to two months rigorous imprisonment on the charge that he laid a false complaint at Arrah Police Station, accusing three men, namely, Padam Kunjra, Ghani Kunjra, Bally Kunjra of having committed theft of cash contained in a gamchha knowing that there was no just or lawful ground for such a charge.

10. The incident that led to the lodging of this information arose out of a civil suit between some Hindus and Muhammadans of Arrah in connection with a mosque in that town. The case had been pending before one of the Munsifs who found it necessary to make a local inspection which, it is common ground, was held on the 17th March last year at or about 5:30 P.M. That some disturbance between the parties took place at or about the time of the Munsifs local inspection is the case of either party. The prosecution aver that the incident was a mere assault on Padam Kunjra's party and in the presence or the Munsif. On the other hand, the defence contends that the assault--which was by the party of Padam Kunjra on the accused and his party--was followed by the snatching away of a sum of Rs. 101 tied in a gamchha from the petitioner Ram Prosad Das, by Padam Kunjra.

11. Whatever the incident, both parties went to the Police Station and made their respective complaints by 6 P M. The information of Padam Kunjra was in respect of assault alone and thus not cognizable by the Police, The petitioner's information, on the other hand, comprised the charge of theft in consequence where of an information in the prescribed form was drawn up by the Sub-Inspector who, it happened, was a Muhammadan. This Police Officer, believing the charge of theft to be an exaggeration, refused investigation and referred the petitioner, as also Padam Kunjra, to the Magistrate. Accordingly on the next day, i.e., 18th March, Ram Prosad laid his complaint before the Magistrate substantially to the same effect as what he had stated in his first information of the previous day, with two exceptions as to the hour of occurrence and the presence of the Munsif.

12. In the body of the first information, purporting to be the statement of the informant, the time of the occurrence is not mentioned, but in the column that has to be filled up by the Police Officer, the time stated is 4-30 p. M. In the complaint before the Magistrate, however, the petitioner fixes the time at 5-30 P.M. It being from the beginning the case of either party that the occurrence--whatever it was--took place at 5-30 p. M., and the unimpeachable testimony of the Munsif establishes beyond doubt that his inspection was at 5 30 P.M., it is difficult to believe that the petitioner in his information to the Police stated the time of occurrence at 4-30 P.M. In respect of this question of time, the circumstance is emphasised by, what appears in the body of the informant's statement, an

explanation of the supposed delay in lodging the first information, viz., that the delay was due to 'the presence of a great crowd and to the Muhammadans abusing the Hindus.' Considering the undoubted fact that the occurrence could not have taken place earlier than 5 30 P.M. and, consequently, there was no delay whatsoever in laying the first information, the fact of the explanation of delay cannot but cast a serious doubt on the integrity of the Sub-Inspector in making a faithful record of what had been stated to him by the informant. The next point of difference between the first information and the complaint in Court is in respect of the presence of the Munsif at the time of the occurrence. Were it not for the importance attached by the Magistrate and the learned Judge to the presence of the Munsif at the time of the occurrence, I should have felt inclined to take no notice of the discrepancy. In the first information, it is stated thus: 'First stated that Munsif Saheb was on the side of the garry, again said Munsif Saheb's garry had gone up to chowraha, therefore, I could not give its information to the Munsif Saheb.' On the complaint to the Magistrate, the statement on oath stands thus; 'The occurrence took place while the Munsif was not present,' Considering that the discrepancy in respect of time cannot be reasonably in the circumstances, attributed to the informant, who it has not been shown, had any motive to set back the occurrence to an hour earlier than it really took place, nor has it been suggested that he had anything to gain by inventing in the first information a delay which was contrary to the facts of the case, I have no hesitation in declaring that the discrepancy concerning the Munsif's presence must also be ascribed to the Sub-Inspector.

13. Whatever the demerit of the first information in respect, of the above-mentioned incident may be, the petitioner, however, is entitled to the advantages for his defence of such statements as appear therein to be his. One important statement affecting the present charge of laying a false complaint of theft stands out in bold relief in the first information. That statement is that the Rs. 101 of which the petitioner had been robbed had been received by him from one Jaggan Ram. The prosecution in this case has examined that Jaggan Ram as its witness. Jaggan Ram has, at the instance of the prosecution, produced his account book and proves, if he is to be believed, that he Lad handed to the petitioner the said amount a very short time before the time of the alleged occurrence. The reason for

this witness's examination and the production of his book is to be found in the fact that originally he had been the petitioner's witness and the prosecution discovering in the book an interpolation, showing the payment as having been made to the petitioner, in the entry regarding this transaction, it forestalled the accused by citing him (Jaggan Ram) as its own witness, thereby inviting the Courts below, from the fact of the interpolation, to draw an inference adverse to the accused. The entry in the account book appears to be genuine in all respects, except, a very small portion which may be translated into 'paid through Pershady.' This portion, from the appearance of the space into which it has been pressed, appears to have been written after the item of Rs. 101 had been entered in the book. But for this interpolated passage, the entry does not show how or through whom the payment had been made.

14. In respect of the transaction leading to the entry, the learned Judge holds that it is likely that it did take place but Ram Prosad did not take the money himself. The learned Judge in his judgment remark: 'The rest of the entry seems genuine enough, but I think there can be no doubt that these words were added subsequently. From this I think there can be no doubt that Ram Prosad did not take the money himself and he induced Jaggan Ram to add these words subsequently, in order to corroborate the charge of theft. I think, therefore, there cannot be the slightest doubt that the charge of theft is absolutely false.' This certainty in the finding that the charge of theft was false is attained by the learned Judge by a reference to the account book. I confess, I am unable to appreciate his conclusion when based on the interpolation, for the interpolation is in no wise inconsistent with the petitioner's assertion of receipt, and Jaggan Ram's statement of payment, of the money.

15. Examining the judgment of the lower Appellate Court, I find that the finding in respect of the falsity of the charge is based on two circumstances only, first, that the Munsif though present did not hear of the theft, and second, that there is the interpolation in Jaggan Ram's book.

16. As I have already expressed, Jaggan Ram was in reality a witness for the defence, and the fact that he has been examined by the prosecution does not alter

the character of his evidence. To my mind, the circumstance of interpolation does not give the inference that no payment was made to Ram Prosad. It may be that Ram Prosad received the money as is sworn to by Jaggan Ram and yet the fact that it was paid into his hands might not have been originally entered in the account book. From the circumstanced interpolation, the learned Judge has deduced that there could be no doubt; that Ram Prosad did not receive the money himself. To the learned Judge the interpolation renders payment to Ram Prosad impossible, and it is on such a view that he records an emphatic finding that 'there cannot be the slightest doubt that the charge of theft is absolutely false.' If this incident of the account book is eliminated, there then remains the other circumstance, viz., the Munsif not hearing of the theft. In respect of this, the learned Judge says that it is an extremely strong reason for holding that no theft took place. Apart from the fact that the learned Judge has not correctly appreciated the evidence regarding the presence of the Munsif, the question to my mind is, whether a finding based on a very doubtful circumstance can warrant a conviction of the accused for instituting a false charge. Had Padam Kunjra and others been on their trial, this circumstance might have been urged in their defence and found sufficient for their acquittal, but for the conviction of the petitioner for laying a false charge, it fails to be sufficient proof. The lower Appellate Court in holding that the Munsif was present at the occurrence, specially refers to the evidence of the D.W. No. 1, Ram Narayan, cousin of the accused, who said, in answer to a Court question, that the Munsif was present when the marpit took place, and also to the hesitation of the petitioner in his first information as to whether the Munsif was present or not. I have already expressed my reasons for doubting the fidelity of the first information as recorded by the Sub-Inspector in this respect. Referring to the statement of Ram Narayan, it appears to me that the learned Judge took up only one passage from his deposition and failed to notice the other statements that explained the witness's evidence. Ram Narayan in his deposition states that Ram Prosad arrived when the takrar was going on and joined in it; then, he says that the takrar commenced when the Munsif was present but he (Munsif) left while the takrar was continuing. The witness further says that the Munsif had already left the place when Padam ran away with Ram Prosad's bundle of money. In this deposition, there is nothing that can be construed to

mean that the Munsif should have heard of the theft, if a theft had occurred. The Munsif's own statement is that there was a general 'hulla,' that he could not make out what they were talking, and that he did not see any one assaulted nor did any one complain to him about the assault. He further says that the hulla had subsided a little but the crowd was still there when he left the place. Judging from the Munsif's deposition, it appears to me impossible to hold that the Munsif was present to the end of the occurrence. In fact, it appears to support Ram Narayan's version that the Munsif left the place while the takrar was still going on. Padam Kunjra, who is also known as Ramjan Kunjra, states: 'I was pointing him (Munsif) out the drain and the house when Narayan ordered maro, maro, and I was assaulted and beaten. The Munsif was present at the time.'--Narayan and Munsif were inside the enclosure.'--The marpit took place for about 10 minutes.' The evidence of Abdul Ghani is still more graphic. He says: Padam was showing the land to the Munsif, Lachmi dragged Padam by his kurta, Padam fell down, whereupon Lachmi, Babu Lal and Lal Chand beat him and Narayan incited them by saying maro.... The Munsif was inside the tatti at the distance of 3 to 4 paces.' Another witness, Dahari Teli, admits that both parties assaulted each other, while the fifth witness states that Padam complained to the Munsif that he had been beaten These statements are not supported by the Munsif at all, and, indeed, relying on his statement, we have to reject the statements of these witnesses as untrue. We have the prosecution case that the marpit between two excited factions took place at a distance of 3 to 4 paces only from the Munsif and in his presence, the marpit lasting for 10 minutes, the order for the assault having been given by a man who had been standing with the Munsif within the enclosure. It can mean only one of two things, i.e., the story of the Munsif's presence is false, or, the Munsif failed to notice what was a mere trivial assault because of the crowd. It is on the latter view that the petitioner has been convicted. We have definite statements of witnesses on which we have to proceed, and from their evidence it would be neither just nor judicious to belittle the incident, but even if I were so disposed, it would compel the rejection of their evidence. There, then will remain the only reliable evidence of the Munsif. I see nothing in his evidence on which. I could uphold this conviction. On the other hand, if the incident was as is spoken to by the witnesses, no inference adverse to the accused could be drawn from the fact

of the Munsif not hearing of the theft, for if the Munsif failed to notice a marpit between two excited parties within 3 to 4 paces of him, it is much less likely that he should have noticed the theft. The learned Judge seems to think that the theft, if true, was a serious affair and would have been bound to have been brought to the notice of the Munsif, but in respect of the assault, he remarks that the fact that the Munsif did not notice it is most likely due to there being a large number of persons present.' The explanation in respect of the assault does not commend itself to me as, if the prosecution case is true, it is inconsistent with the alleged facts. As for his not hearing of the theft, his own statement explains it away, for he says 'he could not make out what they were talking.'

17. Besides the Munsif and other witnesses that I have mentioned above, the evidence of the sixth witness for the prosecution requires to be noticed. He is a Mukhtar and was engaged on the side of the mosque. It is true that he supports the prosecution, but I place no reliance on his testimony as he positively asserts that the accused was present on the spot but took no part in the marpit. This statement is unworthy of credit, as the petitioner, when at the Police Station, was found to have injuries on him. Furthermore, this witness, though claiming to have seen the fight, is discreetly silent as to whether the fight was one sided or mutual, by saying that he did not notice who assaulted whom.

18. Reverting to the charge of theft, the possession of 101 rupees by the petitioner is an important point in the case, and the learned Judge, relying on his finding that the man had not the money, has held that the charge in respect of it must be false. I have already pointed out that the learned Judge's conclusions are erroneously drawn. On the other hand, there is one important circumstance in the first information which ought not to be overlooked and which gives me the conviction that the petitioner had the money with him. In the first information, it is stated that he had been carrying Rs. 101 that he had received from Jaggan Ram. On behalf of the prosecution, it has been contended that the petitioner never got the money as 'Jaggan Ram had been unable to say whether he had ever paid any money to Lal Chand on any previous occasion through the petitioner.' Granting force to this argument, the question naturally strikes one as to how the petitioner came to mention Rs. 101 and Jagan Ram's name in the first information which,

undoubtedly, was laid without delay. The statement and the stage at which it was made, leave no room for doubt that the petitioner was in some form or other connected with this transaction of Jagan Ram's. It thus renders the story of the petitioner in respect of his possessing 101 rupees very probable.

19. For the reasons I have stated above, I would set aside the conviction of the petitioner and make this Rule absolute.

20. It is not usual for us, in revision, to discuss a case on its facts, though it is open to us to do so. As I have the misfortune to be in disagreement with my learned brother in this instance, I have felt I owe it to him to explain at length my reasons for differing from him.

21. On account of this difference of opinion, the case was heard by Sir Asutosh Mookerjee.

22. Mr. C.R. Dass, Babus Chandra Sekhar Prasad singh and Rajendra Prasad for the Petitioner.

23. Babu Srish Chandra Chaudhuri, Junior Government Pleader, for the Grown.

24. The substantial question is controversy in this Rule is whether the conviction of the petitioner for an offence under Section 211 of the Indian Penal Code can be sustained. The Magistrate convicted the accused and sentenced him to rigorous imprisonment for six weeks Upon appeal, that conviction has been affirmed by the Sessions Judge. On the present Rule, issued by Mr. Justice Holmwood and Mr. Justice Hassan Imam at the instance of the petitioner, Mr. Justice Carnduff has recorded the Opinion that the conviction should be affirmed, while Mr. Justice Hassan Imam has recorded the opinion that the conviction ought to be set aside. The matter has now been placed before me under Section 439, Sub-section 1 of the Criminal Procedure Code, read with Section 429 and has been fully argued on behalf of the accused as also on behalf of the Crown.

25. There has been some discussion before me as to the meaning and effect of the judgment of the Sessions Judge in this case, and so far as I am able to gather from the opinions recorded by my learned colleagues, that judgment appears to

have been minutely analysed and criticised before them. To me it seems a fruitless task to submit the judgment of the Sessions Judge to a searching psychological analysis as appears to have been attempted at the Bar. I am not prepared to extend the application of the observations of their Lordships of the Judicial Committee in Mirza Sajjad Husain v. Nawab Wazir Ali Khan 16 C.W.N. 889 : 10 A.L.J. 364 : 16 C(SIC) 14 Bom. L.R. 1055 : 23 M.L.J. 210 : 34 A. 4(SIC) T. 361 : (1912) 1 M.W.N. 976 : 15 C.C. 27(SIC) Cas. 197. to criminal cases. Applications for revision in criminal cases stand on a fundamentally different footing from appeals against appellate decrees in civil suits. In cases of the latter description, this Court is bound by the rigid provisions of Section 100 of the Court of Civil Procedure, 1908, to act on findings of fact embodied in the judgment of the lower Appellate Court. In criminal cases, on the other hand, there is no such statutory restriction to the exercise of our jurisdiction. It is not disputed that, as a matter of practice, the Court does not ordinarily interfere with the conclusions of the lower Appellate Court on questions of fact: Belilios v. Queen 12 B.L.R. 249 : 20 W.R. 61 Cr. but although it is unusual in revision to interfere with a finding of fact, there can be no question as to the competency of the High Court so to interfere with a finding of fact when the occasion requires it, and the Court will not hesitate to do so when satisfied that the finding is manifestly erroneous and a miscarriage of justice would result from it if left uncorrected. King-Emperor v. Buransaheb 6 Bom. L.R. 1096 : 1 Cr. L.J. 1114. In this connection, reference may be made to the exposition of the law on the subject by Sir Lawrence Jenkins in King--Emperor v. Bankatram 28 B. 533 at p. 563: 'if we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion, and whenever it is argued that judicial decision has deprived us of the power that the Legislature has given us, I recall the words of an eminent English Judge: 'I desire to repeat, he said, 'what I have said before, that this controlling power of the Court is a discretionary power, and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly. For myself I say emphatically that this discretion ought not to be crystallised, as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion, which the Legislature has committed to them. This

discretion, like all other judicial discretions, ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised, according to the exigencies of each case.' These weighty words appear to me to breathe the spirit that should guide us in the exercise of our discretionary powers of revision, This may, perhaps, increase our responsibilities and add to our labours, but no one would shirk the one or grudge the other.' In view of the unfettered and unrestricted jurisdiction of this Court in cases for revision, I am not prepared to apply to such cases, rules and principles rightly recognised in appeals from appellate decrees. As I have already stated, no useful result can be achieved by a critical examination of the judgments of the subordinate Courts; it is a much safer course to obtain a broad and comprehensive view of the facts of the case and then to ascertain whether there has been a failure of justice. This was the course pursued in the case of Ramanath Kalapahar v. King-Emperor 2 C.L.J. 524 : 3 Cr. L.J. 160 and will be followed in the present instance.

26. The circumstances under which the petitioner has been convicted lie in a very narrow compass. On the 17th March 1911 the third Munsif of Arrah held a local inquiry in connection with a suit about some land near Chowk Masjid. The case for the petitioner is that either while the Munsif was there or immediately after his departure, an altercation took place between the persons present. The petitioner asserts that he had with him Rs. 101 in a bag which was stolen from him by one Padam Kunjra. The petitioner Ram Prosad went to the Police Station at once and lodged information; his opponent at the same time lodged a counter charge of assault. The Sub-Inspector refused to inquire into the case of Ram Prosad as he thought the charge of theft was an exaggeration. On the next day, the petitioner lodged a complaint before the Magistrate; inquiry was held later on and the case found to be false. Eventually, on the 31st August, the petitioner was ordered to be prosecuted for an offence under Section 211 of the Indian Penal Code. The petitioner has been prosecuted and convicted as already stated. It is conclusively established on the evidence that there was an altercation amongst the persons present at the local inquiry; whether this took place before or after the Munsif had left the place, is by no means clear, and the witnesses who speak to the presence of the Munsif are, as might be anticipated, not agreed as to the precise spot where the Munsif was at the time. The vital point of the case, however, is whether the

petitioner was deprived, as he alleged, of the sum of Rs. 101. I sea no reason to distrust the evidence that the petitioner had, as a matter of fact, with him the sum in question. This is supported by the evidence of the banker from whom the money was obtained and the entry in his account book. That entry, upon careful examination, does not appear to me to be suspicious, and there is no reasonable ground for the theory that Jagan Ram added words to the entry to corroborate the charge of theft. It is remarkable that no plausible hypothesis has been established by evidence as to why a wholly unfounded charges of this description should be brought. The failure of the Police Officer to investigate the matter promptly, has, unquestionably, prejudiced the petitioner: evidence which might have been available, if an inquiry had been set on foot at once, would naturally be difficult, if not impossible, to obtain when the investigation was taken up later on. Nor can I attach any weight, in the circumstances, to the evidence of the Munsif who, it is plain from his deposition, did not particularly observe the incidents which took place at some distance from him. In my opinion, the Courts below have failed to keep in view two elementary principles, namely, first that failure on the part of a complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false, and, secondly, that to secure a conviction in this class of cases, it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence. Upon a careful examination of the entire evidence on the record and the circumstances of the case, I have arrived at the conclusion that the conviction of the petitioner cannot be supported. The Rule is made absolute and the conviction and sentence set aside; the petitioner will accordingly be discharged from his bail.