(1868) 09 CAL CK 0016

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Fatik Biswas		RESPONDENT

Date of Decision: Sept. 10, 1868

Judgement

Phear, J.

We think that the prisoner must be acquitted in this ease. He was tried before the Sessions Court upon two charges. The first one was, "that" he, on or about the 2nd day of April 1868, at Jessore, in the Court of the Joint" Magistrate, being lawfully bound on oath to state the truth, intentionally gave" false evidence in a stage of a judicial proceeding by stating;" and then follows the statement alleged to be false; and the second charge was, "that he, on or about the 2nd day of April 1868, at Jessore, in the " Court of the Joint Magistrate, being lawfully bound on oath to state the "truth, intentionally gave false evidence in a stage of a judicial proceeding by "stating," and so on. It was essential to both these charges that the prosecution should make out that there was, on or about the 2nd day of April, a judicial proceeding pending in the Joint Magistrate''s Court; and that the prisoner, in the course of that proceeding, made the statement which was alleged to be false. But we can find no evidence on the record that there was any such judicial proceeding pending in the Joint Magistrate''s Court at Jessore at any time. The proper mode of proving that fact would have been to produce the record of the proceeding which the prosecution referred to. If this was actually done, that record has become detached from the papers in this case, and has not come up to us as part of the Session''s record. We think it right to remark here that, in our opinion, both the charges made against the prisoner are seriously defective, in not specifying the judicial proceeding in a stage of which the prisoner is accused of having made the false statement. We even think that the particular stage of the proceeding ought to have been mentioned. It is only fair to the prisoner that the charge which is to stand for ever on record against him should be made as definite and specific as it reasonably can be; and, on the other hand, the prosecution, too often needs to be

definitely told what is the burden of proof which lies upon it. Had the charge, in this case, been properly specified, it could hardly have happened that the evidence which was most material to the issue to be tried should not be forthcoming.

2. We also cannot discover that there is any evidence in the Session''s record of the prisoner having made the statement in the Joint Magistrate''s Court, which he is alleged to have made there. The Judge says: "the deposition he gave," that is, in the Joint Magistrate''s Court," is marked A., and I know it to be in the Joint Magistrate''s hand-writing." It is scarcely necessary for us to remark that the knowledge of the hand-writing possessed by the Judge did not, of itself, constitute evidence, such as even he himself could have looked at or considered that the prisoner made the statement which appeared in the deposition. The hand-writing of the Magistrate did not afford legal evidence that the prisoner made the statement which was written down in that hand-writing. There are one or two instances mentioned in the Code of Criminal Procedure when the attestation by the Magistrate, and his signature is of itself sufficient proof of the document such as that to be found in section 366, relative to the examination of the accused person before the Magistrate. But there is nowhere any general provision apart from these special instances, that the deposition of a witness, either written out or signed by a Magistrate, shall be evidence of itself, without more to the effect that the witness deposed before that Magistrate the words which appear in the deposition, and this case does not fall within the meaning of any of those instances. Moreover, even if the Judge''s knowledge of the hand-writing of the Joint Magistrate could have been supposed to afford to himself any evidence in proof of the deposition, it obviously could not be such evidence to the Assessors. The only mode of conveying it to them would be by the Judge stating on oath before them what he actually knew upon the point. It appears to us that, in the absence of any evidence of there having been in fact a judicial proceeding pending in the Joint Magistrate''s Court, on or about the 2nd of April 1868; and further, in the absence of any evidence of the prisoner having made the statement alleged against him in any such proceeding, the whole foundation of the two charges upon which the prisoner was tried in the Sessions Court breaks down. We have had some hesitation in our minds whether or not we should exercise the powers which are given to us, sitting here in appeal, by the provision of section 422 of the Criminal Procedure Code, [2] and send back the case to the Sessions Court, in order that any additional evidence on these two points might be produced by the prosecution. It is clear that evidence relevant thereto, either affirmative or negative, must exist. But upon a consideration of all the circumstances of the case, including even some of the collateral matter to which the Judge has referred, and bearing in mind that the prisoner has already undergone nearly two months'' rigorous imprisonment, we don''t think it necessary to exercise the discretion which is given to us by that section; and we think it is proper to say that on the evidence which appears on the record, the prisoner ought to be acquitted. He will, therefore, be discharged from custody so far as this conviction is concerned.

[1]Sec. 193:--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 ease, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.--A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2.--An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Punishment for false evidence.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a Judicial proceeding, A has given false evidence.

Explanation 3.--An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a Judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an Officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.]

[2] [Sec. 422:--In any case in which appeal has been allowed, it shall be competent to the Appellate Court, if it think further enquiry of additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, to direct such enquiry to be made and additional evidence to be taken. The result of the further enquiry and the additional evidence shall be certified to the Appellate Court, and the Appellate Court shall thereupon proceed to pass such judgment, sentence, or order as to such Court shall seem right.]

Appellate Court may direct further enquiry, etc.