(1866) 02 CAL CK 0009

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Lalchand Kowrah, Chowkeedar and Others		RESPONDENT

Date of Decision: Feb. 7, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

It is said that s. 28 does not extend to the mofussil Court; and that it applies only to the High Court on its Original Side, inasmuch as the Act was intended to apply only to Her Majesty''s Supreme Courts. That depends upon the construction which is to ha put upon the words, in the general rule laid down in s. 28, "in any such Court," or "before any such person." Now, it so happens that s. 27, which immediately precedes the section in question, says:-- "The rules of evidence in Her Majesty''s Supreme Courts as to matters of Ecclesiastical or Admiralty, Civil Jurisdiction, shall be the same as they ore on the Plea Side of the said Courts, and it is argued from that that, when s. 28 uses the words in such Courts," it means in any such Court as is lastly above-mentioned, viz., Her Majesty''s Supreme Courts. But it appears to me that that construction is not correct. S. 27 was not intended to alter the rules of evidence in every branch of the Supreme Courts, but only to make the rules of evidence in matters of Ecclesiastical or Admiralty Civil Jurisdiction the same as those on the Plea Side of the said Courts. That was the sole object of s. 27, and it did not apply to matters of Criminal Jurisdiction. But s. 28 applies to cases of treason and perjury, and to all cases of every kind; and it appears to me that the words "before any such Courts" were intended to refer to all Courts of Justice in the territories then in the possession and under the government of the East India Company, as mentioned in s. 2 of the Act. The words "or before any such person" cannot refer to persons mentioned in s. 27, as no persons are mentioned therein. They in like manner refer to the persons mentioned in s. 2, viz.; all persons having by law, or consent of parties, authority to take evidence. Ss. 3, 5, 7, 11, and other sections use the words "all such Courts and persons aforesaid," and ss. 6, 9, 12, and other

sections use the words "all such Courts and persons aforesaid," referring to the Courts and persona mentioned in s. 2. The Act passed was for the improvement of the law of evidence, not only in the Supreme Courts, but in all the Courts of the country. Neither the title nor the preamble limit the Act to the Supreme Courts. If the words "such Courts," in s. 28, refer to the Supreme Courts, because those were the Courts last-mentioned, ss. 30, 41, and 45, which use the words "such Court or person," must, upon the same reasoning, be construed to refer to the Supreme Courts. The Act recites that it is expedient, further, to improve the law of evidence, and then proceeds to enact "that, within the territories in the possession and under the government of the East India Company, all Courts of Justice and all persons having by law, or consent of parties, authority to take evidence, shall take judicial notice," &c. Further, the proviso in s. 28 shows that "any such Court" was not intended to refer simply to the Supreme Courts; it says;-- "But this provision," that is, the provision that the evidence of one witness, who is entitled to full credit, shall be sufficient for proof, and "shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury.

2. Now the words "of any Court" would not have been used in the proviso of the preceding part of the section had they been Intended to apply only to the Supreme Courts; whereas if nay construction is correct that the words "such Courts" and "such person" refer to the Courts and persons mentioned in the second section of the Act, the words of "any Court," &c., are applicable and correct. According to the law as administered in the exercise of Original Criminal Jurisdiction, the evidence of only one witness, uncorroborated, is not sufficient to convict of perjury, because it is governed by the rules of the law of England. I do not mean to say that every rule of the law of evidence as administered in England applies to the mofussil, but I cannot think that we ought to put such a construction upon s. 28, Act II of 1855, as would allow a person to be convicted of perjury at Alipore, or in other parts of the mofussil, upon the uncorroborated testimony of a single witness, when such evidence would be insufficient for a conviction in Calcutta before the High Court in the exercise of its Original Criminal Jurisdiction. Such a construction would not be very consistent. But if the law is so, we are bound by it. If there was any rule or practice in the Sudder Court or in the Courts in the mofussil, which, before Act II of 1855, prevented a conviction for perjury upon the evidence of a single witness without any corroboration, it appears to me that such Courts fall within the proviso in s. 28. Now there is a case which was decided by Mr. Samuells in the Sudder Court, Government v. Goreeb Peadah (1), in which the rule was laid down as follows:-- "Perjury is not to be assumed, because the story of one man appears to be more credible than that of an other. There must be certain proof adduced, independent of the oath of one of the parties that the deposition of the other is false;" that is to say, the oath of one man is not sufficient to convict another of perjury, when he has sworn to the contrary; that you are not to take the evidence which, by an accident, is the more

credible for the purpose of convicting of perjury, but you must bring something corroborative or something more than the evidence of one witness. This rule, which was laid down by the Sudder Court in this case, is supported by other cases, and is in accordance with the principle of the English law. Indeed, I think, I may safely say, that it was the practice of the Sudder Nizamut and of the Mofussil Courts not to allow a conviction of perjury upon the uncorroborated evidence of a single witness. Consequently, the case does not fall within the general rule of s. 28, inasmuch as it is taken out of that rule by the provision which says, that the rule is not to affect any rule or practice of any Court that requires corroborative evidence of a single witness in a case of perjury.

3. We do not sit here to make the law, nor to exercise the functions of Legislators, but to administer the law, as in our consciences we believe it to exist. It is unnecessary, therefore, to enquire, whether the rule of English law or the rule of practice of the Mofussil Courts are founded upon sound and correct principles or not.

Bayley, J.

4. In this case I would distinctly confine myself to the case as one of perjury. The question then is whether, when A has deposed one way, and B has deposed exactly the contrary, and upon this B is accused of perjury, the statement of A on oath, which is one statement against that of B, also on oath, will require some corroboration before B can be convicted of perjury. I think that the principle laid down in the decision of Mr. Samuells in the case of Government v. Goreeb Peadah 9 Niz. Ad. Rep., 210, is that which should be followed. That case is very analogous to this. The principle I would follow here is enunciated in the following words:-- "The conviction, which is founded simply on the oath of the persons accused by the prisoner, cannot stand. If I were to affirm such a conviction, no person bringing a charge against a darogah, who happened to enjoy the good opinion of the Judge and Magistrate of that district, would be safe. Perjury is not to be assumed, because the story of one man appears to be more credible than that of another. There must be certain proof adduced, independent of the oath of one of the parties, that the deposition of the other is false." As I said before, the case before us is a case of perjury, and therefore I would not go beyond it, or enter into any other question of the construction or application of Act II of 1855, irrespective of this case of perjury.
Norman, J.

5. I may observe that the prisoner was called before the Joint Magistrate to prove that by the desire of the head constable he had taken bamboos, without paying for them, from Kartick Ghose and other villagers. He denied it. The question, whether he had not told the inspector that he had not done so, was apparently put to him, in order to show that his statement before the Magistrate was at variance with the statement made by him to the inspector, and, consequently, that his evidence in

exculpation of the head constable was not to be relied on, as opposed to that which it was expected that Kartick Ghose and the other villagers would give. It was clearly material as affecting his credit and the credibility of his statement on oath before the Magistrate. It is, therefore, not necessary for me to express any opinion as to whether a false statement made by a witness on a point wholly immaterial to the issue in a cause, is a giving of false evidence, and, as such, punishable under the 193rd section.

6. The only other point is, that the prisoner was convicted of giving false evidence, the only proof that the testimony was false being that of a single witness. S. 28, Act II of 1855, enacts (reads). An accomplice can hardly be said to be a witness entitled to full credit. I am disposed to think that, by the law of evidence in this country, and the practice of the lute Sudder Court, the testimony of an accomplice required confirmation (see Regulation X of 1824). I think that by the rule and practice of the late Sudder Court, some corroborative evidence was required to prove the falsehood of the statement on which perjury is assigned: that a conviction for perjury was not allowed to stand where there was the mere uncorroborated oath of the prosecutor against the oath of the prisoner. See a case in Beaufort''s Digest, paragraph 4508, in which, however, the rule was probably misapplied. See also Government v. Goreeb Peadah 9 Niz. Ad. Rep., 210, Vaheel of Government v. Musumat Kukha 1 Niz. Ad. Rep., ed. by Macnaghten, 314, and Government v. Khooman 2 Niz, Ad. Rep., ed. by Macnaghten, 168.

7. I am sure that the rule rested on sound policy.

8. After a very careful consideration, I am disposed to think that the evidence of two witnesses, or at least some corroborative evidence of the oath of a single witness, is still necessary to prove the falsehood of any statement charged to be false evidence. But I feel considerable diffidence on the subject. My view is, however, apparently in accordance with the opinion of Mr. Norton in his work on Evidence, s. 622. The cases of the other prisoners, who were tried at the same time, are precisely similar. I would quash the conviction. I should regret the acquittal of the prisoners on this ground the less because of the shape which the charge in the present instance has assumed. The substantial offence of which the prisoners were apparently guilty, was that of giving false evidence in order to screen an offender. In order to punish them, for that offence, of which there was no sufficient proof, they are charged with having spoken falsely, by denying that they made a particular statement to the Police officer. The confessions of persons accused, made before Police constables are not admitted as evidence of guilt; and it would certainly seem to be a dangerous practice that one who has made such a statement or confession before a single Police constable, should be compellable to repeat or admit that he made the confession before the Magistrate or Judge, on pain of being charged with perjury if he retracts and denies that he made the statement. If the statements of the prisoners made to the Inspector are true, they are probably liable to be charged as

guilty of, or of abetting, offences under the 105th or the 409th section of the Penal Code.

9. The case having been referred to the Full Bench on the second point, as the majority of such Court agree with me, the convictions will be quashed.

Pundit, J.

10. I believe that in the late Sudder Nizamut, the Judges almost invariably convicted prisoners tried for perjury, when the oath against the former oath of the prisoner was corroborated, and so I should hold in this case, that the testimony of one witness is not sufficiently legal to convict the prisoner.

Campbell, J.

11. The question arising in this case is a point of law in a criminal appeal, from a conviction by jury for false evidence, first heard by Norman, J., and myself. There was a difference of opinion, on account of which we thought it necessary to refer the case to a Full Bench.

12. If I were charging a jury, or advising an inexperienced Judge, I should probably say that, in ninety-nine cases out of a hundred, a single witness would not suffice for a conviction in a case of this kind. As a matter of credibility, I have no doubt that it is so. But we are now called on to determine the matter simply as a dry point of law, and of law only. The prisoner has been convicted of false evidence in a trial by jury in the Sessions Court, upon the evidence of one witness, which the Jury and the Judge deemed worthy of entire credit; and my learned colleague and myself, who sat on the Division Bench, were agreed that, as a question of fact, we neither had the power to interfere, nor saw any reason for interfering, with that conviction; that in this respect the appeal could not be sustained. The only question is whether, that being so, we are, as a matter of technical law, bound to quash the conviction; to say, we have no doubt of the truth of the evidence for the prosecution, we have no doubt of the guilt of the prisoner, we have no power to interfere with the finding of a jury on the facts, but still we are, in a case of perjury, bound by a technical rule to release the prisoners, because the evidence of one witness is, in law as distinguished from fact, insufficient for a conviction, and the jury cannot legally find a verdict upon it. I concur in the view of Act II of 1855, s. 28, which has been taken by my learned colleagues. The first sentence of that section lays down the general law of British India, viz., that one witness of un-impeached credit is (if believed by the Court) sufficient for a conviction in a case of perjury, or in any other case. The second sentence makes an exception in regard to Courts where a contrary rule or practice is already established. It is not, I think, necessary here to discuss whether, in English Courts, there is really on this subject a rule of legal effect; whether, in a case of perjury proved by a single witness, the question is one for the jury or for the Judge. I have no doubt that since the English law prevailed in the late Supreme Courts, and it was not in 1855 thought necessary to go beyond that law for the

purpose of rendering the law of those Courts uniform with that of British India in general, the second sentence of s. 28 was intended to reserve the law of England in those Courts in regard to the point now before us, whatever the Judges might construe that law to be. Up to the present moment, the Criminal Procedure is entirely different within and without the limits of the original jurisdiction of the High Court; and it seems to me that, in 1855, the Legislature recognised and contemplated a very wide difference in the Criminal Law and Procedure within and without the Mahrattn Ditch. But the wording of the second sentence of s. 28, even if specially designed for the Supreme Courts, in terms extends to all Courts in which there had been previously established a rule or practice requiring corroborative evidence in support of the testimony of a single witness in the case of perjury. The question is, therefore, narrowed to this, viz., whether in the Courts of Bengal such a legal rule or practice had been established, I think, however, that when the Legislature had laid down a broad and liberal rule for British India, and allows only of exception in regard to certain Courts, then, before we establish the exception in the Courts of Bengal, before we give effect to a highly technical rule at variance with the general law of British India, we must be satisfied that, in reality, such a rule was clearly, distinctly, and definitely established as matter of law Previous to the Penal Code, the criminal law of the Mofussil Courts was very vague and uncertain. It may be that, both in criminal and civil matters, single Judges may occasionally have somewhat loosely quoted what they supposed to be the rules of English law. But I cannot think that two or three isolated instances of such references, culled from a vast number of decisions extending over very many years, would suffice to establish a rule of law. In this instance, so far as I have seen, even such dicta are quite wanting. A great deal depends on the way in which the word "practice" is understood. I quite admit that it may be found that, in practice, in a very great many cases, a single witness, uncorroborated, was not deemed sufficient for a conviction for perjury. But that is, in my view, a question of the credibility, not of the admissibility, of the evidence. The question is whether there is a practice elevated to the dignity of an absolute rule of law, viz., that though we may, to the fullest extent, believe the evidence, we cannot convict upon it, and must set aside the verdict of a jury. Such a rule of law must, it seems to me, have been clearly enunciated and consistently acted on before it can be binding upon us under the terms of the statute, I cannot see that it has been so. I do not find it clearly and broadly expressed in unambiguous terms in a single case which has come to my notice.

13. Beaufort quotes one case in which the Judge refused to convict for perjury on the evidence of two witnesses, because it was oath against oath; that can hardly be applicable. One or two other cases have been examined, and especially one is relied on, decided by Mr. Samuells--Government v. Goreeb Peadah 9 Niz. Ad. Rep. 210--in which it seems to me that the expressions used mean that, in the particular case, the judge did not think, and in similar cases would net think, the unsupported testimony of one or two witnesses interested in the matter sufficiently credible. In

truth, on examining that case I find that there were two witnesses who directly swore to the perjury-- "the darogah and a burkundaz named Meheeroollah." Mr. Samuells also says:-- "The only evidence against the prisoner is that of the darogah and the burkundaz whom he had accused, and the conviction, founded simply on the oath of the persons accused by the prisoner, cannot stand." It is evident that this case is not in point, nor have I seen any other more so. I cannot see that any rule of law on the subject was established in the Courts of Bengal, and, therefore, I would not give effect to such a technical rule in opposition to the general law of India. The appellants having been convicted by the jury, I would dismiss the appeal.

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(1) Act 11 of 1855, s. 28.-- "Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such Court or before any such person. But this provision shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury.