

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 891.

Dated 30th Apr 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Directing the Government Pleader, Madras, to present an appeal to the High Court against the judgment of acquittal in Salem Session case No 18 of 1895.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	3321 3490		95				



IN THE COURT OF SESSION OF THE SALEM DIVISION.

The Fourteenth day of March, X
One thousand eight hundred and ninety-five.

PRESENT:—W. J. TATE, Esquire, J.

JUDGMENT IN SESSIONS CASE No.18 of 1895.

P. R. C. No. 1 of 1895,

Committed by the Head Assistant Magistrate of Salem.

The Queen-Empress of India v. Marigan.
The accused was defended by
Mr. J. Shrieves, Pleader.

Offence ... Giving false evidence in a judicial
proceeding, first part of section
193, I. P. C.

Opinion of Assessors. ... Guilty.
1 a Chetti.
2 a Brahmin.

Finding of Judge ... Not guilty.

Order ... Acquitted and discharged.

The case for the Prosecution is that the accused, Marigadu, when examined by the Police as a witness in a case of murder brought against one Tirumaligadu (this formed the subject of Sessions Case 60/93 on this Court's file) made a statement implicating Tirumaligadu, and then, when examined by the 2nd Class Magistrate at the preliminary enquiry, retracted the said statement and declared it false.

2. Marigadu was, on these facts, committed to this Court on a charge under section 194, I. P. C., and further on an alternative charge under section 193, the Prosecution being duly sanctioned by the 2nd Class Magistrate—Exhibit C.

3. The charge under section 194 was not pressed here, no evidence having been adduced before the Magistrate, other than the accused's own second statement, to show that his statement made to the Police was false.

4. The alternative charge was continued in this Court. And it has to be seen (a) whether the two statements are so contradictory as to be incapable of reconciliation (b) whether they were really made by the accused and (c) whether they were duly and legally taken.

5. As to (a) there can be, I think, no doubt. The statement to the Police is that of an eye-witness. The deposition to the Magistrate is to the effect that the statement was made, but under Police pressure, also that it was wholly false, as accused was on the day of the murder absent from his field (adjacent to the scene of murder) and also absent from the village. These averments cannot both be true.

6. As to (b). The accused generally admits making both statements. There can be no doubt (vide the evidence of ^{2nd witness}_{P.}) that he made the statement to the Magistrate (B), but it has been argued for him that precise proof is wanting to show that he made the statement to the Police (A). This statement was recorded by the Inspector of Police (^{1st witness}_{P.}) in his note-book. It was, so the Inspector says, given in Canarese, or in mixed Telugu and Canarese,—the witness is not very clear which,—and recorded in English. Now, the Inspector knows Telugu and English well, but is unable (as was found by testing him in Court) to translate at all accurately or properly from English into Canarese. He could, however, translate to a considerable extent from Canarese into English, and I agree, on the whole, with the Assessors in thinking that—considering accused nowhere denies that he used the expressions attributed to him in the note-book—the Inspector must be believed when he says that he caught and duly recorded what accused told him. Exhibit A contains a short and simple narrative, and one not difficult to render in another tongue.

7. As to (c). The deposition B contains a declaration at foot that it was read to the accused in Telugu (a language he understands pretty well) and pronounced by him correct. The ^{2nd witness}_{P.}, a clerk in the Denkanikota Sub-Magistrate's office, proves the handwriting of the clerk who recorded this declaration, and says the clerk is now in Mysore—i. e. out of reach of the Court's process. The statement to the Inspector (A) is stated by that officer to have been recorded in answer to questions put by him, as required by Section 161 Criminal Procedure Code—see I. L. R. XVI Calcutta 349. It is here pointed out that he told the committing Magistrate it was "volunteered", but this cannot be the case, for the evidence on both sides shows that accused had to be sent for and brought before the Inspector for interrogation. Question and answer are not recorded in the note-book—this being contrary to custom—but I agree with the Assessors in thinking that the Inspector must be believed on the point.

8. Then it is said that accused made the statement A under Police pressure. It is not alleged that any compulsion was used to him by the Inspector. And that officer says he sent for him by a non-Police man, and that no constables were present when he examined him. Five witnesses have, however, been examined for the defence to show that, prior to this examination, the accused suffered ill-treatment at the hands of the Police, and was even threatened by the Head Constable with inclusion in the case as a guilty person, did he not say what was

wanted. The Assessors believed this evidence. I cannot say I agree with them. The cross-examination of the ^{1st witness}_{Defence}, who is perhaps, the most important witness in the case, shows that he is unduly interested in these proceedings, and his story that the threat of inclusion in the case was publicly made (it is notwithstanding supported by no other witness) seems to be improbable. The evidence of the 2nd witness consists merely of a repetition of what the accused told him; the 3rd witness speaks to a slap dealt accused by a constable—for a reason unknown; the 4th and 5th to a cry from accused of "Ayyayo!" as he was with the Police inside the Shanbhog's house, and (5th witness only) to the noise of slaps—this being during the afternoon, and when the whole village was collected outside. Something, possibly, took place in the way of pressure, but the evidence in proof of it seems to me far from conclusive or reliable. In any case, the allegation against the Police affects, even if proved, the punishment only—section 94 I. P. C.

9. The Assessors found the accused guilty. But in coming to a conclusion in the case, I have great doubts whether he can be legally convicted on the alternative charge. If both the statement to the Police and that made to the Magistrate are punishable as the same offence under the first clause of section 193 I. P. C. there is, of course, no difficulty in the case. And here I am referred to the judgment of Mr. Justice Scott printed at page 219 of I.L.R.VIII Bombay. But, with every deference to the opinion of that learned Judge,* I cannot bring myself to see the soundness of his dictum that a Police investigation under Chapter XIV of the Criminal Procedure Code is a "stage of a judicial proceeding". Explanation 2 to section 193 I.P.C. does not make it so, for the Police enquiry is not one directed by Law. It is one, no doubt, authorized by Law, but that is another matter. The charge of murder against Tirumaligadu might have been legally taken up and dealt with by the Magistrate on a mere complaint made under section 191 C. P. C., and the illustration to the section seems to confirm this view, while, in section 4 C.P.C. (b), (c), (d) the terms "investigation" "inquiry" and "judicial proceeding" are strictly defined, and the first of these terms alone made to cover "all" the proceedings under the code for the collection of evidence conducted by the Police". The proceedings taken under section 161 cannot be both an "investigation" and a "judicial proceeding". I come to the conclusion that a false statement made to the Police is, though no doubt punishable under section 193 I.P.C. (In re Karim Khan, VIII Calcutta 300), punishable only under the latter clause of that section.

10. It is therefore a distinct offence from that contemplated by the first clause of the section, and punishable differently in consequence.

11. Now, it has been held in I.L.R. X Bombay 124 (cf. also I.L.R. XI Bombay 702 (Full Bench)) that an accused cannot be convicted on an alternative charge of two different offences. The reason appears both sound and obvious. Section 233—Criminal Procedure Code—

*It does not appear that the point was argued before him.

As the Dist. Judge points out it is "directed by Law" if information is given to Police officer under s 157 of the Cr.P.C.

A
20/4

Why not? Explanation 2 to s 193 expressly speaks of an "investigation" as being "a stage of a judicial proceeding".

D
20/4

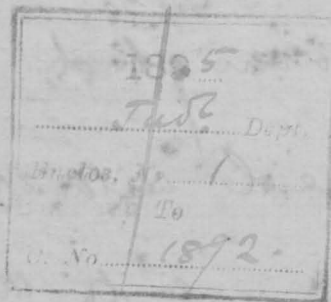
enjoins a separate charge (and separate trial) in the case of "every distinct offence". Where the allegation is that only one "distinct offence" has been committed (as in the case of an alternative charge for giving false evidence in a judicial proceeding) it is open to the Prosecution to show that it must have been committed either in one set of facts or the other. It is also, under section 236 Criminal Procedure Code, open to the Prosecution to charge an accused with having committed one or other offence in the same set of facts. But it is, as it appears to me, not permitted by the Code to say to a prisoner "either you committed (A) offence in (a) facts, or (B) offence in (b) facts," for the simple reason that the prisoner is then misled in his defence, and "entangled in a logical snare".

12. For these reasons I hold that the accused cannot be legally convicted under the present charge and hereby accordingly acquit him.

(Signed) W. J. TATE,
Sessions Judge.

(True Copy)

Exd.,
P. S.,
Hd. C.



PATRIOT PRESS—SALAM.

Lee Maran
Head Clerk
In Cr Appeal 300/95.

one well up to 5 to 600 has
as per his appn no 35-55/95

A copy of the letter No. 88 of 19 April 1895
of the Public Prosecutor Salem

Sir I have the honor to invite your attention
to the judgment in the Sessions Case No. 189
1895 Regina Versus Marigan in which the
latter was charged in the alternative with
having made one statement to the Police
and a different statement to the 2nd class
Magistrate of Denkanikotah.
2. On the facts the learned judge finds that
the two statements are not reconcilable
(vide para 5) but he holds that under
the circumstances stated the accused
cannot legally be convicted. In his view
a man may be charged with having
made a false statement to the Police
or to the Magistrate and convicted only
where the falsity of the statement is clearly
proved but there can be no charge
in the alternative. I cannot agree
with him.

3. The judge relies on the cases quoted in X Bombay page 124. and XI Bombay page 702. These cases do not apply to the present case and I pointed out their inapplicability to the judge during the trial.

4. The case in VIII Bombay page 219 - (not overruled by the two cases relied on by the judge) is a direct authority that such an alternative charge would lie. XVI Calcutta page 349 is also a case in point and the judge's attention was drawn to it by me. But he makes no allusion to it except with regard to, altogether a different matter. Thus you may see that the judge differs from the rulings of the two High Courts.

5. The expression used in explanation II to Sec. 193 Cr. P. C. is "directed by Law". The expressions used in Sec. 156 & 161 of Cr. P. C. are respectively

"may investigate and" ~~may examine~~

"may" the learned judge holds that the law ^{itself} permits or authorises. But does not direct the Police to make an investigation and that therefore an investigation by the Police is not "a stage of judicial proceeding" within the meaning of the Section 193. This construction in my opinion rather strained.

6. When a report is received by the Police of the commission of a "Cognizable offence" it is their duty to investigate it. They are to have no option in the matter because of the use of the word "may" in Sections 156 and 161 Cr. P. C.

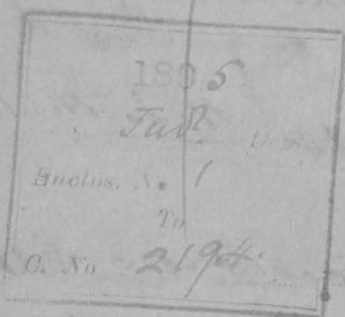
The department itself was organised for the detection of such cases.

7. In IV Calcutta page 47 it has been held that in interpreting statutes the words "must" and "shall" might in some cases be substituted for the word "may" but only for the purpose of giving effect to the intention of the Legislature. So, if

At C. P. C. the word "may" must be taken to mean "must" or "shall". If this view were adopted the narrow distinction drawn by the Judge between the words directed and authorized vanishes.

8. The Judge informed that he doubted the soundness of his judgment and that he would like to have a distinct Madras ruling on the point.

9. The issue involved in this reference is an important one and I request that you may be pleased to see that an appeal is filed in this case against the acquittal.



True copy

Manipal Singh
Jr. Dist. Magistrate

2000-11-7-94.

CURRENT NO. 111
Salem Collector's Office,

11th April 1895
Dated 14th April 95

No. 664
Jn.
From

G. STOKES Esq.,

Collr. & Dist. Magte. of Salem.

To

The Chief Secretary to Government
Judicial Department

SIR,

Madras.

I have the honor to submit the enclosed judgment of the Sessions Court and to recommend that an appeal be made to the High Court against the acquittal. The matter is of very great importance in this District. One of the greatest difficulties in the way of the due administration of justice is the tendency of witnesses to turn round and swear at one time one way and at another the

of witnesses is often most flagrant,
and the only way of dealing with the
evil is by summary punishment
for perjury. This is with perfect
justice much facilitated "by
an alternative charge" and if so
the Sessions Judge thinks an
alternative charge won't lie in a case
where one Statement is made to the
Police and the other to the Committing
Magistrate, it will render it so diffi-
cult as to be practically impossible
to deal with perjury in many cases,
for it is often impossible to prove which
Statement is false. I venture
to think however that the
Sessions Judge's arguments are
unsound.

2. The facts of the case so far as

2.

are set out as fully as is necessary
in the first para of the Judge's judgment
viz. "the accused, Marigadu, who
"examined by the Police as a wit-
"ness in a case of Murder brought
"against one Tirumaligadu (this
"formed the subject of Sessions
"Case 60/93) on this Court's file
"made a Statement implicating
"Tirumaligadu, and then, when
"examined by the Second Class
"Magistrate at the preliminary
"enquiry, retracted the ^{said} Statement
"and declared it false". It is the
Conclusion in para 10 which I
venture to think is entirely unsound.

Para 9.

3. In para 9 the Sessions Judge refuses to be bound by the dictum of Mr Justice Scott (D.L.R. VIII Bombay 210) and refuses to allow that the Police investigation into a murder case ~~into a murder case~~ is a stage of a "Judicial Proceeding".

4. The first reason is that it does not come under explanation 2 to Section

193 I.O.C. The terms of that explanation are copied on the margin for convenience of reference.

The point taken is that the before a court of Police Proceedings are not judicial proceedings "directed" by law though judicial proceeding "authorised". It is said that the Police Proceedings are only authorised

because the charge place before a court of justice of murder against

Thimmalagadu might legally have

3.

have been taken up and dealt with by a Magistrate. But in my opinion that fact & beside the question. What we have got to look to, is what the law directs when Thimmalagadu gave information to the Police and it is perfectly certain that the law directs an investigation by the Police when he does so. What the law allows under a totally different set of circumstances is of no consequence.

5. The Judge further argues that the "Illustration to Section

ra 9.
when unable to follow this reason.
ing unless it be supposed that the
illustration is the only case under
the explanation. It is one case
not ^{the} only one under it. Looking to
the wording of the explanation
it is at once plain that a Police
investigation is covered by its
terms. The case of a committing
Magistrate was chosen in the
illustration no doubt with the view
to illustrate that a committing
Magistrate is not a judge as de-
fined in the Penal Code nor are
his proceedings those of a court

4

and illustration in the Penal Code
but they are nevertheless a stage
of a judicial proceeding.

b. The next argument adduced
is that the Proceedings taken under
Section 161 ^{Cr P C} cannot be both an
investigation, and a "judicial
proceeding". I cannot in the least
follow this dictum or see the
necessity for it. It is true that
"investigation", "enquiry" and "judicial
proceeding" are strictly defined
but the absurdity of the conten-
-tion that these terms are mutually
exclusive is patent on its face for
no one can deny that an

But it is necessary to examine the above idea in the light of the definition of Judicial proceeding itself. In Section 4 clause (d), Judicial proceeding is defined as "any proceeding in which evidence may be legally taken."

7. Evidence is defined in the Evidence Act Section 3 as (1) all Statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry

(2) all Statements produced

5

and "Court" is defined to include all Judges and Magistrates and all persons except arbitrators legally authorised to take evidence.

8. The definition is thus defective as including in one case the word defined but I think

"Evidence" may be taken in the result to be defined as follows.

(1) All Statements which any person except an arbitrator legally authorised to take the Statements of witnesses permits or requires to be made before it by witnesses in relation to matters of

A witness is nowhere defined
but what distinguishes the State-
ment of a witness from the State-
ment of anyone else is that
he is under a legal obligation
to speak the truth before a
person legally competent to require
the statement (I.L.R. XVI Calcutta

349 and I.L.R. XI Bombay 702)
I think myself that there can
be ^{no} doubt reading the definition
so as not to be otherwise that

A Police officer investigating
under the Criminal Procedure
Code comes within the definition of "Court"

6 (2) That a person can give "evidence"
before a Police officer so investiga-
ting is certain in one case for
it has been often ruled and is
not disputed by the judges.

Empress versus Oankharan
Day Singh I.L.R. 8 Bombay 216

Nathur Sheikh versus Empress I.L.R.
10 Calcutta 405. Empress versus
Baikanto Bauri 16 Calcutta 349.

That a person making false
statements to a Police officer
gives false evidence. Section
162 C.P.C. rules that statements
to a Police officer are not evidence

but that they cannot be used

As evidence in one particular
Case. It is plain even on the
face of the Section they can be
used as any other evidence
in many other cases

They frequently
are used as
evidence for
an accused
person

9. It seems to me that in as
much as a Police officer is a person
legally competent to question persons
who are under legal obligation
to speak the truth his case is
hardly distinguishable from that
of a committing Magistrate. He
is not a Court of justice but
he is in just the same position
in that respect as a committing
Magistrate except that there is

that a committing Magistrate
can take evidence

10. It seems to me therefore,
that the dictum of Mr Justice
Scott is reasonable and sound

I would sum up my argu-
ment here as follows:-

The investigation before
a Police officer is a stage of a
judicial proceeding as ruled
in ILR VIII Bombay 216 and
ILR X Calcutta 405. "Judicial
Proceeding" as defined in the
Evidence Act involves "evidence".

in the Evidence Act

1-5
includes "Court". "Court" as defined
in the Evidence Act includes a
Police officer legally inquiring under
C.R. and having authority under
Section 161 to take evidence is
the statement of witnesses.

As regards the further
arguments taken in para 11 of
the judgment, I have nothing
to say except that I think as I have
already noted in my letter No 530 dated

22nd March 95 that the present
opportunity of revising the C.P.C.
should be taken advantage of
to clear up the law in regard to
alternative charges. I would only

Printed on page
537, 549, 550
35, No 2091.

points out that it has been held in
Queen Versus Mahomed Humayun

not available, Shah 21. D.R. in 72-73, B.L.R. 324

that such a charge is not a charge
of two offences but of one and that
the fact that the two inconsistent
statements were made on

different occasions is beside
the question vide Empress Versus
Gules I.L.R. Allahabad 44,
which latter ruling is directly
opposed to I.L.R. 10 Bombay 124.

I would also observe that the latter
part of Section 193 is not a distinct
offence from that made punishable
by the first part but the same
offence with aggravating

Judicial Department.

CURRENT NO 1892

From the Collector

C-101462/95

and District Magistrate,

CHIEF SECRETARY
16 APR. 1895
GOVERNMENT OF MADRAS

To

The Chief Secretary to
Government,
Judicial Dept.
Madras.Dated 11th April 95Despd 14th April 95

No. 664

Recd 16th April 95
Recd 17th April 95

Enclosure. /

Subject.

Recommending that
an appeal be preferred
to the High Court
against the acquittal
in Ses Case No 18 of 95

18/4

Law Reports. See perhaps as far as
available here

18/4

Circumstances. The
variation is noted in the
"thing made punishable"
(vide Section 40) which

Salem.

is giving false evidence
but in the giving
false evidence under
aggravating circum-
stances.

I have the honor to be
Sir

Yours most obediently
Serravallo

Richard M. D. Serravallo

For Dist. Magistrate

13/4/95

[G.
25.]
10-3-95.

Judicial DEPARTMENT.

C. No. 1892/95

FOR ORDERS.

Appeal

18

23/4/95

Order 330. April 1895, No. 891.

The Post Pleader will accept
be instructed to present an appeal
against the judgment of acquittal
in Salem Sessions Case No.

18 of 1895 (P.C.)

26-4-95 29/4/95

DESPATCHED
2 MAY 95

The Dist. Magt, Salem (S.O.)
The Post Pleader (a to) to be

Office note

Show para 11 to Serravallo
Prepar for embodiment in the
Criml. Proc. Code amendment
pieces

Para. 9 of the judgment is the week
that point, upon which appeal is sought.
The Dist. Magt's letter goes
into the legal aspect of the judgment
in detail but it is submitted that
sufficient ground for appealing is
to be found in the fact that Mr.
Sate overrules the dictum of Mr.
Justice Scott (I.L.R. Bombay VIII 21)
that "under explanation 2 of s 193 of the
P.C. a police investigation under
Chapter XIV of the Cr. P.C. is a stage
of a judicial proceeding". This
is a common sense point of view, which,
it is submitted, Mr. Sate has not
shown sufficient cause to disregard.
If Mr. Justice Scott interprets the
law correctly, the acquittal was
clearly wrong: if Mr. Sate is
right, then the law should be
amended, & to ascertain if he is right
an appeal to the High Court is needed.
2. Para 11 of Mr. Sate's letter will
be disposed of, in connection with
papers relating to the amendment
of the Cr. P.C.

Stokes new that a Police Officer
taking statements in the course
of an inquiry which he is
legally competent to hold is
a "Court" is correct but the
case under reference is I submit
one involving an important
point and in which therefore
an appeal should be preferred.

JS
22/4/88.

FOR ORDERS.

JS
(from orders)

JS

22/4

When given for copying _____

When copied _____

When examined _____

When signed _____

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.

A = Copy in full.

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