Privy Council Appeal No. 72 of 1937
Allahabad Appeals Nos. 36 and 37 of 1935

Sah Mauji Ram - - - - - - *Appellant*

v.

Sah Chaturbhuj - - - - - - *Respondent*

Same - - - - - - - - *Appellant*

v.

Same - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH JULY 1939

Present at the Hearing:
LORD THANKERTON
LORD MACMILLAN
LORD WRIGHT
LORD ROMER
LORD PORTER

[*Delivered by* LORD THANKERTON]

This is a consolidated appeal from a judgment of the High Court of Allahabad, dated the 3rd December, 1935, embodied in two decrees of the same date, by which two decrees of the Court of the Subordinate Judge of Manipuri, dated the 1st August, 1931, were set aside and the respondent was granted damages amounting to Rs.5,313 and Rs.5,300 respectively in respect of malicious prosecutions by the appellant. The appellant seeks the restoration of the decrees of the Subordinate Judge, who had dismissed the suits.

The consolidated suits were both filed by the respondent on the 16th December, 1930, claiming damages for malicious prosecution, (1) in suit No. 41 of 1930, in respect of proceedings instituted in April, 1929, under section 107 of the Code of Criminal Procedure, on the complaint of the appellant, against the respondent and others, in the Court of the First Class Magistrate at Manipuri, and (2) in suit No. 42 of 1930, in respect of the prosecution under section 506 of the Indian Penal Code, instituted in May, 1929, on the complaint of the appellant, against the respondent and others in the same Court.

At the hearing before the Board, the appellant did not dispute his responsibility for the institution of both prosecutions, though the police were already making enquiries as to the state of enmity between the parties before the appellant made his complaint under section 107. Further it is the fact that both the prosecutions ultimately failed. The Magistrate decided both cases on the 21st October, 1929; in the case under section 107, he ordered the respondent to furnish securities to keep the peace for one year, and in the case under section 506, he convicted all the accused and ordered them to pay fines. But, on an appeal by the respondent in both cases, the Sessions Judge, on the 18th December, 1929, allowed the appeals, and set aside the conviction and sentence.

The respondent, in order to succeed in his suits, has still to establish that the appellant acted without reasonable and probable cause and maliciously; in this he failed before the Subordinate Judge, but succeeded before the High Court, which set aside the conclusions of the learned Judge on the evidence, and, on a review of the evidence, came to a contrary conclusion. Their Lordships may state at once that they are not satisfied with the reasons given by the High Court for making jettison of the findings of the Subordinate Judge, and examining the evidence themselves, and deciding questions of the credibility of witnesses whom they had not seen, in a case where the bearing of the witnesses, and particularly that of the parties, is obviously of importance.

In considering whether the appellant had reasonable and probable cause for his complaint of the 16th March, 1929, on which the proceedings under section 107 followed, the history of the relations between the parties is important, and there can be no doubt that a state of enmity had existed between them for many years. The parties are separated members of a Hindu family; the appellant, who was a first cousin of the respondent's deceased father, had managed the respondent's property until the latter came of age about 1907, after which date the respondent sued the appellant twice or thrice for recovery of profits of his estate. Both parties are zamindars and moneylenders, and they reside in the same village. The appellant is childless and the respondent is his nearest heir. In 1917, the appellant applied to have the respondent bound over under section 107 of the Code of Criminal Procedure, but the proceedings are stated to have been compromised. It is unnecessary to refer in detail to the murder of the appellant's friend Ram Sarup Gupta in 1927 and the appellant's success in the District Board election in December, 1928, as these are given their correct place in the story by the High Court, who stated that they had not the least doubt that bitter enmity "exists between Chaturbhuj and Mauji Ram since several years." Then, immediately antecedently to the appellant's complaint, there was the meeting at the respondent's house on the 14th March, 1929, at which it was resolved to do him physical injury, which was reported to the appellant by a witness, who was

present at the meeting, and the occasion of the abuse of the appellant by friends of the respondent, in presence of the respondent, in front of the appellant's house. The learned Subordinate Judge dismissed as immaterial the incidents of the throwing of bricks into the appellant's compound, and the logs found across the road on which the appellant was travelling. An important part of the evidence to which the High Court do not appear to have sufficiently directed their attention, was that of the police as to the respondent and his gang, his surveillance by the police, and that they were already investigating the matter when the appellant made his complaint. Their Lordships find it unnecessary to go into further detail, but they are satisfied that there was ample evidence to justify the finding of the learned Subordinate Judge in holding that the appellant had rightly and reasonably been afraid of being attacked by the respondent or at his instigation or by his connivance, if that evidence was believed and accepted by him. The learned Judge did accept that evidence and he disbelieved the evidence of the respondent.

Turning now to the prosecution under section 506 of the Indian Penal Code, which followed on a complaint by the appellant dated the 21st May, 1929, to the effect that the respondent, with three of his friends, and one Ganeshi Lal, had gone that morning to the appellant in the grove of Kishori Lal, where he had been stopping, and the respondent and his friends had asked the appellant to compromise the case under section 107; that the appellant had declined to do so, as he had no trust in their good faith, and that, thereupon, the respondent and his friends had lost their temper and became angry and threatened the appellant with the same fate as Ram Sarup Gupta. The appellant and three other witnesses gave evidence in support of the appellant's story, while the respondent denied having gone to the grove and denied having threatened the appellant. No other witness was produced by the respondent to support his denials, and no explanation was given of the absence of the three friends alleged to have been with him. The learned Subordinate Judge, who saw the witnesses, believed the appellant's evidence, and disbelieved the respondent. The High Court has accepted the evidence of the respondent, and has held that the appellant's evidence was false, on grounds which appear to their Lordships to be quite inadequate to justify such a course, and which must now be examined.

In the judgment of the High Court, these grounds are stated as follows:—

> " The judgment of the learned Subordinate Judge is not satisfactory and our complaint is that it has been of very little assistance to us. Instead of considering the evidence in the manner in which it should have been considered he starts criticising the judgment of the learned Sessions Judge who had acquitted the plaintiff. It looks as if the learned Subordinate Judge treated the Sessions Judge as an opposite party in the case and he himself adopted the role of the counsel who has to criticise the argument of the opposite party on

> behalf of his client. A perusal of his judgment shows that at every stage he is anxious to show that the conclusions of the learned Sessions Judge, who acquitted the plaintiff, are wrong. This was not the right method of approaching the case before him. In our opinion the learned Subordinate Judge should not have bothered himself about the view taken by the Criminal Court. He should have carefully and calmly considered the evidence which had been produced before him and then decided the question as to whether the plaintiff had made out a case against the opposite party or not. In his anxiety to score point after point against the Sessions Judge the learned Subordinate Judge had to make statements in his judgment which are difficult to understand."

And, later,

> "The learned Subordinate Judge in his judgment does not give his reasons for believing the evidence of the defendant and his witnesses in preference to the evidence of the plaintiff. In first appeals this Court is generally very reluctant to interfere with the finding of the Court below on a question of fact. It was argued before us by learned counsel appearing for the respondent that as in the case before us on fact there is a finding against the plaintiff, we should not reverse it. As we have already pointed out the findings of fact arrived at by the Court below are entitled to very great respect and weight, but at the same time this Court is justified in insisting that the judgment of the Court below should show that the evidence was carefully weighed and considered. In the case before us we find no such indication and it is therefore necessary for us to examine the evidence ourselves and then come to a decision in the case."

These are hard words to use about the judgment of the Subordinate Judge, and, in their Lordships' opinion, they are not justified. It was inevitable that reference should be made to the decision of the Sessions Judge, and it will be observed that most of the references of the Subordinate Judge relate to the credibility of three witnesses, Ganeshi Lal, Ali Ahmed and Hadiyar Khan, and it is more than likely that the reasons of the Sessions Judge for rejecting the evidence of these witnesses were again submitted by the plaintiff's pleader to the Subordinate Judge, which was perfectly legitimate, and it was natural, and certainly not wrong, for the Subordinate Judge to explain his reasons for believing these witnesses in contrast with the view of the Sessions Judge. In his first judgment under section 107, the Subordinate Judge fairly states the issue to be determined by him as "Whether or not there were circumstances to justify an ordinary reasonable man to entertain the belief that some person of the plaintiff's party might end Mauji Ram's life one day," and, later in the same judgment, he is at pains to distinguish between the grounds for acquittal in the criminal case and the case before him. Their Lordships regard these observations as showing, if it were not otherwise clear enough, that the Subordinate Judge did carefully consider the evidence. The question of credibility, in view of the conflicting stories, was of the utmost importance, and it is right that their Lordships should state that they prefer the reasons of the Subordinate Judge to those of the Sessions Judge, which appear to have been substantially repeated by the learned Judges of the High Court,

with an additional reason in the case of Hadiyar Khan, with which their Lordships are not in agreement. The learned Judges state:

> " Now it will be noticed that the plaintiff's counsel had cross-examined this witness on the question of his conviction in a riot case. The witness admitted that he had been prosecuted in a riot case but asserted that he had been acquitted. Eventually it was found that his statement was not quite accurate. He had been convicted by a trial Court but the sentence had been reduced in appeal. In these circumstances the plaintiff's counsel must have been fully justified in asking the Court not to believe the evidence of a man who had perjured himself. The learned Subordinate Judge does not take any notice of this perjury."

The only reference in the examination of this witness is as follows:—

> *Cross-examined.*—" I was convicted of rioting once 15 or 16 years ago."
>
> *Re-examined.*—" I was acquitted by the High Court on appeal."

It was subsequently admitted that the High Court reduced the sentence to so much as he had undergone at the time of the decision of the appeal. This is flimsy material on which to base a finding of deliberate perjury, as the High Court have done. The seeming inconsistency between the cross-examination and the re-examination should have been cleared up before any suggestion of perjury had been made.

In view of the opinions above expressed by their Lordships, it follows that, in their Lordships' opinion the High Court were not justified in throwing over the findings of the learned Subordinate Judge. Their Lordships are further of opinion that no good reason has been shown for interfering with the findings of the learned Judge as to the credibility of the witnesses, whom he saw, and, in the circumstances of this case, the question of credibility is the main determining factor.

Accordingly, their Lordships will humbly advise His Majesty that the appeal should be allowed, that the two decrees of the High Court should be set aside, and that the two decrees of the Subordinate Judge should be restored. The respondent will pay to the appellant his costs in this appeal and in the two appeals to the High Court.

(18366—3A) Wt. 8075—41 180 7/39 P. St. G. 338

In the Privy Council.

SAH MAUJI RAM

v.

SAH CHATURBHUJ

SAME

v.

SAME

DELIVERED BY LORD THANKERTON

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