

NIRANJAN SINGH alias NANJU

A

v.

REGINAM

[SUPREME COURT, 1965 (Hammett P.J.), 14th May, 20th August]

B

Appellate Jurisdiction

Criminal law—witness—form of oath—defect immaterial for purpose of perjury proceedings if accepted without objection—Penal Code (Cap. 8) ss.106,106(1),117—Oaths Ordinance (Cap. 13) s.2.

Criminal law—perjury—form of oath—acceptance without objection by witness being sworn.

C

The appellant, who was convicted of perjury, put forward as a defence the allegation that, at the proceeding at which the false statement was made, he had not been properly sworn as a witness. He had in fact been sworn on a witness. He had in fact been sworn on a Sikh Prayer Book called the "Gudka" containing extracts from the "Granth", an especially holy book to the Sikhs, but one which is never permitted to be removed from the temple for the purpose of taking oaths. The appellant himself had selected the Gudka (there being also available a Bible, a Ramayan and a Koran) as the book upon which he wished to be sworn. Section 117 of the Penal Code which is in the chapter thereof dealing with perjury provides that for the purposes of the chapter the forms and ceremonies used in administering an oath are immaterial if the court . . . has power to administer an oath . . . and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him. It was argued on appeal that the defect in the appellant's oath was not part of the form or ceremony of the oath.

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Held: The word "form" in section 117 refers, if not exclusively, then certainly inclusively to the words used in taking the oath, and when a witness holds up the book on which he is taking the oath, this act is part of the ceremony used in administering the oath and the book is part of the ceremony. The defect (if any) was therefore immaterial.

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Appeal against conviction.

J. N. Falvey for the appellant.

B. A. Palmer for the Crown.

The facts appear sufficiently from the judgment.

HAMMETT P.J. : [20th August, 1965]—

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The appellant was convicted by the Magistrate's Court sitting at Labasa of Perjury contrary to section 106(1) of the Penal Code and sentenced to 12 months' imprisonment. He appeals against conviction only.

H

The particulars of offence read as follows :—

A "NIRANJAN SINGH alias NANJU s/o Kartar Singh on the 24th day of August, 1964, at Labasa in the Northern Division, being lawfully sworn as a witness in a judicial proceeding, namely Civil Action No. 100 of 1964 (Labasa), held in the Magistrate's Court of the first class at Labasa between Messrs. K. S. Lab Singh Co. (Plaintiff) and Nagaiya s/o Kondaiya (Defendant) knowingly falsely swore that, in a trade ledger which was produced by B said NIRANJAN SINGH alias NANJU s/o Kartar Singh at the trial of the said civil action as exhibit "E", to evidence the alleged indebtedness of the defendant to the Plaintiff firm, "each entry was written about the date on the margin" of the said ledger, "a week later — but not a month later" which false statement was material in the said judicial proceeding."

C The case for the prosecution in the Court below was as follows. The appellant is the Manager of a firm carrying on business as general merchants in Labasa under the name and style of "K. S. Lab Singh and Company".

D On 20th April 1964 a writ was issued in the Magistrate's Court at Labasa at the instance of K. S. Lab Singh and Company against Nagaiya (No. 100 of 1964) claiming £194.19.5 for the balance of the price of goods sold and delivered and for interest thereon. This claim was disputed by Nagaiya. At the trial of this civil action on 20th August, 1964, the appellant Niranjn Singh gave evidence in his capacity as Manager of the Plaintiff Company in support of the claim. During the course of the trial he produced in evidence a ledger which he said was the only ledger he had and in which he said he had made the relevant entries concerning the transactions between his firm and Nagaiya in 1961. In cross-examination it was suggested to him that E the entries in his ledger had not been made in 1961 but much more recently and had all been written up in one day. This was denied by Niranjn Singh.

F At the adjourned hearing on 24th August 1964 Niranjn Singh gave further evidence on this point and was asked when he made the entries in this ledger in Nagaiya's account relating to transactions in December, 1961. He then asserted that those entries were made in 1961, a week later than the dates shown in the margin, but not a month afterwards. He insisted that all the relevant entries in the book had been written during the same week as the dates shown in the margin, during the month of December, 1961.

G After the trial of that civil action, he was charged with perjury in respect of this evidence. In order to establish the falsity of that evidence at the trial, the prosecution brought evidence to prove that this particular ledger was not even in the appellant's possession in 1961 because as long after that date as April 1963 it was in the store of Morris Hedstrom Limited at Labasa when it was received by them and first put into stock as part of their stock in trade for sale to the public.

H The appellant did not give evidence at his trial, but made an unsworn statement from the dock. He made no attempt to deny or contradict the facts relied upon by the prosecution to support its case

as to the falsity of the evidence of the appellant in the civil proceedings. The two witnesses called for the defence gave evidence restricted solely to the one point of whether at the time the appellant gave evidence in the civil action he was properly sworn or not.

In his address in the Court below Counsel for the appellant based his defence on the following matters:

Firstly: that there was no corroboration of the evidence of Annie Fong that the appellant's evidence was false;

Secondly: that the appellant was not properly sworn at the time he gave the evidence complained of; and

Thirdly: that the evidence was not material.

At no time or stage either in the Court below or at the hearing of the appeal did the appellant attempt to deny or contradict the evidence of the prosecution witnesses as to the falsity of the appellant's evidence.

On the hearing of the appeal Counsel for the appellant relied on two grounds:

Firstly: that the evidence of falsity was not corroborated; and

Secondly: that the appellant was not properly sworn when he gave his evidence during which the alleged offence of perjury was committed.

I will first deal with the question of whether the appellant was properly sworn or not.

When he entered the witness box to give his evidence he was handed a book on which he, a Sikh, had been sworn as a witness in the same Court on previous occasions. This book had been given to the Court by the Sikh Temple for the express purpose of being used for the swearing of Sikh witnesses. It was not, in fact, a Granth, a specially holy book to the Sikhs, which, the evidence showed, measures 12" x 18" x 18", little more or less, and which is never permitted to be removed from the Sikh Temple for this purpose. It was a smaller book containing extracts from the Granth. There was evidence by a priest of the Sikh Temple that this book was a Prayer Book, used morning and evening in the Sikh Temple which is called a "Gudka". It is, however, often called a "Granth" because it can be used for a Granth although he said it should not be used by a Sikh to take an oath.

The Court Clerk, an officer of 12 years' experience, said that he asked the appellant on which book he wished to be sworn — there being also a Bible, a Ramayan and a Koran available to witnesses to swear on according to their religious belief. The appellant thereupon himself selected this "Gudka" as the book on which to swear and on which he actually took the oath. It is now submitted that because the trial Magistrate understood that this was a Granth and not merely a book only containing extracts from the Granth, the appellant was not properly sworn.

The Oaths Ordinance section 2 makes provision for any person who objects to being sworn to be affirmed in certain circumstances therein specified which are not material in this appeal. There is, however, a provision to this section which reads :

A "Provided that nothing in this Ordinance shall prevent any person from being sworn according to the ceremonies of his own religion or in such manner as such person may deem binding on his own conscience."

B Section 106 of the Penal Code is the first section in Chapter 11 of that Code which deals with Perjury and False Statements and Declarations. The last section in Chapter 11 is section 117 and this reads as follows :

C "117. For the purposes of this chapter of this Code the forms and ceremonies used in administering an oath are immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him."

It was submitted on behalf of the appellant that this has no bearing on this appeal because the defect in the appellant's oath was not a part of the ceremony or form of the oath administered to him.

D It appears to me that the word "form" in section 117 refers to the words in which the oath is taken, if not exclusively then certainly inclusively. The words actually used by a witness when taking an oath are at least a part of the "form" in which the oath is taken. When a witness holds up the book on which he is taking an oath, this act is a part of the ceremony used in administering the oath. The book actually used is used as a part of that ceremony.

E In my view, in the particular circumstances of this case, any defects there may have been in swearing the appellant as a witness were, as expressly provided by section 117 of the Penal Code, "immaterial" for the purposes of "Perjury". The Magistrate had the power to administer an oath and the appellant took the oath without objecting to the form and ceremony employed. It is not therefore open to the appellant to avail himself of such defect as a defence to a charge of Perjury.

F The first ground of appeal concerns the question of corroboration. This was a matter which was fully considered by the learned trial Magistrate in his careful judgment. He accepted the evidence of Annie Fong, an assistant in Morris Hedstrom Limited in July 1963. G He held on her testimony that the ledger in question was not received and put into their retail stock by Morris Hedstrom Limited at Labasa and then marked by her with its selling price until July 1963 and that it could not therefore have come into the appellant's possession until after that date. There is no complaint against the acceptance of this evidence by the Court below. What is complained of is that there was no corroboration of the evidence of Mrs. Fong and H that a conviction of Perjury could not be based on her uncorroborated testimony.

The Court below held that corroboration of her evidence was to be found in the evidence of the Manager of Morris Hedstrom Limited at Labasa at that time. In his evidence he identified both the marking in the actual ledger which had been made by Annie Fong in July 1963 and the ledger itself. He also gave evidence, by reference to his own records, made by himself, and the invoice accompanying this ledger and other goods and the markings thereon, which corroborated the evidence of Annie Fong that this actual ledger was received by his firm in July 1963. This evidence which was believed by the learned trial Magistrate was, in my view, sufficient corroboration of the evidence of Annie Fong.

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For these reasons the appeal against conviction is dismissed.

Appeal dismissed.