

BAL KRISHNA (f/n SUKH RAM) *v.* THE POLICE

[Appellate Jurisdiction (Carew, P.J.) April 24th, 1953]

Corroboration of complaint—indecent assault—case stated requirements of—evidence in.

The accused was convicted of the offence of indecent assault by the 1st Class Magistrate's Court at Nausori.

The complainant alleged at the trial that she had been indecently assaulted by the accused. Six days later the accused made a statement to the police in the Hindustani language in which he admitted searching the complainant while looking for a lost 5/- note.

The Magistrate held that for a man to search a girl who was very lightly clothed, on the ground, on a lonely road was an indecent assault.

The accused appealed by way of case stated.

HELD.—(1) That the statement amounted to corroboration of the complainant's evidence.

(2) In an appeal by case stated the appellate court is only concerned with the facts found by the Magistrate and not with the evidence lead, and therefore a point as to the correct interpretation of the statement could not be raised.

(3) Requirements of a case stated specified.

Cases referred to:—

Spicer v. Warbey [1953] 1 A.E.R. 284.

R. v. Rolfe 36 Cr. App. R. 4.

R. v. Baskerville [1916] 2 K.B. 658.

S. Hasan for the appellant.

B. A. Doyle, Q.C., Attorney-General, for the respondent.

CAREW, P.J.—The question of law which is submitted for the opinion of this Court is as follows:—

“Whether the learned Magistrate was correct in holding that the statement made by the accused to the police on the 2nd day of January, 1953, and put in evidence amounted to corroboration of the indecency alleged by the complainant to have been committed on her by the accused.”

The Attorney-General, Mr. B. A. Doyle, who appeared for the Crown, took a preliminary objection to an affidavit which had been served on him by Mr. S. Hasan, Counsel for the appellant. By this affidavit it was inferred that the interpretation of the accused's evidence in the Magistrate's Court was incorrect. The affidavit purported to show, furthermore, that the translation of the statement made by the appellant, on which the Magistrate had relied, was incorrect. The learned Attorney-General submitted that this affidavit was irrelevant to the case now stated for the opinion of the Court. He contended that the Court was not concerned with the evidence before the Magistrate; it was concerned only with the facts found by the Magistrate on the

evidence which had been adduced before him. Whether the learned Magistrate was right or wrong in relying upon the evidence of the accused as it was interpreted to him, and upon the statement and the translation accepted by him, were not, in his submission, matters of which the Court could now take notice. These matters could have been raised in an ordinary appeal, but not by way of case stated.

Mr. Hasan contended that the question of interpretation was a question of law, and therefore properly arguable on a case stated. He submitted that he was entitled to challenge the translation of the statement because, he suggested, as it was translated, the statement was misleading, and the Magistrate, in basing his conclusion on such a translation, was misled. As I understood him, he argued that, in dealing with the question now stated for the opinion of the Court, it was essential, first of all, to determine what, in fact, the statement contained, otherwise it could not be decided whether it amounted to corroboration or not.

In my opinion the learned Magistrate decided, through the sources of interpretation open to him, what the evidence was and what the statement contained. Whether the Magistrate was right or wrong is not a matter now for determination. He was dealing with the evidence before him. This Court is not concerned with that evidence. It is concerned only with the facts as found by the Magistrate after due consideration of the evidence before him. *Lord Goddard*, in the recent case of *Spicer v. Warbey* [1953] 1 A.E.R. p. 284, which was a case stated, said in the course of his judgment at p. 285:—

“ We are concerned, not with the evidence given in the case ; but with the facts found by the justices.”

No doubt if this matter were before the Court on appeal and by way of case stated, the conclusion reached by the Magistrate could be questioned on the ground that he had been misled by faulty interpretation as to what the real evidence was; but such a course is not, I think, open to the appellant in these proceedings. I expressed the opinion that the matters raised by the affidavit could not now be considered.

It will be noted that in the case now before the Court the learned Magistrate has not only set out certain facts, but he has referred to certain evidence and has expressed his opinion on it. It is contrary to the provisions of the Criminal Procedure Code to set out evidence. This practice may cause uncertainty and render it necessary for the Court to search for the full facts on which it should rely.

Mr. Hasan asked for the case to be sent back for amendment, and he referred to the case of *Spicer v. Warbey* (*supra*). This case deals with the procedure where findings of fact have been omitted. Although the case stated contains some defects, it is quite clear, in my opinion, what the facts were on which the Magistrate relied. If the case were now sent back for amendment delay would be caused, and nothing would be gained. The result would be the same. I consider, therefore, that it is unnecessary to send the case back for amendment.

It might be convenient here to draw attention to section 377 of the Criminal Procedure Code which sets out the requirements of a case stated. It reads:—

“ A case stated by a Magistrate shall set out—

(a) the charge, summons, information or complaint ;

- (b) the facts found by the Magistrate's Court to be admitted or proved ;
- (c) any submission of law made by or on behalf of the complainant during the trial or inquiry ;
- (d) any submission of law made by or on behalf of the accused during the trial or inquiry ;
- (e) the finding and, in the case of conviction the sentence of the Magistrate's Court ;
- (f) any question or questions of law which the Magistrate or any of the parties may desire to be submitted for the opinion of the Supreme Court ;
- (g) any question of law which the Attorney-General may require to be submitted for the opinion of the Supreme Court."

It is not necessary to set out the evidence nor to submit the record. The Court is concerned only with the facts found by the Magistrate, and the parties are bound by these findings of facts. It might be of assistance if the form of case stated, set out in the Appendix of Common Forms in *Stone's Justices' Manual* were used as a guide.

I now turn to the merits of the case stated. Mr. Hasan submitted that there must be corroboration of the indecency, and he referred to *Rex v. Rolfe*, 36 Cr. App. R. 4 in support of his contention. The learned Magistrate did not, however, find that the search consisted only in asking the girl for the money. The Magistrate said, as part of his finding of fact:

" In this statement the accused admitted that he was present at the material time and agreed he had chased the complainant. He said he held her hand, that she fell over and that he searched her for a 5/- note he alleged he had lost."

And he continued:—

" In the particular circumstances of this case, where the girl was wearing a flimsy dress which has no pocket and a pair of bloomers, I was satisfied that the accused's admission to the police that whilst this young girl whom he had chased, was on the ground, he had ' searched her ' was corroboration of her complaint that he had indecently assaulted her."

It is true the appellant said, as stated by the Magistrate:—

" I only told the police I searched her ; I only asked her for my money—when she said she had not got it I let her get up and I went on my way ;"

but it is clear that the Magistrate did not accept this explanation of the accused's search because he said:—

" I did not believe him " (the accused) " when he asserted at a later stage " (referring to the re-examination of the accused) " that he did not know the meaning of some words used in his statement."

The words referred to were those interpreted in the Magistrate's Court as meaning that he (the accused) had searched the girl.

I am unable to accept Mr. Hasan's view of the extent of the search. I am bound to accept the Magistrate's findings and the question I have to decide is whether these findings of fact are capable of affording corroboration of the evidence of the complainant.

Arguments were addressed to me by Counsel on both sides on the law relating to corroboration, and authorities were quoted. Mr. Hasan, in reliance on *Rex v. Rolfe* (*supra*) contended that there must be corroboration of the indecency. The Attorney-General suggested that that case goes too far. He argued that the statement of the law laid down in *Rex v. Baskerville* (1916) 2 K.B. 658, has never been questioned, and should be followed.

I doubt whether *R. v. Rolfe* (*supra*) lays down any new principle or that it detracts from the statement of the law laid down in *R. v. Baskerville* (*supra*). I do not think that there is any conflict. *R. v. Rolfe* (*supra*) laid down that where corroboration is necessary on a charge of indecent assault it is necessary to corroborate the indecency, and *R. v. Baskerville* (*supra*) decided the meaning, extent and nature of corroboration. *Lord Reading, C.J.* said in the course of his judgment in *R. v. Baskerville* at page 667:—

“The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.”

In my opinion the statement to the police made by the accused on 2nd January, 1953, and put in evidence, was capable of affording corroboration of the indecency alleged by the complainant to have been committed on her by the accused.

The appeal is dismissed.