

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

IN RE JIVAN AMBA'IDA'S*

1894.

March 29.

*Criminal Procedure Code (Act X of 1882), Sec. 195—Sanction to prosecute—
Requisites of a proper sanction.*

A sanction to prosecute for giving false evidence should specify clearly the statement alleged to be false, so that the person sought to be charged may be definitely informed what is the criminal act alleged against him.

THIS was an application for the exercise of the High Court's revisional jurisdiction under section 439 of the Code of Criminal Procedure (Act X of 1882).

One Bái Diváli made a complaint of rape against Narsi Bhaichand, whereupon he was committed for trial to the Court of Session at Surat.

Narsi was acquitted of this charge by the unanimous verdict of the jury, and he thereupon applied to the Sessions Judge of Surat for sanction to prosecute the complainant, Bái Diváli, and her witnesses, Kilá, Jivan and Parshotam, for giving false evidence.

The Sessions Judge granted sanction to prosecute Bái Diváli under clause 3 of section 211, and Kilá and Jivan under section 195 of the Indian Penal Code (Act XLV 1860). His reasons were as follows—

“The petitioner prays for a sanction to prosecute Bái Diváli for making a false complaint of rape against him, and the other opponents for giving a false evidence against him. He was tried before this Court and acquitted by the unanimous verdict of the jury.

“The charge appears to be a false one, made by Diváli to revenge herself on applicant for assisting her last husband in his litigation against her. The evidence of the witnesses, opponents Nos. 2 and 3, is incredible. It is physically impossible that the woman could have been violated in the manner she describes without receiving any injury, if, as she says, she resisted. Sexual intercourse could only have been had with her in the manner she describes, if at all, then with her full consent and co-operation.

“Applicant now set up an *alibi*, but his witnesses were not examined in this Court and there is nothing on the record to prove that opponent Parshotam's evidence is false. The application is, therefore, refused in his case. I grant the application against the other three. Diváli may be prosecuted under section 211, clause (3), Indian Penal Code, and Kilá and Jivan under section 195.”

* Criminal Revision, No. 43 of 1894.

Jivan thereupon applied to the High Court to set aside the sanction, as it did not refer to any specific portion of his deposition as being untrue.

Govardhan M. Tripathi for the accused.

JARDINE, J. :—Section 195 of the Code of Criminal Procedure ought to be used in such a way as to give the person, against whom the sanction for prosecution is given, some means of knowing definitely in what the criminal act consists—*In re Báláji Sitárám*⁽¹⁾; *In re Har Dial*⁽²⁾. In the present case the sanction relates to the giving of false evidence in a long deposition; but not the very slightest indication is given in the proceedings as to what story or statement was in the opinion of the Sessions Judge false. The Judge issuing a sanction for a prosecution ought to apply his mind closely to the facts with a view to ascertain whether they really constitute an offence, and also to prevent a sanction issued with one purpose or design being abused to the furtherance of some other—*Chintáman Dev v. Chintáman Dev*⁽³⁾.

We, therefore, on the petition of Jivan Ambaidás revoke the sanction for his prosecution.

Sanction revoked.

(1) 11 Bom. H. C. Rep., 34.

(2) I. L. R., 6 All., 105.

(3) P. J., 1878, p. 253.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS *v.* JAVECHARA'M*

Evidence Act (I of 1872), Secs. 25 and 26—Confession—Confession made to a police officer by accused while in police custody—Accomplice—Spy—Distinction between a spy and an accomplice—Evidence of an accomplice—Evidence.

A statement made to a police officer by an accused person while in the custody of the police, if it is an admission of a criminating circumstance, cannot be used in evidence under sections 25 and 26 of the Indian Evidence Act (I of 1872).

The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Indian Penal Code (XLV of 1860) or by the doctrine which distinguishes the spy from the accomplice.

* Criminal Appeal, No. 57 of 1894.

1894.

IN RE
JIVAN
AMBÁIDÁS.

1894.

April 2.