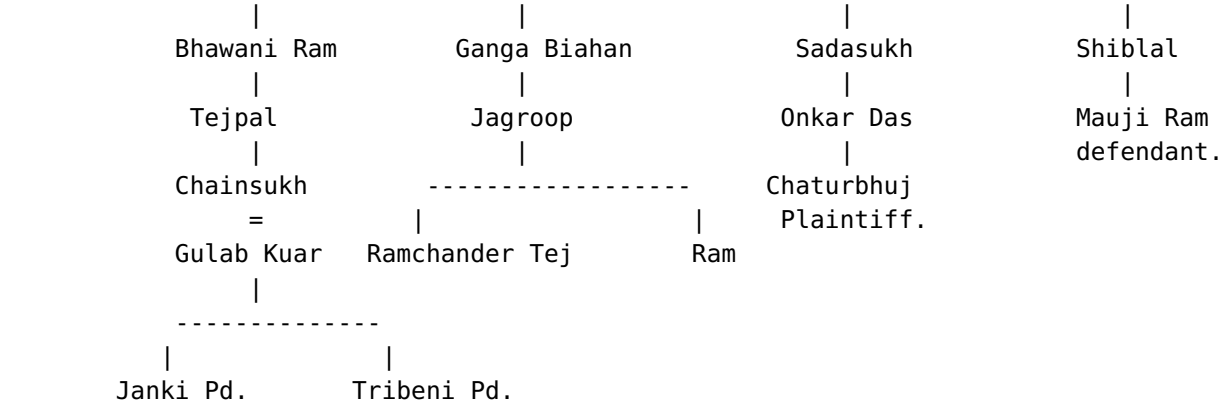
Sah Chaturbhuj vs Sah Mauji Ram on 3 December, 1935

Equivalent citations: AIR1936ALL537, 163IND. CAS.984, AIR 1936 ALLAHABAD 537

JUDGMENT

Rachhpal Singh, J.

1. These are two plaintiff's first appeals arising out of two suits to recover damages for malicious prosecution. The facts which have given rise to the litigation between the parties, can briefly be stated as follows: The following pedigree will show the relationship between Chaturbhuj, plaintiff, and Mauji Ram, defendant.



2. The plaintiff, Sah Chaturbhuj, alleged that owing to the enmity which exists between him and Mauji Ram, defendant, the latter complained to the Superintendent of Police of Mainpuri who directed on that complaint that proceedings under Section 107, Criminal P.C., should be taken against Chaturbhuj and certain other persons. When the case under Section 107, Criminal P.C., was pending in the Court of a Magistrate at Mainpuri the defendant made a complaint under Section 506, I.P.C., against the plaintiff. The case was tried by the same Magistrate who had heard the case under Section 107, Criminal P.C. The plaintiff alleged that the complaint made against him under Section 506, I.P.C., was false to the knowledge of the defendant and was filed without reasonable and probable cause and maliciously. it is also the case of the plaintiff that the proceedings under Section 107, Criminal P.C., were also started at the instance of the defendant falsely, maliciously and

without any reasonable and probable cause. The learned Magistrate, who heard both these cases, found that the complaint under Section 506, I.P.C., was true and further that the case under Section 107 Criminal P.C. was one in which it was necessary to bind down Chaturbhuj, plaintiff. In the case under Section 107, Criminal P.C., he was bound over for a period of one year. Against these two orders Chaturbhuj, plaintiff, preferred appeals to the Court of the Sessions Judge of Mainpuri, who held that both the complaints were untrue and therefore he acquitted the plaintiff in respect of the charge under Section 506, I.P.C., and also passed an order of discharge in connexion with the case under Section 107, Criminal P.C.

3. After the termination of the above mentioned two cases, Chaturbhuj, plaintiff, instituted two suits for malicious prosecution against Mauji Ram, defendant. Appeal No. 381 of 1931 relates to the charge under Section 506, I.P.C., while Appeal No. 380 of 1931 relates to the case which had been started under Section 107, Criminal P.C. The defence in both the cases was that the charges were true and there was no want of reasonable and probable cause. The learned Subordinate Judge, who tried the two cases , came to the conclusion that the plaintiff had failed to make out the cases set up by him. In his opinion in both the cases the charges were true. The result was that both the suits were dismissed. The plaintiff has preferred these two appeals against the decision of the learned Subordinate Judge. In the Court below the evidence was recorded in respect of both complaints in one suit, but separate judgments were given. In our opinion it will be convenient if we deal with these two appeals separately. We first propose to deal with the case in connexion with the charge under Section 506, I.P.C.

4. Before we proceed to discuss the merits of the appeal before us, it is necessary to give a finding on a point which has been urged before us by learned Counsel for the appellant. It has been strenuously argued by him that in a case like the one before us if a criminal Court gives a verdict of not guilty against the person prosecuted, then it is no longer open to a civil Court, in a suit for malicious prosecution, to challenge the order of acquittal and further that it is not open to the complainant to prove that the charge made by him was true and therefore no damages should be allowed as against him. In other words, the contention of the learned Counsel, if accepted, amounts to this: that after the acquittal of a person prosecuted the prosecutor is estopped from showing in a suit for malicious prosecution that the charge made by him was in fact true. For the purpose of his argument learned "Counsel divides cases relating to malicious prosecution into two divisions. One may be a case in which the truth or falsity of the charge is known to both the prosecutor and the person prosecuted. The other may be a case in which the prosecutor acts on the information received by him from other persons and about matters in connexion with which he himself has no personal knowledge. In regard to the cases falling in the second category the -counsel agrees that it is open to the prosecutor in a suit for malicious prosecution to show that he had reasonable and probable cause for prosecuting the opposite party and that there was no malice on his part. In regard to the cases falling within the first division he however contends that the prosecutor would be incompetent to show that the charge made against the person prosecuted was true. Learned Counsel for the appellant in support of his argument relies on a ruling of their Lordships of the Privy Council in Balbbaddar Singh v. Badri Sah 1926 24 ALJ 453. Their Lordships held in that case that in an action for malicious prosecution the plaintiff had only to prove, inter alia, that he was prosecuted by the defendant and that the proceedings complained of terminated in favour of the plaintiff, if from their

nature they were capable of so terminating. That was a case which went in appeal against the decision of the Court of the Judicial Commissioner of Oudh. It appears that a Bench of two learned Judicial Commissioners of Oudh, while dealing with the question as to what the plaintiff had to prove in a suit for malicious prosecution, made the following remarks:

> In an action for malicious prosecution the plaintiff has to prove: (1) That he was prosecuted by the defendant. (2) That he was innocent of the charge upon which he was tried. (3) That the prosecution was instituted against him without any reasonable and probable cause. (4) That it was due to a malicious intention of the defendant, and not with a mere intention of carrying the law into effect.

5. Their Lordships held that proposition No. (2), as stated by the learned Judicial 'Commissioners, was quite erroneous. They expressed an opinion that what the prosecutor was required to prove was: (1) That he was prosecuted by the defendant. (2) That the prosecution terminated in his favour. (3) That the prosecution was instituted against him without any reasonable and probable cause. (4) That it was malicious. Learned Counsel for the appellant argued that where the charge was of such a nature as must be true or false to the knowledge of the defendant, then no question of reasonable and probable cause can arise. This contention is correct. If the prosecutor in his complaint says that the defendant gave him a blow and it is found that the statement was false, then there would be no question of reasonable and probable cause. The falsity of the statement by them itself would go to show the want of reasonable and probable cause and would further establish malice on the part of the prosecutor. The question of reasonable and probable cause would arise in those cases where the truth or falsity of the charge depends on the information which the prosecutor might have received from other persons. Learned Counsel for the plaintiff appellant contended before us that, as in the case under appeal the charge was proved to be false to the satisfaction of the criminal Court, the finding of that Court is in a way binding on the civil Court. We find ourselves wholly unable to agree with this contention. The law as regards malicious prosecution in India is exactly the same as the law in England.

6. It appears to us that there is no; authority for the proposition that if a criminal case ends in an acquittal in favour of the person prosecuted, then in a suit for malicious prosecution it is not open to the person prosecuting to show that the charge was in fact true and therefore the person prosecuted should) not be allowed any damages. One of the points to be considered in cases for malicious prosecution is what is the value of the judgment of a criminal Court acquitting an accused person. On this question we may refer to a recent decision of our own Court, reported in Shubrati v. Shamsuddin 1928 50 All 713, where a Bench of two learned Judges of this Court observed that, the judgments of the criminal Courts are conclusive for the purpose of showing that the) prosecution terminated in favour of the plaintiff.

7. Other decisions on the point to which reference may he made are Mohammad Daud Khan v. Jai Lal 1929 116 IC 852, Baboo Gunuesh Dutt Singh v. Mugneeram Choudhry (1873) 11 Beng LR 321, Jiwan Das v. Hakumat Rai 1933 Lah 461, Pedda Venkatapathi v. Ganagunta Balappa 1933 56 Mad 641 and Gulabchand Gopaldaa v. Chunnilal Jagjiwandas (1907) 9 Bom LR 1134. In the Madras case referred to above we find the following observations at p. 644:

> Under Section 43, Evidence Act, it appears to me that the judgment can be used only to establish the fact that an acquittal has taken place as a fact in issue in the civil Court. I know of no provisions of the Act which will justify the civil Court in taking into consideration the grounds upon which that acquittal was based....

8. We are in entire agreement with the view expressed in Shubrati v. Shamsuddin 1928 50 All 713 and Pedda Venkatapathi v. Ganagunta Balappa 1933 56 Mad 641. In fact there may be no necessity for the plaintiff to file a judgment of the criminal Court in a suit for malicious prosecution. All that is necessary for him is to plead in his plaint that the prosecution terminated in his favour. If that point is admitted by the defendant in his written statement, then it is no longer necessary for the plaintiff to put in evidence the judgment of the criminal Court. In our opinion there is nothing in the judgment of their Lordships of the Privy Council in Balbbaddar Singh v. Badri Sah 1926 24 ALJ 453 to which a reference has been made above to support the argument of the learned Counsel for the appellant that the judgment of acquittal by the criminal Court in favour of the person prosecuted is a bar against the defendant in a suit for malicious prosecution from proving that the charge made by him against the person prosecuted was in fact true and was not without reasonable and probable cause. Counsel for the appellant argued before us that if the defendant in a suit for malicious prosecution was given an opportunity to prove that the charge made by him was true, then the civil Court will be re-trying the question of the guilt of the opposite party. We cannot accede to this contention. So far as the question of guilt or otherwise of the accused is concerned, the matter is finally decided by the criminal Court and can no longer be questioned by any competent Court. When the defendant in a suit for malicious prosecution gives evidence to prove that the charge made by him was true, he is not asking the civil Court to set aside the order of acquittal but he is giving evidence in a suit in which the opposite party claims damages from him. The question before the Court in a suit for malicious prosecution is whether the plaintiff is entitled to damages. The plaintiff in a suit for malicious prosecution can get damages only when he establishes that he was prosecuted without reasonable and probable cause and maliciously. Civil Court will not grant him damages unless it is proved that the prosecution was without reasonable and probable cause and malicious. What the defendant in effect says in a case of this description is:

> Please do not grant damages to the opposite party because I will show to you that he does not deserve any. I will prove that I had reasonable and probable cause for his prosecution and I was not acting with malice.

9. The question may be looked at in another way. Suppose a plaintiff files a suit to recover damages for malicious prosecution. Opposite party contests the claim. The only evidence which the plaintiff produces on his behalf is the judgment of the criminal Court showing that an acquittal was entered in his favour. The question is whether in these circumstances any Court will give him a decree for damages. We are clearly of opinion that no decree would be granted to the plaintiff. The Court will be justified in saying:

> Yes, it is true that you were acquitted by the criminal Court, but then you have not proved that you were prosecuted without any reasonable and probable cause and maliciously and therefore you are not entitled to any damages.

10. Where the truth or falsity of a charge is known to the defendant, the plaintiff, before he can get any damages, must prove not only his acquittal but further that his prosecution was without reasonable and probable cause and malicious. In a case in which the truth or falsity is known to both parties, the plaintiff will have to prove not only that the prosecution terminated in his favour but further to prove that the prosecution was without reasonable and probable cause and malicious. These points, he can only establish by showing that the charge was false to the knowledge of the prosecutor. It will be only when he has established this fact that he will ask the Court to draw an inference of want of reasonable and probable cause and also malice on the part of the prosecutor. If he is allowed to prove want of reasonable and probable cause and malice, we know no principle of law under which the opposite party can be debarred from producing evidence in rebuttal. We may cite here an American case Carp Queen Insurance Co. (1907) 203 Mo 295, decided by the supreme Court of Missouri, reported in Wigmore's Select Cases on the Law of Torts, Vol. II, at p. 572, where the following observations made in Threefoot v. Nuckols 68 Miss 123, were quoted with approval:

> Surely no reason can be assigned, nor any respectable authority produced, to justify the shooking proposition that the guilt of a plaintiff in a suit for malicious prosecution may not be shown in any manner or by any proof, no matter how, or where, or when, acquired. Reason and conscience revolt at the bare thought of a proven criminal recovering damages against the prosecutor.

11. There may be a case in which the prosecutor may not be able to prove a charge to the satisfaction of the criminal Court for want of some evidence which was not available to him at the time, and it is conceivable that later on, when he is sued for malicious prosecution, that evidence may be available to him. This additional evidence may prove the charge, which had failed in the criminal Court beyond any possibility of doubt. It will be altogether unreasonable in a case like that to hold that the defendant in a suit for malicious prosecution should not be permitted to show that the charge was true. In Johnston v. Sutton (1786) 1 TR 493 at pp. 510, 544, Lord Mansfield made the following observation:

> The essential ground of this action is that a legal prosecution was carried on without a probable cause. We say this is emphatically the essential ground, because every other allegation may be implied from this; but this must be substantively and expressly proved and cannot be implied. Prom the want of probable cause, malice may be, and most commonly la, implied. The knowledge of the defendant is also implied. From the most express malice, the want of probable cause cannot be implied. A man, from a malicious motive, may take up a prosecution for real guilt, or he may, from circumstances which he really believes, proceed upon apparent guilt; and in neither case is he liable to this kind of action: Wigmore's Select Cases on the Law of Torts, Vol. 2, p. 569.

12. If the contention raised on behalf of the appellant were to be accepted, then it will lead to very curious results. A plaintiff in a suit for malicious prosecution will be permitted to prove that he was acquitted by the criminal Court and further that his prosecution was without reasonable and probable cause, but the defendant would not be given an opportunity to show that there was

reasonable and probable cause and want of malice on his part. Such a position would be intolerable and it would amount to a denial of justice to the defendant.

13. Another aspect of the case has also to be borne in mind. The criminal Court has only to decide whether the person charged is or is not guilty. It hears the evidence on both sides and forms a conclusion that the person accused is not guilty and, therefore, gives him an acquittal. No question of damages arises before it. The conditions are, however, different when a suit for malicious prosecution is instituted. It is the duty of the civil Court in cases of this description to decide itself whether or not the plaintiff or the defendant should succeed. Before it can grant a decree for damages, it has got to be satisfied that the plaintiff has made out a case entitling him to damages. If the judgment of the criminal Court is to create an estoppel against the defendant, then it would mean that the civil Court will not be in a position to grant damages, because it will be open to the civil Court to say that as the opposite party is not in a position for no fault of his to produce evidence in rebuttal then it will not grant the relief claimed by the plaintiff. In Shubrati v. Shamsuddin 1928 50 All 713 a Bench of two learned Judges of this Court made the following observation:

> In our opinion the judgment of the criminal Courts are conclusive for the purpose of showing that the prosecution terminated in favour of the plaintiff, but we doubt if the findings of the criminal Courts by themselves are any evidence of the malice or want of reasonable and probable cause. It is for the civil Court to go into all the evidence and decide for itself whether such malice or cause existed or not.

14. It was not necessary in that case for their Lordships to decide whether the findings of criminal Courts were by themselves any evidence and, therefore, we find that they used the words:

> we doubt if the findings of the criminal Courts by themselves are any evidence of the malice or want of reasonable and probable cause.

15. We are clearly of the opinion that the judgment of the criminal Court is evidence merely showing the acquittal of the person prosecuted, and the findings of the criminal Court are no evidence at all in a civil case between the parties. In all suits for malicious prosecution it is the civil Court which has to decide the question as to whether or not there was a malicious prosecution, and in order to decide that question it has to go into the evidence produced before it. The civil Court will not take into consideration the reasons which may have led the criminal Court to acquit the accused. In Pedda Venkatapathi v. Ganagunta Balappa 1933 56 Mad 641, Curgenven, J., made the following observations, which are to be found at p. 643:

> Besides the fact of the prosecution and of its termination in favour of the plaintiff it has to be shown that the prosecution was instituted against him without any reasonable and probable cause and that it was due to a malicious intention.... I know of no provision of the Act which will instify the civil Court in taking into consideration the grounds upon which that acquittal was based, and upon this point I am in agreement with Gulabchand Gopaldaa v. Chunnilal Jagjiwandas (1907) 9 Bom 1134 and Shubrati v. Shamsuddin 1928 50 All 713 in the view that there is no such

> provision. The clear and straightforward issue in the present case, which must be decided before we can find an absence of reasonable and probable cause, is whether the respondent was deliberately making a complaint which was in substance false when he alleged that the appellant took part in the disturbance and fired the shot which injured the third witness for the defendant, and the appellant must establish the falsity of this complaint by disproving it before he can be entitled to damages.

16. These two cases, Shubrati v. Shamsuddin 1928 50 All 713 and Pedda Venkatapathi v. Ganagunta Balappa 1933 56 Mad 641, are against the contention raised by learned Counsel for the appellant. For the reasons given above we are of opinion that there is no authority for the proposition that in a suit for malicious prosecution the judgment entering an acquittal in favour of the plaintiff can be pleaded as a bar which would prevent the defendant from proving that the charge made by him against the plaintiff in the criminal trial was in fact true and on that ground the plaintiff was not entitled to recover damages.

17. Another point which we consider necessary to dispose of before considering the evidence in the case has been raised by learned Counsel for the defendant. It has been contended before us by him that if the plaintiff in a suit for malicious prosecution has been convicted by the trial Court, then no suit for malicious prosecution will lie although the plaintiff may have subsequently been acquitted on appeal. It appears that this view found favour in Jadubar Singh v. Sheo Saran (1898) 21 All 26. The headnote in the case runs thus:

> The fact that the plaintiff in a suit for damages for malicious prosecution has been convicted by a competent Court, although he may subsequently have been acquitted on appeal, is evidence, if unrebutted, of the strongest possible character against the plaintiff's necessary plea of want of reasonable and probable cause.

18. With great respect to the learned Judge of this Court who decided the case, we find ourselves unable to agree with his view. As we have already pointed out, in a case for malicious prosecution, it is for the civil Court to hear the evidence on both sides and then decide for itself as to whether or not the prosecution of the plaintiff was without reasonable and probable cause and malicious. The judgments of the Criminal Courts are evidence only of the fact that the prosecution ended in favour of the plaintiff. They can be used for no other purpose. In our opinion, there is no warrant for holding that the judgment of the First Criminal Court convicting the plaintiff "is evidence, if unrebutted, of the strongest possible-character against the plaintiff's necessary-plea of want of reasonable and probable cause." In our opinion, in deciding the question of reasonable and probable cause and malice, the judgments of the Criminal Courts cannot be taken into consideration at all. In malicious prosecution cases-it is the function of a civil Court to find out whether there was want of reasonable and probable cause and whether the prosecution was malicious. In every case of malicious prosecution, it is for the plaintiff to prove that his prosecution was without reasonable and probable cause and was malicious. If he fails to establish these points, then his suit would fail and the question about the value to be attached to the judgment of the Criminal Court convicting the accused would not arise at all. We do not understand what is meant by the expression used in, the headnote of the case reported in Jadubar Singh v. Sheo Saran (1898) 21 All 26:

> The fact of conviction by a competent Court is evidence, if unrebutted, of the strongest possible character against the plaintiff's necessary plea of want of reasonable and probable cause.

19. In the body of the judgment we find the following observations:

> No doubt, as observed in the said judgment [Judgment in Parimi Baperaju v. Bellamkonda Chinna Venkayya (1866) 3 MHCR 238], judgment of one competent Court against the plaintiff should not in every case be considered a sufficient answer to the suit.

20. As we have remarked, our opinion is that such a judgment cannot be considered at all in deciding the case one way or the other. The view expressed in Jadubar Singh v. Sheo Saran (1898) 21 All 26, was dissented from in Shubrati v. Shamsuddin 1928 50 All 713, where the following observations were made:

> He, [the learned Judge who decided the case, reported in Jadubar Singh v. Sheo Saran (1898) 21 All 26, was influenced considerably by the circumstances that the appellate criminal Court had given the plaintiff only the benefit of a doubt. With great respect we would hold that in cases where the facts contained in the plaint are professedly within the personal knowledge of the complainant, the mere fact that the first Criminal Court believed the complainant's statement and convicted the accused would not be any evidence of the existence of reasonable and probable cause if the appellate Court comes to a contrary conclusion.

21. We agree, if we may say so, with respect, with this view. Another case on which reliance was placed by learned Counsel is Ramayya v. Sivayya (1901) 24 Mad 549. That case is clearly distinguishable. There the plaintiff had been convicted by the trial Court and his appeal had been dismissed by the appellate Court. The High Court, in revision set aside the conviction. The Munsif dismissed the suit instituted by the plaintiff for malicious prosecution. The Subordinate Judge reversed that decree. He presumed the existence of reasonable and probable cause and malice from the fact that the High Court had acquitted the plaintiff. The learned Judges who decided the case held that the Subordinate Judge was wrong in presuming reasonable and probable cause and malice from the judgment of the High Court. At p. 551, the learned Chief Justice, made the following observations:

> The issue in the case was correctly framed but the Subordinate Judge does not seem to have appreciated the actual points which he had to consider. In his judgment he reviews the facts and states (para. 11): "In the state of things the complaint and the prosecution by the defendant must be presumed to have been made maliciously," and he goes on in para. 12 "I accordingly find the issue for the appellants." If he had simply found the issue for the plaintiff his finding would have been one of fact and could not have been questioned on second appeal.

22. On a perusal of the judgment it would appear that the view taken by the Judges who decided this case is opposed to the contention raised before us by learned Counsel for the respondent. What was held in that case was that the plaintiff has always to prove want of reasonable and probable cause and also malicious intention on the part of the defendant before he can succeed in claiming damages; and malice cannot be inferred from the judgment of an acquittal passed in favour of the plaintiff. For the reasons given above we are unable to accept the contention that a judgment of conviction passed by the trial Court which is subsequently reversed in appeal, can be pleaded as a bar in a suit for malicious prosecution.

23. Now we may proceed to consider the evidence which has been produced in the case. The case, under Section 506, Penal Code, was started by Mauji Ram, against Chaturbhuj, plaintiff, on a complaint which is printed at p. 86. This complaint was filed by him in Court on 21st May 1929. He stated that on the morning of that day he was in a garden belonging to Kishori Lal in Mainpuri when Chaturbhuj, plaintiff, Lachhmi Narain, Shyam Lal and Bishun went to him and suggested to him very politely that he should withdraw the proceedings which had been started at his initiation under Section 107, Criminal P.C., against them. Mauji Ram declined to agree to this request whereupon Chaturbhuj and others became very much displeased and threatened to murder him This story was denied by the plaintiff. The question which we have to consider, is as to whether or not the complaint made by Mauji Ram against Chaturbhuj and others was without any reasonable and probable cause and made maliciously. The burden is on the plaintiff to prove this point.

24. Chaturbhuj , plaintiff, went into the witness-box and denied on oath the charge made by Mauji Ram against him. The evidence of Chaturbhuj is printed at pp. 8 to 14 of the paper-book. On behalf of the defendant Mauji Ram examined himself and supported the allegations made by him in his complaint. He also produced in evidence Ali Ahmad, Ganeshi Lal and Hadiyar Khan in support of his evidence. The learned Subordinate Judge who decided this case, believed the evidence of Mauji Ram and the above named witnesses. 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 a 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 conclusion of the learned Sessions Judge, who acquitted the plaintiff, is 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. At one place we find that he was considering the evidence of Hadiyar Khan, a witness examined by the defendant. He does not refer to the arguments of the plaintiff's counsel as to why this witness should not have been believed. On the other hand, he finds fault with the learned Sessions Judge for not having accepted the evidence of Hadiyar Khan. This is what he says in his judgment at p. 71:

> Hadiyar Khan's evidence is sought to be rejected on the ground that he had been convicted of committing a riot once. Rioters and assaulters are often brave persons only with the defect that they get excited on seeing some injustice being committed somewhere. They cannot be classed among the liars.

25. 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 this 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. On the other hand he expresses an opinion that persons who commit riot are brave people. We are not concerned in this case in deciding whether such persons are brave or cowardly, nor is there any necessity to go into the question whether these brave people get excited on seeing some injustice being done because these points have nothing to do with the question before us. 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. We have had the benefit of very able arguments on both sides. The entire evidence was read over to us and very ably criticised by learned Counsel appearing on either side.

26. After a consideration of the evidence produced on both sides and taking into consideration all the surrounding circumstances we have arrived at the conclusion that the charge which Mauji Ram made against Chatturbhuj plaintiff, under Section 506, I.P.C., was not at all true. From the pedigree which has been given in the beginning of this judgment it will be seen that Mauji Ram is an uncle once removed of Chaturbhuj, plaintiff. The evidence produced in the case shows that Chaturbhuj's father died when he was a minor and it appears that Mauji Ram through the mother of the plaintiff managed the estate of Chaturbhuj until the latter attained majority. The evidence makes it abundantly clear that since several years the feelings between the two parties have been strained. There has been civil litigation between them as well as some criminal cases. We have not the least doubt in our mind that bitter enmity exists between Chaturbhuj and Mauji Ram since several years. So in considering the evidence which has been produced, we have to keep in view this fact that the parties are enemies. If we are to accept the statement of Mauji Ram then the position at the time of the complaint made under Section 506, I.P.C., was something like this: In 1916 in a civil litigation Chaturbhuj sided with the adversary of Mauji Ram. One Ram Sarup Gupta, a Tahsildar of Dholpur who was a social reformer in the cause of the depressed classes, had after his retirement settled down in the village of the defendant. This man was a great friend of Mauji Ram and consequently an

enemy of Chaturbhuj. In 1917 a dacoity is said to have been committed at the house of Ram Sarup Gupta who resided in the village of Nayabans at a distance of two furlongs from the village of Khairgarh in which the plaintiff and the defendant resided. On hearing the alarm raised Mauji, Ram sent his men to help the victim of the dacoity. Chaturbhuj advised Mauji Ram not to send his men and when Mauji Ram insisted Chaturbhuj fired a gun. In an enquiry made by the police Mauji Ram according to his own statement made a statement before the police that Chaturbhuj was responsible for this dacoity and Mauji Ram says that on account of his statement the licenses in respect of arms held by Chaturbhuj were cancelled and the name of Chaturbhuj was entered as a history sheeter. One Ajudhia Prasad had complained under Section 107, Criminal P.C., against Ram Sarup Gupta.

27. Chaturbhuj gave evidence before the police on one side and Mauji Ram gave evidence for Ram Sarup Gupta. One Bhabhuti had filed a complaint some years before against Chaturbhuj under Section 498 and Mauji Ram admits that it was he who had instigated Bhabuti to file this complaint. Then there was a case under Section 107, Criminal P.C., between high and low class Hindus in which Mauji Ram sided with one party and Chaturbhuj with the other, and during the continuance of that proceeding Ram Sarup Gupta was murdered. In 1928 a District Board election took place. Kedar Nath, Mauji Ram and Chaturbhuj were candidates. Chaturbhuj withdrew in favour of Kedar Nath, so there was a straight fight between Mauji Sam on one side and Kedar Nath on the other and Mauji Ram won by a majority of 73 votes. On 15th March 1929 in a civil case Mauji Ram and Chaturbhuj were witnesses on opposite sides, Mauji Ram's case is that on 14th March 1929 a meeting was held at the place of Chaturbhuj where it was resolved to give him physical injury. Then we find that a complaint had been made by Mauji Ram against Chaturbhuj to the Superintendent of Police in pursuance of which Chaturbhuj was prosecuted under Section 107, Criminal P.C. On the other hand we have the statement of the plaintiff who admits that Bhabuti had prosecuted him at the instigation of Mauji Ram. He further admits that two or four months before the proceedings under Section 107, Criminal P.C. started, he apprehended that Mauji Ram might take his life and property and that Mauji Ram was angry with him since seven years. He also admitted that in 1917 Mauji Ram had prosecuted him under Section 107, Criminal P.C., but that matter was compromised. He further stated that in connexion with the dacoity at the house of Ram Sarup in 1917 his arms had been confiscated. These were the circumstances at the time when the plaintiff is alleged to have threatened Mauji Ram and in respect of which the charge under Section 506, I.P.C., was made.

28. Mauji Ram in his plaint, to which a reference has already been made, stated that on his refusal to agree to the request made by the plaintiff he and his companions got angry and told him that he would meet the same fate as had befallen Ram Sarup Gupta. It appears that according to Mauji Ram, Ram Sarup Gupta was murdered at the instigation of Chaturbhuj plaintiff. It is said that when Mauji Ram refused to compromise the matter as suggested by Chaturbhuj the latter told him that he would meet the same fate as had befallen Ram Sarup Gupta. The evidence of Mauji Ram is supported by Ganeshi Lal, Ali Ahmad Khan and Hadiyar Khan. Taking into consideration the circumstances of the case we find it very difficult to believe that the plaintiff could have gone to Mauji Ram at the house of his relation Kishori Lal in Mainpuri. Mauji Ram in his evidence states that early in the morning at about 7 he reached the place of Kishori Lal and within a few minutes the plaintiff and his companions came up there. The story appears to be highly improbable.

29. It was argued by learned Counsel appearing for the respondent that there was nothing improbable in plaintiff's approaching Mauji Ram in order to settle the matter, but we are not prepared to accede to this contention taking into consideration the bitter enmity which exists between the parties. If Chaturbhuj had been anxious to approach Mauji Ram with a view to settlement, the probabilities are that he would have adopted some other and better method. We would have expected him to approach such people who have some influence with Mauji Ram and to ask them to intervene and get the matter settled. The story put forward by Mauji Ram, if accepted, means that the plaintiff was very desirous of courting trouble and with a view to get evidence against him he went to Mauji Ram to utter a threat in the presence of other persons. This is a thing which we cannot believe. Ganeshi Lal is a relation of Mauji Ram and it is said that the plaintiff had sent for Ganeshi Lal to go with him in order to induce Mauji Ram to settle the matter by way of compromise. It is said by Ganeshi Lal that the man who went to fetch him told him nothing.

30. All that he was told was that Chaturbhuj wanted him. This is another improbable story. Ganeshi Lal is a near relation of Mauji Ram and if it was the desire of Chaturbhuj to get the help of Ganeshi Lal in order to effect a settlement with Mauji Ram, then we would have expected Chaturbhuj to go to Ganeshi Lal and first enquire from him whether or not he was agreeable to help him in the matter. About the evidence of Ali Ahmad Khan and Hadiyar Khan it has to be borne in mind that both these gentlemen are like Mauji Ram members of the District Board. The suggestion of the plaintiff is that they have come forward to render help to Mauji Ram in view of their friendship with him. This is not at all improbable. We find that Ali Ahmad Khan and Hadiyar Khan are not residents of Mainpuri but belong to villages which are at a distance from each other. Ali Ahmad Khan says in his evidence that his wife had been ill and he was anxious to hire a house belonging: to Kishori Lal and with that object in view he went to see him in the morning on which Mauji Ram was threatened. He saw Mauji Ram in the garden of Kishori Lal. He further deposed that Chaturbhuj had threatened Mauji Ram as alleged. It is Curious that this witness though he had gone all the way to hire a house from Kishori Lal, never made an effort even to enquire whether there was any house of Kishori Lal which he could get on rent. The evidence of Hadiyar Khan is also highly improbable. He states that on 21st May he met Chaturbhuj near the house of Kishori Lal when Chaturbhuj told him that he had gone to Mauji Ram to compromise the case under Section 107, Criminal P.C., but that Mauji Ram had not agreed to the request.

31. The witness deposed further that Chaturbhuj told him that Mauji Ram would meet the same fate as Ram Sarup Gupta and that Chaturbhuj was at that time very angry. We find it difficult to believe that Chaturbhuj should have taken into his head to repeat his threat in the presence of Hadiyar Khan. There could have been no need for him to have told this gentleman Hadiyar Khan as to what threat he had uttered against Mauji Earn. In cross-examination this witness was asked whether he had been convicted in a criminal case. He admitted that he had been prosecuted in a riot case, but deposed that he had been let off in appeal. The plaintiff put in evidence the former statements which this witness had made in proceedings under Section 107, Criminal P.C., to show that he had been convicted, but the appellate Court had; reduced the sentence.

32. The learned Subordinate Judge appears to have omitted to take into consideration that this witness was quite prepared to make a statement which was not quite true. It was argued by the

learned Counsel for the respondent that the plaintiff's statement is not supported by any other evidence. Mauji Ram had stated that certain other persons had accompanied the plaintiff when he went and threatened him with murder and that those persons should have been produced. This argument leads us nowhere. Of course if the plaintiff had produced them - it would have been better, but the mere fact that he did not produce any of the persons who it is alleged had gone with him is no reason why his own testimony should not be considered on its merits. The story which has been put forward by Mauji Ram appears to us to be highly improbable and we are not prepared to believe the evidence of Mauji Ram and his witnesses. It is true that there exists bitter enmity between Mauji Ram and the plaintiff, but that cuts both ways. When Chaturbhuj plaintiff made no effort to compromise the case which was being bitterly fought on both sides it is difficult to believe that all of a sudden he would take it into his head to go and make a request to Mauji Ram to compromise it.

33. The plaintiff was aware that the case under Section 107, Criminal P.C., was being fought between him and Mauji Ram bitterly and so it is highly improbable that during the pendency of that case he should have gone to Mauji Ram to make a request for settlement of the dispute. The plaintiff knew that there was enmity and he would have taken very good care to see before approaching Mauji Ram that there was a reasonable likelihood of his request being acceded to. The evidence and the circumstances are all in favour of the plaintiff's version and against Mauji Ram. It appears to us that Mauji Ram charged the plaintiff under Section 507, Penal Code, with a view to strengthen his case under Section 107, Criminal P.C., which was then pending. We do not think that there is any truth whatsoever in the story set up by Mauji Earn. The plaintiff has stated on oath that he never went to Mauji Ram in the garden of Kishori Lal and he never uttered any threat of murder to him as deposed to by Mauji Ram. We are of opinion that the evidence of the plaintiff on this point is true and it must therefore be held that the plaintiff was prosecuted without any reasonable and probable cause and maliciously by Mauji Ram. In our opinion the plaintiff was entitled to a decree for damages against Mauji Ram.

34. The next question which we have to consider is as to the amount of damages which should be awarded to him. From the evidence produced in the case it appears that both the plaintiff and the defendant are well-to-do zamindars and own extensive zamindari property. The defendant on account of his enmity with the plaintiff prosecuted him without reasonable and probable cause and maliciously and that is a serious matter. He is therefore entitled to substantial damages. The plaintiff had claimed a sum of Rs. 7,740 on account of damages. He attempted to prove the following items: viz., that (1) Rs. 3,240 were paid to his pleaders, (2) Rs. 1,000 were spent in connexion with the witnesses summoned in the case, (3) Rs. 2,500 were claimed for loss of mental and physical comfort, (4) Rs. 1,000 for the loss of business.

35. The learned Subordinate Judge held that so far as the loss of business was concerned the plaintiff had failed to make out any case. As regards the item claimed on account of mental and physical discomfort the learned Subordinate Judge held that the plaintiff was entitled to a sum of Rs. 1,060. In respect of the first two items of Rs. 3,240 and Rs. 1,000 the learned Subordinate Judge held that the plaintiff should get only one-fourth of this as there were some other accused and he assumed that they must have also contributed money towards the expenses of the case. This view of the learned Subordinate Judge is not justified. The plaintiff has given evidence which has not been

contradicted that he paid the fee of his counsel and also spent a sum of Rs. 1,000 in connexion with summoning and dieting witnesses, &c. No attempt was made by the opposite party to challenge this evidence of the plaintiff. It was open to the defendant to show that as a matter of fact the plaintiff alone had not defrayed all the expenses and that other defendants who are not parties to the present suit had also spent money towards the expenses of the case. Had they done so then there would have been a justification for curtailing the amount claimed by the plaintiff, but in the absence of any evidence on that point we are of opinion that the plaintiff was entitled to recover the whole amount spent by him. The result therefore is that in our opinion the plaintiff is entitled to recover the following amounts way of damages:

Rs. 3,240, fee of counsel Rs. 1,000, expenses in connexion with witnesses Rs. 1,060 on, account of physical and mental -discomfort

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Rs. 5,300

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36. For the reasons given above we allow this appeal, set aside the decree of the Court below and grant the plaintiff a decree for a sum of Rs. 5,300 with proportionate costs in both the Courts.

37. We now come to the other appeal which relates to the case started by the appellant under Section 107, Criminal P.C. On 16th March 1929, Mauji Ram made an application to the District Magistrate of Mainpuri in which he complained that he had received news that a large party of bad mashes had gathered in Khairgarh village and they appeared to be anxious to commit such acts as to bring out a serious occurrence in the village and for that reason there was danger. If proceedings to stop this were not taken there might be trouble. He further mentioned that between 8 and 9 p. m. on 14th March 1929, he and his pairokar were going to the Court of the District Judge of Mainpuri in order to give evidence in a case when they found some branches of trees on the road near Kalhur with a view to stop his motor, but his driver cleverly passed the car. Further he complained that he had learnt that Amarchand and some other relations of his had been stopped by armed men at a short distance from Mainpuri. He therefore prayed for suitable action. Later on it appears that Mauji Ram complained to the Superintendent of Police of Mainpuri on the same date and he directed the Sub-Inspector of Pharha that as Mauji Ram was complaining that he was in danger of his life on account of the activities of Chaturbhuj, some action under Section 107, Criminal P.C., should be taken against Chaturbhuj.

38. On 6th April the Sub Inspector made a detailed report praying that action should be taken against Chaturbhuj and seventeen others under Section 107, Criminal P.C. In this the various activities on the part of Chaturbhuj against Mauji Ram were enumerated and then the case started against Chaturbhuj which eventually ended in his discharge by the learned Sessions Judge as already mentioned.

39. The question which we have to consider is whether the proceedings under Section 107, Criminal P.C., were started by Mauji Ram with malice and without reasonable and probable cause as alleged by the plaintiff. As we have already pointed out it is for the plaintiff to establish want of reasonable and probable cause and further he has to prove that there was malice on the part of the prosecution.

40. The evidence produced in the case clearly goes to show, as has already been pointed out, that there is enmity between Mauji Ram and Chaturbhuj which is of long standing. They have been fighting civil suits and they have been taking sides with the opponents of each of them, for instance if there was a case in which Mauji Ram was helping one party then Chaturbhuj was certain to be on the op-posits side and so on. The plaintiff went into the witness-box and stated that Mauji Ram had no reasonable and probable cause for his prosecution under Section 107, Criminal P.C. Mauji Ram on the other hand narrated various points from which the Court was asked to gather that he had reasonable grounds for taking action against the opposite party and it was suggested by him that owing to the existence of enmity between him and Mauji Ram he apprehended danger from Chaturbhuj. "While dealing with the case under Section 506, I.P.C. we have mentioned the versions of both the parties. It appears to us on a perusal of the evidence that though the enmity had been in existence since a very long time, yet there were very few occasions on which there was an open show of hostility by one side against the other. The fact that enmity exists between the parties is by itself no reason for one of them to go and make a false complaint against the other with a view to injure his adversary. The question which we have to keep in view in cases of this description is whether the prosecutor had a reasonable and honest belief as a prudent man that owing to some actions by the opposite party his life was really in danger. If a party goes to Court and says that owing to the existence of enmity he apprehends danger from his adversary, and on that ground he asks the Court to take proceedings under Section 107, Criminal P.C., and the Court decides the matter against him, then it will be very difficult to hold that it was a case which was without any reasonable and probable cause. The man had believed that the opposite party was his enemy and he was therefore apprehending danger, but an enemy has no right to concoct a case against his adversary in order to put him to trouble, and if in a case it is found that with a view to support an imaginary story against an enemy one party fabricates evidence to bolster up his case against the other, then the prosecutor cannot say that his case against the other comes within probable and reasonable cause.

41. In the case before us we find that the first point which Mauji Ram wants to make against Chaturbhuj is that in 1917 there was a dacoity and on that occasion Chaturbhuj fired his gun in order to help the dacoits and later Mauji Ram complained to the police and the firearms of Chaturbhuj were confiscated and his name was entered in the history sheet. Then another admitted incident relates to the complaint which Bhabhuti had made against Chaturbhuj under Section 498. It is a case of both sides that that complaint was made at the instance of Mauji Earn. That incident also took place several years ago. It appears from the evidence that in December 1928 there were District Board elections and Mauji Ram, Kedar Nath and plaintiff stood as candidates from one and the same constituency. The plaintiff withdrew in favour of Kedar Nath with the result that there was a contest only between Mauji Ram and Kedar Nath. It further appears that it was a close contest and Mauji Ram won by a majority of 73 votes. It would appear that the trouble between the parties was this District Board election. Mauji Ram resented the action of Chaturbhuj in siding with the opponent.

42. If the evidence produced in the case is carefully scrutinized, it at once becomes manifest that the case set up by Mauji Ram was really a concocted one. (His Lordship then examined the evidence and proceeded.) In these circumstances we are of opinion that it must be held that according to the evidence produced in the case the prosecution of Chaturbhuj by Mauji Ram was without reasonable and probable cause and was malicious. The suit for damages should therefore have been decreed by the Court below.

43. The plaintiff claimed damages to the extent of Rs. 8,000. The learned Subordinate Judge has found that the plaintiff spent Rs. 3,788 on counsel's fee and Rs, 1,212 in connexion with the summoning and dieting of witnesses. In addition to these two amounts the plaintiff claimed Rs. 2,000 for the loss of mental and physical comfort and Rs. 1,000 for loss of business. The learned Subordinate Judge allowed the plaintiff Rs. 313 on account of mental and physical sufferings. The item in respect of damages for loss of business was disallowed. For the first two items the learned Subordinate Judge, while holding that the amount had been spent allowed plaintiff only Rs. 313. The reason which led him to adopt this course was that there were 18 accused and he took it for granted that the expenses must have been defrayed by all of them. We find it difficult to agree with this view of the learned Subordinate Judge. The plaintiff had given evidence to show that it was he who spent these amounts, and in the absence of any evidence to the contrary the plaintiff alone was entitled to recover the same regardless of the fact that there were other accused in the criminal case. In our opinion the plaintiff is entitled to the items of Rs. 3,788 and Rs. 1,212. In connexion with item 3 the learned Sessions Judge has allowed him Rs. 313 and to that sum he is also entitled. The total amount then comes to Rs. 5,313. In our opinion for this sum a decree should have been passed in favour of the plaintiff.

44. For the above mentioned reasons we allow this appeal, No. 380 of 1931, set aside the decree of the Court below and grant the plaintiff a decree for a sum of Rs. 5,313 with proportionate costs in both the Courts.