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14,1956

IN THE PRIVY COUNCIL

No. 20 of ~~1955~~

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

SUBRAMANIAM KADIRTAMBY SUBRAMANIAM .. Appellant

- and -

THE QUEEN ... ... Respondent

CASE FOR THE APPELLANT

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1. This is an appeal, by Special Leave, against the Order of the Commissioner of Assize (1st Northern Circuit, 1954 Assizes, Supreme Court of Ceylon), dated the 18th March, 1954, whereby the Appellant was sentenced to one month's rigorous imprisonment for having given false evidence during the course of a criminal trial before the said Commissioner who, in sentencing the Appellant as stated, purported to exercise the summary powers vested in him under Section 440(1) of the Criminal Procedure Code of Ceylon. pp.136-144

The Appellant has served the said sentence.

2. The main questions for determination on this appeal are concerned with the nature and exercise of the discretion vested in the Court under Section 440(1) of the Criminal Procedure Code to punish a witness for giving false evidence within the meaning of Section 188 of the Penal Code in a judicial proceeding held before it.

3. The said Section 440 of the Criminal Procedure Code (under Sub-Section (1) of which the Appellant was sentenced) is as follows:-

Summary punishment for perjury in open Court) "440. (1). If any person giving evidence on any subject in open Court in any judicial proceeding under this Code gives, in the opinion of the Court before which the judicial

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proceeding is held, false evidence within the meaning of Section 188 of the Penal Code it shall be lawful for the Court, if such Court be the Supreme Court, summarily to sentence such witness as for a contempt of the Court to imprisonment either simple or rigorous for any period not exceeding three months or to fine such witness in any sum not exceeding two hundred rupees; or if such Court be an inferior Court to order such witness to pay a fine not exceeding fifty rupees and in default of payment of such fine to undergo rigorous imprisonment for any period not exceeding two months. Whenever the power given by this Section is exercised by a Court other than the Supreme Court the Judge or Magistrate of such Court shall record the reasons for imposing such fine.

"(2) Any person who has undergone any sentence of imprisonment or paid any fine imposed under this Section shall not be liable to be punished again for the same offence.

"(3) Any person against whom any order is made by any Court other than the Supreme Court under Sub-section (1) of this Section may appeal to the Supreme Court and every such Appeal shall be subject to the provisions of this Code.

"(4) In lieu of exercising the power given by this Section the Court may if it thinks fit transmit the record of the judicial proceeding to the Attorney-General to enable him to exercise the powers conferred on him by this Code or proceed in manner provided by Section 380.

"(5) Nothing in this Section contained shall be construed as derogating from or limiting the powers and jurisdiction of the Supreme Court or the Judges thereof."

4. The said Section 188 of the Penal Code is as follows:-

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Giving false evidence

"188. Whoever, being legally bound by an oath or affirmation, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give 'false evidence'.

"Wherever in any Ordinance the word 'perjury' occurs, such Ordinance shall be read as if the words 'giving false evidence' were therein used instead of the word 'perjury'.

"Explanation 1 - A statement is within the meaning of this section whether it is made verbally or otherwise.

"Explanation 2 - A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

"Illustrations ....."

5. The Appellant came to be sentenced as aforesaid under the following circumstances:-

In the case of R. v. Verrakathey Tharuman alias Tharmalingam the accused was charged, under Section 296 of the Penal Code, with the murder of one Kandasamy on the 27th November, 1952, at or near a place known as Nelliadi Junction. At his trial before Mr.Commissioner Barr Kumarakulasinghe and an English-speaking Jury (1st Northern Circuit 1954, Assizes, Supreme Court) the accused pleaded Not Guilty. p.1 and copy of indictment

The case for the prosecution, so far as is ascertainable from the prosecution witnesses and so far as is now relevant, appears to have been that the deceased was seriously assaulted and beaten by the accused and two others (who were not before the Court) on the said date at the said place soon after it had become dark, (i.e. about 6.30 - 7 p.m.). His assailants left the injured man lying on the road where he was attacked but subsequently he was removed from the northern side of the road to the southern side by two pp. 4-5, 8-10.

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innocent persons who placed him under a tamarind tree. After the attack the attackers who had used clubs etc. went away but the accused returned shortly after and finding the injured person under the tree he attacked him again, this time with a knife. The injured man died as a result of the injuries he had thus received.

pp. 4-12 pp.28-35

The case for the prosecution was supported principally by the evidence of two alleged eye-witnesses and by the usual evidence of police officers and others (the Appellant among them) who had either assisted at the police investigation or otherwise had played some part therein.

6. The said eye-witnesses supported the prosecution case as outlined above. The Appellant is not really concerned with the suggestion that their testimony remained substantially unshaken in the cross-examination that followed in each case but he would respectfully submit nevertheless that this is the only reasonable inference that can be drawn from an examination of the Record.

7. The Appellant was, on all material dates, the Village Headman of Karavetti North, a village close to Nelliadi Junction which was the scene of the offence. In the immediate neighbourhood also is the village of Karavetti West.

pp.35-47 pp.54-62

In his evidence for the prosecution (given, it is important to note, nearly sixteen months after the alleged murder) the Appellant, not being an eye witness nor in possession of information which definitely identified any person with the crime, could only testify to events which had occurred after he had been informed of the attack and to the part that he had played during the investigations.

His testimony, so far as is now relevant, was to the following effect:-

p.40, LL.32-35

(a) He was first informed of the offence at about 7.30 p.m. on the day in question and within 10 minutes or so of his receiving such information he was at Nelliadi Junction.

pp.35-37, 38, 41.

(b) On his arrival at the Junction he found the injured man alive but gravely wounded lying under a tree within the jurisdiction of the Karavetti West Headman in whose absence

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he (the Appellant) assumed jurisdiction to deal with the emergency.

(c) He reported the offence to the police by telephone very shortly after - at about 7.45 p.m. - and until the police arrived at about 9 p.m. he carried out his duties as best he could. — p.37, LL.42-44; p.43, LL.26-27

(d) At about 8.15 p.m. he sent a written message to the Karavetti West Headman asking for his car for the removal of the injured person but the message was not accepted and was returned to him. The letter, probably mislaid, cannot now be found. The said Headman did not arrive on the scene before about 9 p.m. — p.35, L.35; p.40, LL.4-24; pp.46-47; p.54, L.32; p.35, L.36; p.44, LL.8-9

(e) He tried vainly to enlist the assistance of car owners for removing the injured person who died eventually at about 8.30 p.m. i.e. before the arrival of either the police or the Karavetti West Headman. Later he telephoned the Hospital and arranged for the removal of the deceased to that institution. — p.41, L.33 to p.42, L.16; p.60, LL.23-35; p.43, LL.4 - 5; p.36,LL.30-39; p.46,L.2; p.58,LL.10-20

(f) Before the arrival of the police or the Karavetti West Headman he questioned, among others, one Kandappu a neighbouring boutique-keeper and recorded his statement. — p.41,LL.21-26; p.54,L.34 to p.55,L.15

(g) He did not question one Sahotharam Sinniah (a relation of one Chelliah for causing whose death the deceased had suffered imprisonment for four years) because his boutique at the Junction was closed at the time. — p.43,L.37 to p.44,L.6

(h) He assisted the police to the best of his ability during the investigations that followed, e.g. in the search for a suspect called Sellappan. — p.39,LL.26-29; p.44,LL.20-30

(i) He did not try to trace a woman called Sinnachy as the police had not directed him to do so. — p.39,LL.36-39

(j) There was a general reluctance on the part of several persons who had been questioned to come forward with any information of the attack on the deceased. — p.45,LL.20-35

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p.46,LL.42-44 (k) There was no truth in the suggestion that "we all of us got together and suppressed the fact as to who the assailant was."

8. The prosecution case was supported also by
pp.47-54 one Kandappu, a cultivator and boutique-keeper, who said that :-

p.47,LL.20-26
p.51,LL.21-23 (a) He had telephoned the police at about 7 or 7.15 p.m. for transport to remove a man who was critically injured.

p.53,LL.26-28
p.54,LL.6-16 (b) He had subsequently failed in his efforts to procure such transport.

p.47,LL.25-35 (c) His statement had been recorded by the Appellant after the police had arrived.

p.48,LL.6-21
p.49,LL.20-22
p.51,LL.32-39 (d) He had not mentioned the names of any possible witnesses except a woman called Sinnachi who he said "was in the crowd where the incident happened", whose address he had subsequently given to the police, and for whom he, together with the police, had searched.

The nature of the subsequent examination of this witness by the learned Trial Judge is best illustrated by the following extracts from the Record:-

pp.49-50 "Court: You did your duty first by going to the police but the police did not record your statement. They have suppressed that statement. If your message had been recorded at the time the whole thing would have been out. If there is one man who knows about the incident that man is you.

"Witness: I do not know about the assault on Kandasamy. If I knew it I would not have failed to disclose it. I made way through the crowd in front of my boutique and I saw Kandasamy lying there. There was a large crowd there. I looked at the crowd and asked them who had assaulted the injured person but nobody replied.

"Court: Do you know what the reply from Court to that is? Two years' rigorous

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imprisonment under the Courts' Ordinance. Somebody is going to pay for this. Did you tell anyone before this that you asked the crowd who had assaulted the man?

"Witness: I told the police ..... I mentioned that in my statement to the police.

"Court: There is nothing like that in your statement to the police.

"Witness: I told the police that.

.....

"Court: Your boutique is right in front of the place where this man was lying? p.50,LL.32-40

"Witness: My shop was not opposite the spot where the man was lying but west of it. My shop was not the nearest to the spot ..... Narayan Nair's boutique, the Malayalee, was the nearest.

"Court: You are not speaking the truth even with regard to that.

"Witness: My shop is to the right of the road and his is to the north."

9. In support of the prosecution case, Police Constable B.A.M. Mudiyanse testified to his having received at the police station, between 7 and 7.30 p.m., a telephone call from the Appellant informing him of the offence. pp.85-90. p.86,LL.10-14

The learned Trial Judge thereupon warned the witness "in his own interests" that the Court had "got the time at which the Village Headman telephoned" and which, according to the Post Office witness, was 7.45 p.m. p.86,LL.15-22

Later, the witness said that he gave the said information to Sergeant Hameen who thereupon went to the scene of the attack, and that, as all available police constables had been previously called to a fire, he had instructed the Appellant to send the injured man to the hospital. p.89,LL.7-15

On the witness's further statement that he took full responsibility for all that he (the witness) had done, the learned Trial Judge ordered p.90,LL.17-21

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that he should be taken into immediate custody by the Fiscal.

pp.92-103
p.93,L.40 to p.94,L.9
p.96,LL.20-29

10. A further prosecution witness, one B.V.J. Alagiah, Sub-Inspector of Police, was questioned by the learned Trial Judge about allegations which had been made against the Appellant and which the witness had said were false.

p.104

Later, on being recalled by the Court after evidence had been given of the recording of a statement by the accused in another police district where he was arrested, the witness said that it was possible that an extract of the said statement had been sent to his police station but it was not to be found in the Crime File.

pp.90-92

11. In his evidence, the deceased's brother, one Arumugam, said inter alia that:-

p.90,LL.35-37

(a) he had learnt of the attack on his brother and his brother's death only on the next day - the 28th November, 1952;

pp.90-91

(b) he had subsequently seen the Appellant and the police working together; and

p.91,LL.13-20

(c) that on the following day he "was able to find out the assailants" and had given his information to the police.

12. The learned Trial Judge, dissatisfied presumably with the prosecution evidence, took the unusual course of calling a number of witnesses himself.

pp.66-75

One of the said witnesses was Police Sergeant Z. Hameen who, during the course of his evidence (for the giving of which, he, like the Appellant, was subsequently to suffer), said that:-

p.66,LL.5-6

(a) he had been a Sergeant of Police for 18 years;

p.67,LL.21-26

(b) the Appellant's telephone message had been received at the police station at about 7.22 p.m. on the day in question (the Appellant had fixed the time at about 7.45 p.m.);

p.70,LL.18-19

(c) "Nobody at Nelliadi Junction would give any information";

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(d) the Appellant had assisted in the search and arrest of one Chellapan (who was however subsequently released); and — p.71, LL.19-40

(e) he had not recorded statements of boutique-keepers who denied all knowledge of the offence. — p.72, LL.10-18

Then followed a series of questions relating to the part that the witness had played in the investigation of the crime, to the recording of statements, and to the destruction of police-diaries after a year (a normal practice). And then came this question from the Court:- — p.72, L.27 to p.73, L.24

"Do you drink hard?" — p.73,LL.25-26

To which the witness replied: "I do not drink hard but once in a way I drink".

Later, on the witness's denial that he was one of the first to arrive on the scene, the learned Trial Judge said to the witness:- — p.74,LL.3-5

"There is ample evidence to have you indicted for fabricating evidence in a murder case". — p.74, LL.6-8

The witness denied that he had fabricated evidence. He said that he had heard many rumours in this case. As to the Appellant he said that he had overheard some persons make statements to the effect that the Appellant was trying to suppress evidence but that the said persons when questioned had denied making the statements. — p.74, L.9; p.74,LL.31-46

13. Of the other witnesses called by the Court it is necessary to refer only to one V.J. Perera, Sub-Inspector of Police, who was also called by the prosecution. — pp.77-81

This witness said that:-

(a) the Appellant had questioned a number of persons in the presence of the police; — p.77,LL.41-42

(b) he (the witness) had visited the deceased's brother who, however, had no information to give him; — p.78,L.45 to p.79,L.5

(c) there was a rumour that the accused knew something about the crime; and — p.79,LL.34-35

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pp.79-80 (d) it was not true to suggest that the police intended to shield the true assailant.

p.104,LL.38-42 p.105,L.2 14. The learned Trial Judge was of opinion that there was no evidence against the accused and that it was not a case for "a full trial".

He accordingly directed the Jury to bring in a verdict of not guilty of any offence which the Jury did.

The learned Judge then addressed the accused as follows:-

p.105 "The gentlemen of the Jury did not wish to proceed with this case any further. I have not the slightest doubt that you are the man who killed the deceased along with two others. You did not want the deceased to live in this country. You had, with the assistance of the Village Headman and the police, suppressed the evidence. Not even the full facts of the case were brought to the notice of the Attorney-General and the fact that you had made a statement had not been brought to the notice of the Attorney-General. You are a despicable man. After the deceased had been seriously injured you left him on the road and you left, and you left the Headman to come and suppress evidence. You may escape but this country will be made safe. Everyone of the witnesses who helped to suppress the evidence in this case is not going to escape. There were apparently people who wanted to have this man killed. He might have been a bad man. You have a bad record on having in my opinion killed the man. Your name transpired immediately after this incident, when evidence was suppressed. You may go."

p.105 15. The next stage in this remarkable case was reached on the 15th March, 1954, and is thus recorded officially:-

"Court calls Sub-Inspector Alagiah, Police Sergeant Hameen, Police Constable Mudiyanse, S.K. Subramaniam, Village Headman, Karaveddi North" [the Appellant] "Thangammah wife of Sinnathamby and Ponnambalam Kandappu and orders that Sub-Inspector Alagiah be allowed" [out?] "on personal bail and all the other

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witnesses be remanded till 9.30 a.m. tomorrow.

"Court informs the Crown Counsel to consult the Attorney-General if he likes and to file indictment against all the witnesses mentioned above".

16. The Appellant was brought before the learned Trial Judge the next day, the 16th March, 1954, when Dr. Colvin R. de Silva, a well-known Advocate of considerable experience, appeared for him. p.108

Dr. de Silva pointed out to the learned Judge that he had cause to show but that he would like to know on what precise points the learned Judge had formed the opinion that the witness had given false evidence. p.108,LL.27-30

The learned Judge's answer to this was that the whole of the Appellant's evidence was false and that "if you read the evidence you will find the various points set out". Further argument proceeded thus:- p.108,LL.30-33

Dr. de Silva: "Your Lordship's Court is both in the position of Prosecutor and Judge, a position which the Code puts upon Your Lordship. I would like to ask what precisely are the matters, and on what footing I have to go. I would like to be clear whether we have to show cause on the footing that our evidence has been in conflict with other evidence or with ourselves."

Court: "I was only trying to save time, but in the evidence of the witness in Court point by point has been brought out. I am not acting on his evidence as against that of others, I am only taking his evidence into consideration."

17. During the course of further argument on the subject of bail for the Appellant, the learned Trial Judge referred to the following "sufficiently serious matter" disclosed in the Appellant's evidence: he had assumed jurisdiction which was that of another Headman to whom he said that he had sent a letter which, however, could not be found and there was evidence that that other Headman was on the scene. The argument then proceeded as follows:- pp.109-113 p.110,LL.9-20

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p.110,LL.21-31 Dr. de Silva (for the Appellant): "That is a letter that went to and fro in the month of November, 1952" /i.e. nearly a year and four months previously/

Court: "That is a letter he said he had with him regarding a matter in which he usurped jurisdiction."

Dr. de Silva: "That was a letter written by him and signed by him and in his handwriting and if it was his intention to deceive he could have written such a letter and produced it here."

Court: "Except for the way in which the matter developed in this Court."

18. Counsel for the Appellant (Dr. de Silva) then submitted that, in proceedings which were p.110,L.35 to p.111,L.12 "not merely summary but summarily summary", he was entitled to satisfy the Court that there were two possible interpretations of the evidence, one of which might lead to guilt and the other to innocence; but to this the learned Trial Judge answered:-

p.111,LL.13-15 "Here is a case where I have already formed an opinion. I do not agree that it is open to the witness to challenge the opinion I have formed."

Argument on the Appellant's right to show that the Court had arrived at a wrong opinion then proceeded as follows:-

p.111,LL.18-29 Court: "If it is demonstrated that the view I hold is not necessarily right I will look into it and change my view if necessary. He" /i.e. the Appellant/ "can only show cause as to why he should not be punished. He cannot be heard to argue that my opinion is wrong. That is an opinion formed in the course of the trial."

Dr. de Silva: "Submits that there would be no section giving a man the right to show cause unless it was open to him to show that the opinion formed by the Court was undeserved by producing fuller material before the Court on which the Court might form a different opinion."

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Court: "I think it rather a case of showing why the man should not be punished."

Dr. de Silva: (after quoting Section 440) "submits that the man is free to defend himself".

Court: "Free to show why he should not be punished, otherwise it places the Court in a very difficult position as the Court would be under trial".

Dr. de Silva: "..... Once I am called upon to show cause I have the right to say this: that the opinion formed by Your Lordship on the basis of which I was called upon to show cause is an opinion which on ..... fuller consideration ..... may be said to be not valid ..... It would be meaningless to call upon a man to show cause and then limit his right to show cause." p.112, LL.1-29

Court: "I am asked to sit in appeal and consider whether my opinion which I have formed is the correct opinion. I am asking you to show cause why he should not be punished."

Dr. de Silva: "One way of doing that is by showing that the opinion formed by Your Lordship is invalid. I am not asking Your Lordship why Your Lordship has formed that opinion, but I claim the right to know in respect of what evidence I am considered to have been guilty of falsehood."

Court: "My opinion may have been formed by watching the demeanour of the man. Suppose a witness is in the witness-box and when questioned he keeps turning round and looking at some man who is muttering in a corner of the Courthouse. I may form the opinion that the witness is giving false evidence on that fact coupled with other facts."

Dr. de Silva: "But the muttering at the back may have had no relationship at all to the evidence given, and therefore the opinion formed by the Court is invalid."

On the next day the Court released the Appellant on bail. p.113,LL.10-11

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pp.128-129

19. The case against the Appellant was continued on the 18th March, 1954, when the Appellant's Counsel (Dr. de Silva) submitted that in the view that the Court took of the Appellant's conduct

p.129,LL.8-19

(suggestive of a conspiracy to fabricate evidence) it would be more appropriate and satisfactory if the Record were transmitted by the Court to the Attorney-General under Sub-Sect. (4) of the said Section 440, so that the matter could be dealt with by the normal processes of the law thus giving to the Appellant suitable opportunities to meet any charges against him. But the learned Trial Judge said that action taken under Sub-Sect. (1) of the said Section was a known process of the law and that under that Sub-Section he had a discretion to act in the way he thought best.

p.129, L.20 to p.130, L.43

The learned Judge's attention was next drawn to the fact that his unfavourable opinion had been formed as the result of his acting under Section 165 of the Evidence Ordinance under which a Judge can, in order to discover, or to obtain proof of, relevant facts, ask questions of a witness about any fact, but not so as to cross-examine him; and that this inquiry which consisted of the questioning of a witness on an undisclosed charge, appeared to have been undertaken to confirm an unfavourable opinion already formed at an early stage of the case, and was therefore irregular and invalid. Answering this the learned Trial Judge said that the Court was not helpless where evidence was suppressed and only part of a case presented.

p.131,LL.17-43

Later, during the course of the argument it appeared that the learned Judge had been unfavourably impressed with the Appellant's evidence because the Appellant had said that he had proceeded immediately to the spot and yet had not found anyone who was prepared to say who the assailant was, and because he had not followed up clues which in the learned Judge's opinion, must have been available to him. The learned Judge admitted that in questioning the Appellant he had

p.132,LL.6-24

made use of an anonymous communication made to the police but he did not consider that there was anything wrong in his doing so.

p.133, LL.10-15

And, referring again to the evidence of the Appellant he expressed the opinion that "as he had assumed jurisdiction outside his area and had not done "the obvious things" the inference was that he had acted thus to suppress the evidence.

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20. On the Appellant's Counsel renewing his prayer that the case should be forwarded to the Attorney-General under Sub-section (4) of the said Section 440, so that the Appellant could have the advantage of being tried in the normal way whereby justice would not only be done but would also appear to be done, the argument proceeded thus :- p.133,LL.19-31

Court: "How is it advantageous to the witness to be dealt with by the Attorney-General or by a Magistrate and not by me under Section 440 (1)? That he will have a chance of getting off?" p.134,LL.10-30

Dr. de Silva: "Your Lordship will not be influenced by the fact of whether in a proper trial he would get off?"

Court: "You know what a trial is?"

Dr. de Silva: "Your Lordship will not be influenced by the view that a trial in any other Court would be different to a trial in Your Lordship's Court. I may be permitted to have the same advantage as the accused had."

Court: "I am not disposed to give him that advantage. Under the Section the law gives me the right to decide the matter and I have formed an opinion after very great consideration and why should I say that I have doubts about the matter? Just to wash my hands of an unpleasant affair? Why should I not act when I am fully convinced?"

Dr. de Silva: "I am asking Your Lordship to act in the proper way under the Section."

Later, the learned Trial Judge, adhering to his view that the offence should be dealt with summarily by him and not by indictment and trial, expressed the opinion that if he acted as he proposed to do it would have "a far greater effect on the man as well as on the public". p.135,LL.4-5

21. On the 18th March, 1954, the learned Trial Judge sentenced the Appellant to one month's rigorous imprisonment. pp.136-144 p.144,LL.31-32

In his Order, previous to the said sentence, the learned Judge referred to the fact that the eye-witnesses had made their statements to the p.137,LL.16-22

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police on the 16th December, 1952, about 3 weeks after the alleged murder had taken place. Their
p.137,LL.23-31 evidence was belated and it became a "vital matter" to enquire into the delay for the witnesses themselves said that they had always been available as from the 29th November, 1952 (two days after the alleged murder) if the police and the Appellant desired to record their statements. The learned
p.137,L.42 to p.138,L.3 Judge said that the Appellant had been questioned on the basis of the material found in two anonymous communications which had been sent to the police but his answers thereto had "nothing to do with the opinion formed in this case by the Court" with regard to his evidence.

In the learned Judge's opinion, the Appellpp.138-139 ant had given false evidence:- (a) in relation to the letter which he had sent to the Village Headman Karaveddy West (the learned Judge referred to the Appellant's evidence on this point but was unable, it is submitted, to advance any reasonable
p.139,LL.35-48 ground for arriving at his conclusion); (b) in denying that he was not aware of allegations which were being made against him during the investigations (the learned Judge thought it improbable that the Appellant was not aware of these allegations which had been sent to the police with whom the Appellant was associated in investigating the
p.140,LL.3-23 offence); (c) in stating that no persons were forthcoming to give evidence as to who the assailants were (the learned Judge named the owners of two boutiques who he thought could have given
p.140,L.31 to p.141,L.9 such information); (d) in stating that he had tried in vain to get transport for the removal of the injured man (the learned Judge appeared to think that this was improbable as Nelliaddi Junction is a place where buses and cars are to be
p.141,LL.12-43 found at all times); (e) in relation to his taking the woman witness Thangammah to the police station (the learned Judge thought that the witness, who was due to give evidence before the Magistrate the next day, must have been taken to the police station for some purpose which the police could not mention and therefore the Appellant's evidence that he had taken her there at the request of the police who had directed him at the Station to take the witness back and bring her to Court on the following day, must be regarded as false).

pp.142-143 22. Called upon by the learned Trial Judge to show cause why he should not be punished for giving

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false evidence, the Appellant said:-

"All the statements made by me in this Court in connection with this case are the actual facts. I have not said anything false". p.142,LL.8-10

On some of the portions of his testimony which the learned Judge had singled out for criticism the Appellant said:-

(a) "As regards the letter I actually sent a letter to the acting Headman, Karaveddy West. In that letter I mentioned all what had happened up to the time of writing and requested him to do the needful. I sent that note asking him for the car. That was the only motive for having sent that note". p.142,LL.29-34

(b) As to the reluctance or refusal of members of the public to give evidence: that this has actually occurred in several instances. and that all boutiques were closed when he arrived on the scene. p.142,L.35 to p.143,L.2

(c) As to his inability to secure transport for removal of the injured person: "I was busy in search of a car. I tried but could not get a vehicle to transport the injured to the Hospital ..... If there was a vehicle I would have got that vehicle and gone with him to the Hospital. There was no vehicle at all available. The evidence I gave in this connection is true." p.143,LL.2-12

23. Purporting to exercise his summary and other powers the learned Trial Judge dealt with others who had the misfortune to be concerned with the prosecution case as follows:-

(1) The witness Kandappu (who testified to his sending a telephone message to the police Station at a particular time) was sentenced to three months' rigorous imprisonment. pp.117-119 p.119,LL.16-17

(2) The witness Thangammah (a woman subject to epileptic fits who said that she had not seen the attack on the deceased which, in the learned Judge's opinion was improbable) was sentenced to two weeks' simple imprisonment. pp.114-117 pp.117,LL.1-2

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pp.119-124

p.124,LL.40-50

(3) Police Constable Mudiyanse (who testified as to the reception and entry of telephone messages at the police station and who stoutly maintained that he had done nothing wrong) was reported to the Inspector General of Police for disciplinary action.

pp.125-127

p.127,LL.14-20

(4) Police Sergeant Hameen (who, notwithstanding his thirty-three years' service and experience in the Police Force, had, in the learned Judge's view, failed to record the statement of Kandappu which he should have done and must be taken to have given false testimony as everything seemed to have gone wrong in the course of his investigations) was sentenced to one month's rigorous imprisonment.

pp.144-146

p.145,L.40 to p.146,L.1

(5) Sub-Inspector Alagiah, was reported to the Attorney-General and to the Inspector-General of Police for necessary action, a complete copy of the proceedings being sent to each of the two Departments.

The result of this appeal will no doubt be awaited with anxiety by all of the above persons each of whom would appear to have suffered by the non-judicial exercise of a discretionary power which, even when circumstances appear to warrant its exercise is, in the Appellant's respectful submission, to be exercised with caution and care.

24. Against the said Order of the Commissioner of Assize the Appellant, unable to appeal to the Court of Criminal Appeal because of the summary nature of the proceedings, applied for Special Leave to Appeal to Her Majesty in Council which, by Order in Council, dated the 7th April, 1955, was granted to him.

In pursuance of the said grant of Special Leave this appeal to Her Majesty in Council is now preferred and the Appellant humbly submits that the appeal should be allowed, his conviction and sentence quashed, and the said Order of the Commissioner of Assize, dated the 18th March, 1954, set aside with costs throughout, for the following among other

REASONS

1. BECAUSE the discretion vested in the trial judge by Section 440(1) of the Criminal Procedure Code summarily to sentence a witness for giving false evidence within the meaning of Section 188 of the Penal Code was, in the circumstances of this case, exercised against the Appellant contrary to law reason and natural justice.

2. BECAUSE there were no grounds, or, alternatively, no sufficient grounds, upon which the learned trial judge was entitled to hold that the Appellant had given false evidence within the meaning of Section 188 of the Penal Code.

3. BECAUSE the discretion vested in the trial judge by Section 440(1) aforesaid) was not judicially exercised.

4. BECAUSE the refusal of the learned Trial Judge to permit the Appellant's Counsel to show, by enquiry and explanation, that the learned judge's unfavourable opinion of the Appellant's evidence was not really justified was, inasmuch as it denied to the Appellant an opportunity of defending himself, contrary to the principles of natural justice.

DINGLE-FOOT

R.K. HANDOO

IN THE PRIVY COUNCIL

No.20 of 1955

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

SUBRAMANIAM KADIRTAMBY SUBRAMANIAM
Appellant

- and -

THE QUEEN ... Respondent

CASE FOR THE APPELLANT

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