Privy Council Appeal No. 20 *of* 1955

Subramaniam Kadirtamby Subramaniam - - - - - *Appellant*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH APRIL, 1956.

Present at the Hearing:

LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD KEITH OF AVONHOLM
Mr. L. M. D. DE SILVA

[*Delivered by* LORD OAKSEY]

This is an appeal, by special leave, against the Order of a Commissioner of Assize of the 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 trial for a murder on the 27th November, 1952, before the said Commissioner who, in sentencing the appellant purported to exercise the summary powers vested in him under section 440 (1) of the Criminal Procedure Code of Ceylon.

The appellant has served the said sentence.

It is convenient to set out section 440 of the Criminal Procedure Code :—

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 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."

The appellant was sentenced in the following circumstances :—

The accused man, one Verrakathey Tharuman *alias* Tharmalingam, was charged under section 296 of the Penal Code with the murder of one Kandasamy on the 27th November, 1952, at or near a road junction known as Nelliadi Junction.

The appellant was at that time the Village Headman of Karavetti North, a village which abutted on the north side of Nelliadi Junction which was the scene of the offence. The village of Karavetti West abutted on the south side of Nelliadi Junction.

The case for the prosecution 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 north side of Nelliadi Junction 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 to the southern side of the Junction by two innocent persons who placed him under a tamarind tree. After the attack the attackers went away but the accused returned shortly after and finding the injured person under the tree attacked him again, this time with a knife. The injured man died as a result of the injuries he had thus received.

The case for the prosecution was supported principally by the evidence of two alleged eye-witnesses and by the 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.

The appellant was called for the prosecution and testified that he was not an eye witness nor in possession of information which definitely identified any person with the crime. 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 went to Nelliadi Junction: 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 he (the appellant) assumed jurisdiction to deal with the emergency: 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: At about 8.15 p.m. he said 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. He was unable to find the letter. The Karavetti West Headman did not arrive on the scene before about 9 p.m.: The appellant 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 the appellant telephoned to the hospital and arranged for the removal of the deceased.

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: The appellant stated that 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: He denied that there was any truth in the suggestion that "we all of us got together and suppressed the fact as to who the assailant was." The Karavetti West Headman was not called as a witness.

The Commissioner appears to have formed the opinion that evidence of the murder had been and was being suppressed and he therefore on his own initiative called a number of witnesses and cross examined the prosecution witnesses and the witnesses he had called not in connection with the

alleged murder which he was trying but in connection with the alleged suppression of evidence of that murder. In the course of this cross examination he formed the opinion that the appellant and some of the police and other witnesses were committing perjury and proceeded to direct the acquittal of the prisoner although he stated that he had not the slightest doubt that the prisoner was guilty and that he had with the assistance of the police and of the appellant suppressed the evidence. At a later hearing the Commissioner after hearing counsel for the police and other witnesses and the appellant sentenced them to various terms of imprisonment.

In their Lordships' opinion the course taken by the learned Commissioner was misconceived. The summary power conferred by section 440 (1) is one which should only be used when it is clear beyond doubt that a witness in the course of his evidence in the case being tried has committed perjury. It was in their Lordships' opinion never intended that in the exercise of the power under section 440 (1) in the course of a criminal trial a subsidiary criminal investigation should be set on foot not against the prisoner charged but against the witnesses in the case.

If such an investigation is necessary it can and should be set on foot under section 440 (4). Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and the Order of the Commissioner of Assize Supreme Court of Ceylon dated the 18th March, 1954, set aside. In all the circumstances of the case they think it right to make the unusual order that the appellant shall have his costs of the appeal and of the petition for special leave.

(39658) Wt. 8064—69 100 4/58 D.I.

In the Privy Council

SUBRAMANIAM KADIRTAMBY SUBRAMANIAM

v.

THE QUEEN

DELIVERED BY LORD OAKSEY

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