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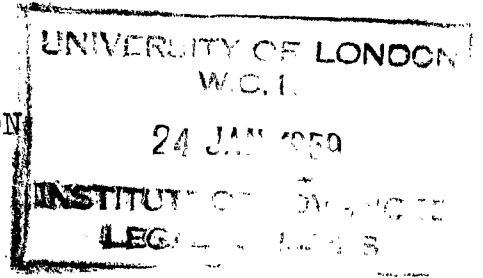
1.

IN THE PRIVY COUNCIL

No. 27 of 1957

ON APPEAL

FROM THE SUPREME COURT OF CEYLON



B E T W E E N

52099

DON THOMAS SAMARATUNGA Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

10 1. This is an appeal by Special Leave from an Order of the Court of the Commissioner of Assize for the Supreme Court of Ceylon dated the 15th June 1957, whereby the learned Commissioner summarily sentenced the Appellant to three months rigorous imprisonment under section 440 (1) of the Criminal Procedure Code of Ceylon for giving false evidence within the meaning of Section 188 of the Penal Code in a judicial proceeding.

20 2. In Supreme Court Case No. 10, before the said Commissioner, the Appellant was jointly indicted with one Ellupuli Ralalage Yothan Singho, the latter with attempting to murder one Wijesooriya Appuhamilage Peiris Singho and the Appellant with aiding and abetting him in such attempt.

30 3. The evidence adduced at the non-summary inquiry into the said charges, showed that the only evidence against the Appellant was that of a witness named K.A.S. Gunatilleke, a young man 19 or 20 years of age. In the non-summary proceedings this witness Gunatilleke had said that he was employed by the Appellant and that on the day in question the Appellant had given Yothan Singho and himself a bottle of arrack to drink in the Appellant's

kitchen and provided them with a club and had directed them to go and kill Peiris Singho between whom and the Appellant, he averred, there was ill feeling due to a dispute about a footpath.

10 4. At the trial before the said Commissioner the said K. A. S. Gunatilleke admitted that he was employed by the Appellant at the relevant time but denied that he had been given arrack in the kitchen or that he had taken any part in the attack on Peiris Singho. He admitted the statement he had made in the Magistrates Court and produced a document on notepaper and an exercise book which he said were given him by Peiris Singho's wife containing the evidence he was to give. He further said that he had been promised Peiris Singho's daughter Kusumawathie in marriage if he gave false evidence.

20 5. After the evidence of the said K.A.S. Gunatilleke had been completed and on being informed that there was no other evidence against the Appellant the learned Commissioner directed the jury to acquit the Appellant. The trial of Yothan Singho then continued. Peiris Singho gave evidence that the said K.A.S. Gunatilleke was 'the boy' at the Appellants house; that the said K. A. S. Gunatilleke had been present at the attack made upon the witness by Yothan Singho, and that he, 30 the witness, had had a dispute with the Appellant concerning a right of way. Punchi Nona, the wife of Peiris Singho then gave evidence that she had seen Yothan Singho running away from the scene of the assault.

40 6. After the evidence of the said Punchi Nona, Yothan Singho changed his plea to "guilty" and on the direction of the learned Commissioner the jury found him guilty of attempted murder and added a rider "In our view we think that the first witness Gunatilleke was deliberately lying".

7. During the course of the speech in mitigation by Defence Counsel the learned Commissioner said "It seems to me that this is one of those cases where he has taken cudgels on behalf of his master ("The Appellant") who has been acquitted in this case. The 2nd Accused (Appellant) had to be acquitted because the witness the Crown relied on went back on the statements he had made to the Magistrate. Anyhow, in imposing sentence in view

of the acquittal of the 2nd Accused I do not take the view that this accused had been set up by the 2nd Accused. It would be the unreal view for me to take in view of the acquittal of the 2nd accused, but .....

8. After sentencing Yothan Singho to eight years rigorous imprisonment the witness Gunatilleke was called up and the learned Commissioner said.

10 "You have gone back on the statement you made to the Magistrate. On your own admission you have come and stated something contrary to what you have stated in the Magistrate's Court and the Jury have brought in a rider that you were not speaking the truth. Therefore, I propose to deal with you under Section 439 of the Criminal Procedure Code and I direct the Clerk of Assize to prepare an indictment and to have you arraigned before me so that you may be tried here. Let the trial be fixed for the 10th June. In the meantime the witness will be remanded to the Fiscal's custody."

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9. At his trial on the 10th June 1957, the said Gunatilleke pleaded guilty to the indictment and the learned Commissioner said :-

30 "I like to hear some evidence with regard to the background. To have something on record the best thing would be to call the Clerk of Assize. I want some evidence to show that he was employed under this accused, the 2nd Accused, who is a rich man, and further I want evidence to show that he was sent away by this man."

40 Defence Counsel said on behalf of the said Gunatilleke that at the time of the offence he was employed by the Appellant; that the evidence he gave in the Assize Court was correct; that on the day following the assault when the police visited the Appellants' house the Appellant hid Gunatilleke to show that he was not employed there; that he had not taken part in the assault but he was hidden because Peiris Singho had made a statement that he (Gunatilleke) had witnessed the assault; that the statement he gave to the Police and the evidence

he gave in the Magistrates Court was written for him by Punchi Nona and was in the handwriting of Kusumawathie, and that he had been promised Kusumawathie in marriage.

10. At this stage the learned Commissioner said

"This is a case where he is trying to either falsely implicate or it is a case he was trying to screen somebody. In either case it is a very serious offence which this Court should take cognizance of."

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(At this stage Court orders that the witnesses Munasinghe Ralalage Punchi Nona and Kusumawathie wife of W.A.Peiris Singho be summoned)

"I am asking all these facts and I should like to hear the evidence of these witnesses before passing sentence in order to understand the background so that I may give an adequate sentence."

Peiris Singho was also summoned and the case continued as follows :-

20

Court: "Has the accused any previous convictions?"

Counsel for Defence: No, My Lord.

Court: I will make up my mind after I hear the other evidence. If I take the view that he was trying to screen this rich man apparently for some small consideration, then this man is coming out with an utterly false version in this court and the evidence he gave in the Magistrate's Court is true.

30

Crown Counsel: I was wondering whether Your Lordship would wish to summon Mr. Samaratunga.

Court: Yes, I wish to hear Mr. Samaratunga

also regarding the facts stated by Crown Counsel. Summon Mr. Samaratunga also. Perhaps the documents were given to impress on the jury that this man, an illiterate man had been given these documents by the injured man's wife and daughter to come out with this falsehood, not with the idea of confronting him but with the idea of making his version more probable. If the other position is found to be correct that the two women had these documents, then it is a case where he tried to implicate an innocent man falsely it is a very heinous offence and much more heinous than screening a man.

Summons the Police Officer who recorded the statement also.

Crown Counsel: The non-summary inquiry shows that the only evidence against the man was the evidence of this witness.

Court: It is a scandalous state of affairs that a rich man is able to buy up a witness and defeat the ends of justice."

11. At the adjourned hearing both Kusumawathie and Punchi Nona gave evidence that they had not given any statements to Gunatilleke; Kusumawathie denied that the handwriting was hers and Punchi Nona stated that she could not write; Kusumawathie identified Gunatilleke as the servant of the Appellant and both denied that there was any love between Gunatilleke and Kusumawathie or promise to give her in marriage to him.

12. The Appellant who was the next witness denied that Gunatilleke had ever been his servant and stated that he did not know him save for seeing him in the bazaar; that he

did not know his name until he gave evidence. He further stated that he was good friends with Peiris Singho and the following passage then occurred

"Q. Please remember, if I find that you are giving false evidence I am proposing to deal with you. Therefore you must speak the truth?"

A. Yes."

After the Appellant had denied hiding the accused when the Police arrived the following passage occurred :- 10

Court to witness: "In my view you are deliberately lying in this Court. You are contumaciously lying. You have no respect for this Court. You have come here to this box and come out with a string of falsehoods with a view to deceiving this Court. Unfortunately I have formed that view and I propose to deal with you for that. 20

Witness: I spoke the truth.

Court: Have you any cause to show why you should not be dealt with for contempt of Court of giving false evidence.

Witness: I spoke the truth.

Court: In my view you have given false evidence. The evidence given by Kusumawathie and her mother shows that you had employed this man. 30

Witness: Never.

Court: I sentence you to 3 months R. I. for contempt of Court by giving false evidence in this Court. In my view you have been lying contumaciously in this Court."

13. In his order dealing with the accused Gunatilleke the learned Commissioner said.

10 " Don Thomas Samaratunga, who was a witness in this case whom I noticed was also indicted with aiding and abetting Yothan Singho to commit the said attempted murder. Yothan Singho and this accused were employed by Mr. Samaratunga according to the statement made by this accused. Mr. Samaratunga was called by me in order to ascertain whether that was the fact. I am sorry to say that Samaratunga was contumaciously lying on this point.

20 Kusumawathie who has given evidence before me, whose evidence I accept, has stated that this accused was employed under Mr. Samaratunga at the time her father was assaulted. Kusumawathie stays about 200 yards from Samaratunga's house on the adjoining land. I accept her evidence with confidence. This accused himself through his Counsel admitted, whilst his Counsel was pleading in mitigation, that he was employed under Samaratunga at the point of time this assault took place. This accused even went to the extent of saying through his Counsel that Samaratunga was hiding him when the Police came to inquire into this offence. I have no hesitation in taking the view that Samaratunga has come here and contumaciously lied on this point."

30 " There are two possible views. It seems to me that the version given by this accused through his Counsel when he stated that Kusumawathie had induced him to give false evidence is utterly false. It is far too fantastic for any Court to accept that version. The only other possible view is that this witness had been bought over by Mr. Samaratunga. Anyhow Mr. Samaratunga is not on trial on that matter and I need not pursue that matter any further. It seems to me that there was no repentance by this accused."

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" It is with regret that I have to deal with Mr. Samaratunga under Section 440 (I) of the Criminal Procedure Code. The way and the manner in which he gave evidence was such

"that he gave me the impression that he was speaking absolute falsehoods when he said that he did not employ this accused at all and that he had only seen this accused in the bazaar on one occasion. As I have stated earlier, I accept Kusumawathie's evidence with confidence, and even this accused must have been taken by surprise when Samaratunga gave his evidence, because through his Counsel he has taken up the position that he was employed under Samaratunga, and even in the Assize Trial before me, which ended in the discharge of Samaratunga, he stated that he was employed under Samaratunga.

10

Although he had gone back on various other statements, on this particular point that he had been employed under Samaratunga he has always been consistent. I think people of Mr. Samaratunga's standing should know better than come to Court and lie. They must know to speak the truth. It seems to me that it was not only a case of lying but a case of contemptuous lying which calls for the censure of this Court. I regret I have to deal with him in this summary manner but I have no other alternative, but to adopt this course, both in the interests of justice and also in preserving the dignity of this Court. I sentenced Samaratunga to three (3) months' rigorous imprisonment."

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14. Special Leave to Appeal to Her Majesty in Council was granted by Order in Council dated the 29th October 1957.

15. The Respondent humbly submits that this Appeal should be dismissed for the following (amongst others)

REASONS :-

Because the learned Commissioner properly exercised his powers under Section 440 of the Criminal Procedure Code.

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THOMAS O. KELLOCK



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DON THOMAS SAMARATUNGA  
Appellant

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CASE for the RESPONDENT

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Solicitors for the Respondent.