

36/1962

ON APPEAL FROM  
THE SUPREME COURT OF CEYLON,  
KANDY ASSIZES, MIDLAND CIRCUIT  
(SUMMARY JURISDICTION)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

B E T W E E N :

GAMALATH RALAJAGE DANIEL APPUHAMY

Appellant

- and -

68284

THE QUEEN

Respondent

CASE FOR THE APPELLANT

Record

10 1. This is an Appeal by Special Leave granted on  
the 5th July 1960, from the Order dated the 5th  
April 1960 made by the Supreme Court in its original  
Assize jurisdiction whereby at the conclusion of a  
trial before a Commissioner of Assize and a jury at  
which the Appellant gave evidence as a prosecution  
witness, the learned Commissioner summarily senten-  
ced the Appellant to three months imprisonment  
under section 440(1) of the Criminal Procedure Code  
of Ceylon for giving false evidence within the  
20 meaning of section 188 of the Penal Code.

pp.98-99.

p. 97.

2. Section 440(1) of the Criminal Procedure Code  
reads as follows:-

30 "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 judi-  
cial 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 sen-  
tence 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

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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."

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The relevant part of section 188 of the Penal Code reads as follows:-

"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'."

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p.2, 1.1 to  
p.3, 1.30.

3. At the trial at which the Appellant gave evidence eight persons were tried on an indictment for certain offences committed by them, during the racial riots of May 1958, as members of an unlawful assembly the object of which was the looting of a small shop run by a Tamil trader named Mooka Pillai in the village of Thalliyadda.

p.6, 11.1-6.  
p.6, 11.11-20.

p.7, 11.8-33.

p.8, 11.14-21.

p.9, 11.28-33.  
p.9, 1.13.  
p.11, 11.15-20.

p.16, 11.6-18.

p.10, 1.6 to  
p.12, 1.2.

4. The evidence for the prosecution consisted firstly of the evidence of Mooka Pillai. He said that the Appellant who was a village headman came into his boutique on the 29th May 1958 warning him that people were planning to loot the boutique that night, and advising him to transfer his property by lorry to a safer place. While the lorry was being loaded two of the accused and others came into the boutique and assaulted Mooka Pillai and his wife whereupon he and his wife fled. The next morning when he saw the lorry again some of his property which had been on the lorry was missing. Other articles from the boutique were missing or damaged. The Appellant had been in the boutique throughout. One of those who broke in was a friend of the Appellant and this made him suspect that the Appellant was in the plot. He had later identified some of the stolen objects.

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The Appellant's evidence was that he had been village headman of Weragoda for 33 years. On the day in question he acted in the place of the headman having jurisdiction over the neighbouring village of Thalliyadda in connection with certain information which he had received concerning a possible attack that night on Mooka Pillai's boutique. The information was given to him in his house by another Tamil trader, a relation of Mooka Pillai, named Perumal Pillai. Having entered Perumal Pillai's complaint in his diary the Appellant went with Perumal Pillai to Mooka Pillai's boutique and made arrangements for the removal by lorry of Mooka Pillai's goods to a place of safety. Before the loading was completed a crowd of about 50 persons gathered in front of the boutique. Four of them entered the boutique, two of whom smashed some goods and one struck Mooka Pillai with his hand and pushed Mooka Pillai's wife on to a chair. Mooka Pillai and his wife ran away by the back door. The rest of the crowd remained outside, but removed some of Mooka Pillai's goods that had been loaded on to the lorry. He saw the eighth accused take a parcel that lay on the ground near the lorry. He identified the other seven accused as persons in the crowd, or as persons who had entered the boutique. After the crowd had left he sent for the lorry driver, who had run away, and on his return went in the lorry to the police station. He made a statement to the police and later, at an identification parade, identified the first seven accused as persons who had taken part in the robbery. He also gave information on which the eighth accused was arrested.

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p.21, 1.30 to  
p.23, 1.19.

p.22, 1.7.

p.22, 11.21-24.

p.23, 1.15.

p.22, 1.30-35.

p.24, 1.36 to  
p.28, 1.30.

p.33, 11.6-10.

p.31, 11.22-23.  
p.30, 1.5.

p.33, 11.15-20.  
p.33, 11.28-35.

Evidence was also given by the lorry driver and a boy called Somapala who had been at the scene that Perumal Pillai and Somapala were the two people who had fetched the lorry to the boutique.

pp.52-53.

p.59, 11.1-25.

Further evidence was given about various objects, later identified by Mooka Pillai as his property, having been found in the possession of the first seven accused.

p.62, 11.11-18.  
p.66, 11. 8-20.

5. In cross-examination the Appellant's evidence was attacked both generally and upon a large number of points. This cross-examination may be summarized as follows :-

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p.42, 11.22-38. (a) The suggestion was put to the Appellant that he had engineered the robbery and that his delay in going to the police was due to his taking time to decide falsely to implicate the accused.
- (b) Mooka Pillai's evidence was put to him as contradicting the Appellant's evidence on the following points:-
- p.39, 1.11. (i) that the Appellant came alone to Mooka Pillai's boutique and not accompanied by Perumal Pillai as stated by the Appellant; 10
- p.39, 1.28. (ii) that the boutique was not partly closed as stated by the Appellant, but that it was locked and that the Appellant had to knock at the doors to get it open;
- p.38, 1.35. (iii) that the Appellant arrived by car and not on foot as stated by the Appellant;
- p.39, 1.3. (iv) that he arrived at about 7 p.m. and not at about 5 p.m. or 5.30 p.m. as stated by the Appellant; 20
- p.44, 1.10. (v) that Mooka Pillai's wife was assaulted first. While according to the Appellant Mooka Pillai himself was assaulted first.
- p.42, 1.32. (c) It was also put to the Appellant that his record of the events of the 29th May 1960 made in his diary, which was marked by the learned Commissioner in his cross-examination of the Appellant, was a fabrication.
- p.50, 1.2. (d) It was pointed out that there was no reference in his diary record to the eighth accused. 30
- p.34, 1.10. (e) It was pointed out that the Appellant's statement recorded in the police information book did not contain any reference to Perumal Pillai, but to certain persons unknown.
- p.79, 1.22. 6. In his charge to the jury the learned Commissioner commended to them the submissions made both by the defence and by the prosecution that the Appellant's evidence had been unsatisfactory. He said:- 40

"The Crown has candidly told you that the Crown would not expect you to hang a cat on the evidence of Daniel Appuhamy for he himself may be regarded as a participant in the Crime. It is very necessary that I should warn you that it is dangerous to act on his evidence unless his evidence is corroborated on very material particulars and cogently corroborated by independent evidence. It is only then that you should consider the evidence of Daniel Appuhamy against any of these accused. Even if you view the evidence of Daniel Appuhamy as against these accused from that angle I would ask you to consider whether the finding of these articles as a result of these statements in these places is or is not material and cogent corroboration of his evidence. But these are questions of fact of which you are the sole judges."

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p.82, 11.27-43.

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20 In view of the absence of corroboration of the evidence against the eighth accused he invited the jury to acquit the eighth accused.

p.83, 1.2.

Towards the end of his summing up he drew attention to the Appellant's evidence and the answers he had given in reply to his own cross-examination. He went on:-

p.90 to  
p.92, 1.20.

"Taking all those matters into account, I would ask you to consider whether or not you consider it your duty to return a rider indicating what you feel about the evidence of this headman. A headman is a person appointed to protect the public, to serve the public, especially at a time of stress like the emergency; and if a headman conducts himself in a way that jeopardizes the safety of the public, surely, you, gentlemen, who sit in judgment in the highest tribunal of the land, will consider whether it is not your duty to indicate what you think about his conduct, whatever your decision with regard to the accused may be.

p.92, 1.24 to  
p.93, 1.15.

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Gentlemen, you may ask yourselves, why is it that if the headman was an accomplice, if he collaborated with the accused and others who are not here before you, when he went to the police he should have given the name of

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the accused Seda. In considering that, gentlemen, you will remember the evidence of Mooka Pillai. He says, "I began to suspect the headman when I saw Seda coming into the boutique, because he was a particular friend of the headman." The headman would have known that Mooka Pillai saw Seda, that Mooka Pillai's wife saw Seda; the headman knew that Mooka Pillai and his wife had run out of the boutique and that they were still alive to give evidence against Seda. The headman would also have known that Mooka Pillai would have known that Seda and he were friends. So, is it too much to think that the headman would have said to himself, Mooka Pillai saw Seda, Mooka Pillai knows that I saw Seda, and if I try to conceal his name in my complaint to the police, will it not bring suspicion on me? You will remember that Seda's name was the only name mentioned to the police. It is only in the realm of speculation, I admit, but I mention these matters for your consideration."

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p.96,11.13-18. 7. The jury found the first seven accused guilty and acquitted the eighth accused. They added a rider:-

p.96, 1.24. "The headman may be dealt with for giving false evidence."

p.96, 1.30. The learned Commissioner said he agreed with the verdict of the jury and thereupon called on the Appellant to show cause in the following terms:-

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p.97, 1.3. "The jury have brought a rider against you that you should be dealt with for giving false evidence. Have you any cause to show why you should not be dealt with?"

p.97,11.9-32. 8. Having refused a request for time made on behalf of the Appellant, and after hearing the Appellant's proctor in mitigation, the learned Commissioner asked the Appellant:

"Have you any cause to show?"

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Whereupon the Appellant replied:

"I beg Your Lordship's pardon."

The Commissioner then sentenced the Appellant to three months rigorous imprisonment.

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9. The Appellant respectfully submits that the sentence is bad in law because it is based upon a finding by the jury and not upon an independent finding by the learned Commissioner. In the light of sections 244, 245, 247 and 248 of the Criminal Procedure Code the powers of the jury to decide questions of fact are confined to matters that are relevant to the charges against the accused who are tried before them and the term "court" in section 440(1) refers only to the presiding judge and not to the jury. There should have been a specific finding by the judge that a particular statement or particular statements in the Appellant's evidence were false. The learned Commissioner while expressing his agreement with the verdict of the jury did not express agreement in regard to the rider brought against the Appellant and did not ask the jury on which points they considered the Appellant to have given false evidence.

10. The Appellant further submits that the sentence should be set aside on the grounds that he was not given a fair opportunity to defend himself and was not told on which points his evidence was disbelieved and what the facts were which constituted the offence (see Chang Hang Kiu v. Sir Francis Piggott (1909) A.C. 312). The Appellant's evidence was taken on two different dates and his cross-examination by three defending counsel and the learned Commissioner was long and protracted.

11. The Appellant further submits that the power given to a court under section 440(1) should be exercised only in cases where the judge is clear beyond doubt that the evidence is false and that the present case is not one that falls within the scope of the section.

12. The Appellant submits that the Order and sentence of the Supreme Court were wrong and should be set aside and that his conviction should be quashed for the following amongst other

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R E A S O N S

1. BECAUSE there was no finding by the Commissioner of facts constituting the offence.
2. BECAUSE the Appellant was not told which parts of his evidence were alleged to be false evidence and was not given a fair opportunity to defend himself.
3. BECAUSE this was not a case where the Judge could be clear beyond doubt that the Appellant had given false evidence.

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DICK TAVERNE



IN THE PRIVY COUNCIL

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GAMALATH RALALAGE DANIEL  
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