

36/1962

IN THE PRIVY COUNCIL

No. 12 of 1961

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 RALALAGE DANIEL APPUHAMY

Appellant

- 68283

- and -

THE QUEEN

Respondent

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CASE FOR THE RESPONDENT

Record

1. This is an Appeal by Special Leave from an Order, dated the 4th day of April 1960, made by Mr. D.E. Wijewardena, a Commissioner of Assize, in the Supreme Court of Ceylon, Kandy Assizes, whereby the Appellant was summarily sentenced to three months imprisonment under section 440(1) of the Criminal Procedure Code for giving false evidence within the meaning of section 188 of the Penal Code, in a trial just concluded before the Commissioner and a jury.

p.47, 11.51-52.

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

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"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

Record

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."

(b) Section 188 of the Penal Code reads as follows:- 10

"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". 20

pp. 2-3. 3. In the trial at which the Appellant gave evidence, eight persons were charged with various offences arising out of an incident in the communal disturbances of May 1958 in which they, being members of an unlawful assembly, had looted a boutique run by a Tamil trader named Mooka Pillai in the village of Thalliyadda. 30

pp. 4-21. 4. According to Mooka Pillai, the Appellant came to his boutique in a car at about 7 p.m. on the 29th day of May 1958 and informed Mooka Pillai that the boutique would be attacked that night. The Appellant offered to guard the boutique, and then suggested that the goods should be removed. A lorry was sent for and arrived about 8 p.m. Some of the goods had been loaded into the lorry when a crowd of people arrived on the scene. The accused, led by one Seda, the 6th accused, came in to the boutique and Seda said, "I have brought 200 people to loot this shop." The Appellant replied, "You better kill me and then take away the goods." Seda then assaulted Mooka Pillai's wife, Poopachy, and 40

then Mooka Pillai himself and they fled. When they returned the next day the shop had been looted.

Record

5. The Appellant gave evidence to the following effect:-

pp. 21-51.

10 That at about 4 p.m. on the 29th a man called Perumal Pillai came to his (the Headman's) office and made a complaint which was recorded; that immediately thereafter the two of them went walk-
 20 ing to Mooka Pillai's boutique which was in the adjoining Wasama; that on the way they were joined by a boy named Somapala; that they reached Mooka Pillai's boutique at about 5.30 or 6 p.m. that he (the Headman) told Mooka Pillai that the boutique would be looted that night and suggested that the articles in the boutique should be taken away; that 'at that stage Perumal Pillai asked Mooka Pillai to remove the goods in a lorry', that Perumal Pillai went and sent a lorry which came at about 7 p.m.; that Perumal Pillai did not come back
 20 with the lorry; that the goods were then loaded into the lorry; that sometime later a crowd arrived on the scene; and that three persons led by Seda entered the boutique.

He then described the subsequent events that occurred that night.

30 6. It was suggested by the Defence in cross-examination that the entire incident had been instigated by the Appellant; that Seda was a personal friend of the Appellant; that the Appellant realised at some time during the incident that Mooka Pillai had begun to suspect his (the Appellant's) part in the transaction and that in order to forestall Mooka Pillai, he went to the Police Station and made a complaint in which he implicated Seda and no one else; and that later he falsely implicated the other accused.

pp. 34-50.

40 7. The contradictions between the Appellant's evidence and that of Mooka Pillai were put to him in cross-examination and in particular that he arrived on foot and not in a car; at 5.30 p.m. and not at 7 p.m.; with Perumal Pillai and not without him; that the door of the boutique was open and not closed.

8. The Appellant produced his diary in which was

Record
p. 101.
p. 100.

a complaint (X1) alleged to have been made by Perumal Pillai, but unsigned by him which contradicted the Appellant's own evidence; and the Police Information Book was produced in which was recorded the Appellant's statement which contradicted both his evidence and exhibit X1.

9. The learned Commissioner asked the Appellant many questions on these contradictions and on occasions warned him of the danger of giving false evidence.

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10. In his summing up to the Jury the learned Commissioner said:-

p.90, l.1 to
p.92, l.37.

"Gentlemen, much has been said about this witness Daniel Appuhamy, I shall refer to a portion of his evidence relating to the recording of Perumal Pillai's complaint. It is true that he was a witness called by the Crown; he was a witness for the prosecution. The Crown has to present its case on the brief. When facts were elicited in cross-examination and in answer to questions put by me which revealed that the witness's conduct required further examination, I considered it my duty to put these questions and get out the first complaint of Perumal Pillai which he recorded. It was in answer to my questions that the following evidence was elicited.

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"Q. (Shown diary) You said this is the complaint of Perumal Pillai which you recorded?
A. Yes.

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Q. I will mark that X1. Will you read that out? (It was read in Sinhalese)."

I shall read out to you the translation.

"Today at about 4 p.m. Perumal Pillai of Kongoda boutique informed me as follows at the boutique. I have received information to the effect that people of Dorawaka would come and break my boutique and the boutique at Thalliade tonight. What shall be done about it? Thereafter at about 5.30 p.m. Perumal Pillai and I having gone there spoke to Mookapillai and told him: People of Dorawaka would be breaking your boutique tonight. Therefore remove

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the goods to Karunasekera's boutique at Kongoda. Said Perumal Pillai thereafter. Perumal Pillai having gone and fetched the lorry of Suwaris of Niyadadupola, the goods were loaded into the lorry. Then at about 7 p.m. about fifty people from Dorawaka rushed into the boutique. Seda and three others. Other people took the goods into the lorry. Know the people. Do not know their names."

10 He went on -

"Q. After the word 'keewa' there is no full stop to show that the sentence ended? A. No.

Q. And the statement is continued with the word 'eetapassu'? A. Yes.

Q. You have mentioned in that statement that Perumal Pillai mentioned this to you at his boutique? A. Yes.

20 Q. So your evidence in this court that he came to your office and made this complaint is not correct? A. I recorded that statement at my desk in the house.

Q. How did you happen, while seated at your table in your house, to write down those words, that Perumal Pillai mentioned this to you at his boutique when in fact he came to your house and gave you this information? A. I have written that wrongly.

30 Q. When you went to the police station on the night of the 29th you did not mention anything about Perumal Pillai having made this statement? A. No.

Q. On the other hand, you told the police that some unknown persons gave you this information? A. Yes.

Q. And that you got this information at Thalaliyadde? A. Yes.

40 Q. You made no reference to this statement which was in your diary which was in your pocket at the time you made your statement to the police? A. No.

Record

Q. You did not mention anything about Perumal Pillai's statement? A. No.

Q. Whose initials are those at the top of the page? A. The D.R.O's.

Q. You took the diary to the D.R.O. at 11.15 a.m. and got him to initial it? A. At 6 a.m. on the 29th I appeared before the D.R.O.

Q. And that is the time at which he initialled the diary? A. Yes. 10

Q. But he has written 11.15? A. I remained at the D.R.O's office till 11 a.m.

Q. And he initialled the diary at 11.15?
A. Yes.

Q. That is the first sentence? A. Yes.

Q. That has nothing to do with Perumal Pillai's statement? A. No."

That would be, gentlemen, on the 29th morning, because the statement, "Today at 6 a.m. having left home, went to Warakapola, appeared before the D.R.O. and returned home at about 3 p.m." - that sentence is here before the record of Perumal Pillai's complaint. 20

There is no evidence that this complaint was produced before the police or in the lower court. Gentlemen, you will take into account the conduct of the headman in not making the slightest effort to inform the police. You will remember Mookapillai's evidence that he came by car. He denied that he came by car. Then you will also remember Somapala's evidence. He too says they went walking, but Somapala when he was asked, "How did you go in search of the lorry?" he said, "I went by car". You will ask yourselves, from where did he get that car. 30

"Q. Where did you find the car? A. At Kongola.

Q. How did you come to Mookapillai's boutique?
A. On foot."

But you will remember Mookapillai's evidence that the headman came to his boutique by car and he sent the car back to fetch the lorry, and as it was pointed out by the defence, the lorry and the lorry driver were from his village.

10 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, 20 whatever your decision with regard to the accused may be."

11. The first seven accused were found guilty of six out of seven counts and were sentenced to five years rigorous imprisonment; the eighth accused was acquitted and the Jury added a rider that the Appellant "may be dealt with for giving false evidence". p.96.

12. The following passage occurs immediately after the sentencing of the accused:-

30 "COURT: p.97.

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?

PROCTOR WIJESINGHE

I appear for the witness my Lord. I beg that your Lordship will be pleased to give me time till tomorrow.

COURT:

40 I am dealing with him summarily.

RecordPROCTOR WIJESINGHE:

The witness is about 55 years of age and he is in fact on the verge of retirement. He should have retired about February last year and on account of this case probably, he has been kept on. He has 4 children, the youngest of whom is 8 years old and any period of incarceration might not be in the interests of the children. He has been a loyal servant of the government for about 31 years and this appears to be the only instance where he has deviated from the path of virtue. In these circumstances I beg of Your Lordship to treat him with mercy.

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COURT to witness:

Have you any cause to show?

Witness Gamalath Ralalage Daniel Appuhamy:

I beg your Lordship's pardon.

COURT: Your offence is a very serious one. I sentence you to three months' rigorous imprisonment."

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p. 98-99.

13. Special Leave to Appeal to Her Majesty in Council was granted by Order in Council dated the 3rd day of August 1960.

14. The Respondent humbly submits that this Appeal should be dismissed for the following among other

R E A S O N S

- (1) BECAUSE the Appellant did not deny the offence.
- (2) BECAUSE the Appellant well knew the points on which he was being disbelieved.
- (3) BECAUSE the Appellant had ample opportunity to defend himself.
- (4) BECAUSE the learned Commissioner correctly applied section 188 of the Penal Code.

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THOMAS O. KELLOCK.

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