

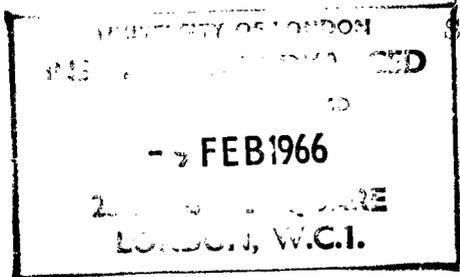
ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

SUNGARAPULLE THAMBIAH Appellant

- and -

THE QUEEN Respondent



CASE FOR THE RESPONDENT

Record

10 1. This is an appeal by Special Leave from a Judgment, dated the 29th May 1961, and Order of the Supreme Court of Ceylon, dated the 1st June 1961, upholding as to one count of the indictment, the Appellant's conviction and sentence by the District Judge, Colombo on the 30th day of June 1960. p.125 p.126

20 2. The Appellant, who was the 2nd accused, was tried with four others on an indictment containing ten counts concerning two stolen and forged cheques. All accused were charged in Count 1 with a conspiracy to use as genuine the forged cheques and the Appellant was in particular charged:- p. 1

In Count 4 with abetting the 1st accused (Appuhamy) in fraudulently or dishonestly using as genuine a forged document, to wit a cheque No. B.A. 3 - 087878 (Exhibit P1) knowing or having reason to believe that it was a forged document, thereby committing an offence punishable under Section 459 read with Section 102 of the Penal Code. p.2, 1.31.

30 In Count 6 with the 1st and 3rd accused with voluntarily assisting in disposing of the said cheque knowing or having reason to believe it to be stolen property, thereby committing an offence punishable under Section 396 of the Penal Code. p.3, 1.5.

In Count 8 with abetting the 1st accused (Appuhamy) in fraudulently or dishonestly using as

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genuine a forged document to wit a cheque No. 651966/9081 (Exhibit P2) knowing or having reason to believe the same to be a forged document, thereby committing an offence punishable under Section 459 read with Section 102 of the Penal Code.

p.4, 1.1.

In Count 10 with the 1st, 3rd and 4th accused with voluntarily assisting in disposing of the said cheque thereby committing an offence punishable under Section 396 of the Penal Code.

3. The Appellant was acquitted on Counts 1, 6 and 10 and convicted on Counts 4 and 8 and sentenced to two years rigorous imprisonment on each Count, the sentences to run concurrently. 10

4. On appeal to the Supreme Court the conviction and sentence on Count 4 were quashed.

5. The case against the Appellant on Count 8 was as follows:-

p.16.

In or about August or September 1958 he approached one Nathanielz, a clerk in National and Grindlays Bank, Colombo who had known him since boyhood and asked whether he could open an account. He was told that it was possible if he got a letter of recommendation from an account holder. As he left the bank he appeared to be in the company of an unidentified man. 20

p.20.

Sometime before August the Appellant asked his brother-in-law, Nagendran, to recommend a man to open a current account in the Old Town Hall branch of the Bank of Ceylon. Nagendran met him and another man, subsequently identified by the bank clerk as the 1st accused, Appuhamy, at the Bank. The forms were completed by the Appellant and signed by the witness. They gave the name of prospective account holder as Malukomburege Gunadasa, a building material supplier, of 230 Kandy Road, Peliyagoda. The witness untruthfully certified that he had known this man for two years on the strength of the Appellant's word. The forms were taken by all three to the Main Street branch of the Bank where owing to an erasure in the signature fresh forms had to be completed and they were told that the prospective constituent would be informed subsequently when the witness' signature had been verified. 30 40

The name and address given by the 1st accused were shown to be false.

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10 The Appellant on the 23rd day of September 1958 similarly arranged for one Weerasingham to vouch for the 1st accused, whom he did not know, in opening a bank account in the name of P.V. Piyadasa, a contractor supplying building materials, of 477 Havelock Road, Pamankade, Colombo 6, at the Bank of Ceylon, Wellawatte. The account was opened with Rs.1,000 supplied by the Appellant and a cheque book obtained. The 1st accused signed five blank cheques and his signature was authenticated by the Manager.

p.25.

The Appellant used the blank cheques for his own purposes and also paid money into the account.

On the 14th day of October an attempt was made by the 1st accused to pay the cheque P2 into this bank account. The forgery was detected but the 1st accused had left the premises.

20 One, Perera, gave evidence that some time in August or September 1958 he had introduced the 1st accused, under the name of Arnolis Appuhamy, to the Appellant as a baker whom the Appellant might employ.

p.39, 1.3.

A witness, Andreas, identified the Appellant as a man who had come to his hotel enquiring for the first accused sometime in October 1958.

p.52, 1.22.

30 6. In addition T.E.N. Goonetilleke, Inspector of Police, gave evidence; the relevant portions are as follows:-

40 "On 16.10.58 at about 7.20 a.m. I met the witness Weerasingham at his residence at Duplication Road, Colpetty. I recorded his statement, after which he took me to the house of S. Thambiah the 2nd accused at No. 29/1A, Clifford Road, Colpetty. That was at about 7.55 a.m. I recorded the statement of the 2nd accused on 16.10.58. The 2nd accused told me that he knew Mr. Weerasingham since his school days. About P.V. Piyadasa he said that he knew him for about 3½ years. He said that he came to know him when he offered to supply him rubble and sand and that he had, in fact,

p.65, 1.25.

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supplied him with this for about 3 months at the beginning and that there was a break and that he had then made his presence felt 3 or 4 months before the day I interrogated him and again offered to supply the same materials. The second accused told me that P.V. Piyadasa opened a bank account at the Bank of Ceylon, Wellawatta. The 2nd accused told me that he (2nd accused) provided Rs.1000/- to open that account. Regarding the cheque book he said that the 2nd accused took charge of the cheque book from P.V. Piyadasa and that he had it with him up to about 10 days before I recorded his statement. He said all along he was known to him as P.V. Piyadasa. 2nd accused told me that on two occasions he deposited money into this account. 2nd accused also told me that about 1½ - 2 years before that he had seen him somewhere at High Street, Pamankada Junction."

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After giving evidence of finding in the possession of the first accused a letter purporting to be signed by one H.B. Mendis addressed to the Manager, National and Overseas and Grindlays Bank Ltd., Colombo, introducing one P.V. Piyadasa for the purpose of opening up a bank account (P14), he continued:-

p.66, 1.49.

"That same night at about 11.45 p.m. I went with the 2nd accused and police party to the 2nd accused's house at Clifford Road, Colpetty. I searched the house of the 2nd accused No. 29/1A, Clifford Road, Colpetty. The 2nd accused was present. I found in his pocket of a bushcoat hanging in his bedroom two credit slips P11 and P12. P11 is dated 30.9.58 and it states: pay to the credit of P.V. Piyadasa of Pamankada a sum of Rs.500/-. P12 is a paying-in slip dated 6.10.58 to the credit of P.V. Piyadasa, Pamankada, a sum of Rs.150/-. I also found two sheets of letter head paper which I produce marked P15 and P16. I found them in the bottom drawer of a chest of drawers in the children's room.

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I produce P15 and P16. Both P15 and P16 are letter heads bearing the name S. Thambiah. On P15 I found the signature H.B.Mendis written in a number of places. In some

places it had been partially written. P16 is a letter and on the reverse of that letter the signature H.B. Mendis and also parts of it have been written in a number of places.

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Q. Did the 2nd accused tell you as to who wrote the words H.B. Mendis on P14, P15 and P16?"

10 Counsel for the Appellant objected to this question as liable to produce an answer which was a confession made to a police officer contrary to Section 25(1) of the Evidence Act. The Court over-ruled the objection ordering as follows:-

p.67, 1.25.

20 "Even if the answer by this witness is to the effect that the 2nd accused admitted that he wrote the signature H.B. Mendis on P14 having practised the same on the documents P15 and P16 as he has stated in the lower court, this evidence would not be a confession by the 2nd accused of having committed any of the offences with which he is being charged in the present case. Nor would it be an admission suggesting an inference of guilt to any of the charges with which he is charged in the present case. Therefore I allow the witness to answer the question put to him."

p.68, 1.28.

The witness continued:-

30 "I referred to the documents P14, P15 and P16. P14 bears the words H.B. Mendis in one place. P15 and P16 has the name H.B. Mendis written in several places.

p.68, 1.40.

Q. Did the 2nd accused tell you about the writing H.B. Mendis on P14? A. He said he signed the name H.B. Mendis on P14.

Q. What did the 2nd accused tell you about the writing H.B. Mendis on P15 and P16? A. He said that he wrote H.B. Mendis on these documents.

40 Q. For what purpose? A. He said he practised this signature on P15 and P16 and thereafter signed it on P14."

"The 2nd accused told me about P.V.

p.70, 1.28.

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Piyadasa and his bank account at Wellawatte. I showed the 1st accused Arnolis to the 2nd accused. He said that was the P.V. Piyadasa whom he referred to. The 2nd accused told me that he did not know where P.V. Piyadasa lived."

In Cross-examination.

p.71, 1.14.

"I asked the 2nd accused to come to the office on 22.10 at 1.45 p.m. He came on a telephone message from me. I telephoned to him and asked him to come to the office. I did not ask him to come and see the photograph of the 1st accused and say whether he could identify him. I telephoned to him to come to office in connection with the cheque case, and he came at 1.45 p.m. I produced him at the Magistrate's bungalow the next day at 4.20. I left office to produce the 1st accused and 2nd accused before the Magistrate Colombo at 4.20. From 1.45 p.m. till that time he was not in the C.I.D. office, he was outside, in the office, and he came back for inquiry. He was in the office or outside in the company of some officer. During that time he was treated as a suspect. He was informed of it by Mr. Kitto and myself of it. I was acting in terms of section 129(1) of the Criminal Procedure Code having obtained the permission of the Magistrate. I had the power to exercise all powers in regard to cognisable offences. I did not formally arrest the 2nd accused. I told him that he was suspected in the case. He was informed of the position that he was brought up for questioning in regard to two cheques. I told him that he was concerned in two forged cheques that had been presented. It is in the interrogations when he was informed by S.P. Mr. Kitto. That was at 3.55 p.m. He was interrogated by Mr. Kitto in my presence. At that time he was made aware of the offences of which he was suspected of. On 16.10 I had earlier questioned the 2nd accused in the morning and again in the evening when I showed him a certain suspect. I have recorded his statement on the 16th morning in his house and again in the afternoon at his office, I showed him another Piyadasa. On 22.10 the

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interrogations only started at 3.05 p.m. by Mr. Kitto and myself. 3.55 was the time he was made aware of the offences he was suspected of. He was aware that he was suspected of a very grave offence and that was why he was taken into our custody. At 3.05 p.m. a 3rd statement was recorded from the 2nd accused. I recorded it. Mr. Kitto and I questioned him and it was I who recorded it. 10 The questioning continued till about 4.30 p.m. The next statement from him was recorded at 9.30 p.m. on 22.10 at the C.I.D. Office. That was the 4th statement recorded from the 2nd accused. There was another statement recorded from the 2nd accused that was at 12.45 a.m. on the morning of 23.10 again at the C.I.D. office, that is the 5th statement. There was another statement recorded from him at 9.10 a.m. again at the C.I.D. office, that is the 6th state- 20 ment. That was also recorded by me. Another short statement was recorded at 9.45, when he was interrogated by Mr. Kitto and I recorded the answers. That was on 23.10. That is the 7th statement. That was not the last. Again at 2.35 p.m. of the same day I recorded another statement. Again it was at the C.I.D. Office.

P14 was discovered at about 7.30 p.m. on the evening of 22.10. P.15 and P16 were dis- 30 covered when I searched the house of the 2nd accused at about 11 p.m. of the same night, that is 22.10 night. By that time he had been made aware that he had been suspected of a very grave charge. (Shown P14). There is an endorsement on it, by me and the 1st accused signed by the 1st accused and dated 22.10.58. That is all. Just the signature and date. The accused put the date. It is not stated where it was found. (Shown P15). That has 40 the date on which it was found. It was signed by me and the 2nd accused. 2nd accused has stated where it was found and then signed. There is a similar endorsement on P16. The 1st accused was unable to make that endorsement in English. It is my practice to always get a document endorsed by the person from whom I took charge of it. Different documents were found in different places. 2nd accused made the endorsement there where it was found

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he did so at my request. P14 was also found in a particular place, when it was found I did not think it was necessary to say where it was found. When I removed P15 and P16 I also removed two note heads and a 1958 desk diary. The two note heads were two letters.

My position is that the 2nd accused admitted that he wrote H.P. Mendis on all three documents P14, P15 and P16. He did so after he had become aware of why he was in our custody, he knew he was in custody for a serious charge, a charge of forgery. After that he confessed to me to have written P14, P15 and P16. He volunteered his confession. I offered no inducement, none whatsoever. I do not know whether I should use the word confessed. Immediately after my return to the office I put it on record. What he stated to me I recorded. When we were climbing the stairs he said so. He offered me the explanation on the way upstairs. He offered me the explanation for the two note heads. The forgery part of it came later. The documents were shown to him later. Even before P14 was shown to him he gave an explanation regarding P15 and P16. After that I recorded his statement incorporating that.

(To Court: What he told me was that he wrote H.P. Mendis on P14 after having practised on P15 and P16.)

He did not say he had P14. He told me of a certain incident connecting these two documents.

(To Court: There was no complaint or charge in respect of P14.)

A charge of forging certain cheques had been made to the 2nd accused earlier that day. Mr. Kitto questioned him on 22.10. This statement was after that. I had the information of the opening of the Pettah Bank account at the time the statement was made by the 2nd accused. The attempt had been made to open an account by the 1st accused with the 2nd accused with a gentleman working at Torrington Square. That fact was mentioned when the 2nd accused was

10 making the statement. It is at the stage of 3.55 p.m. that he was told of that fact. The explanation was given by the 2nd accused in the early hours of 23.10. The admission in regard to P15 and P16 he made after he was made aware that I knew he was concerned in the opening of a Bank of Ceylon account and also after I took charge of the 2 documents from him. It was after I found the two documents in his possession. By that time he had been made aware that I knew that an attempt was made to open a bank account at the Pettah Branch. It is from that time that inquiries started. From the time the 2nd accused came on 22.10 till the following morning the very first thing was he had lunch with us seated at my table after 1.45. There is a note of it that he had his meals and everything was supplied to him. He had the same rest that we had. It is not correct to say that I made an observation that this is the brain behind the whole affair when Mr. Kitto was questioning the 2nd accused. I deny that he did not make a statement to me about P15 and P16. He definitely said what I have recorded."

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In Re-examination:-

30 "The statement of the 2nd accused made on 16.10 was the first statement, it was a detailed statement. The last was on 23.10. The statements made in between were very short statements. Those statements were necessary to show certain documents to the 2nd accused and clear up other points in the course of the investigation of mine. P14 signed by H.P. Mendis was found in the suit case of 2nd accused and I took it into my custody. Then I discovered P15 and P16.

p.75, 1.20.

40 (To Court: No copy of P14 had been sent to Grindlay's Bank nothing had happened on it.)

When I discovered P15 and P16 I had not informed the 2nd accused of the discovery of P14. P15 and P16 were discovered at 11 o'clock in the night, the same night. The reason why I took them was because they had the signature of H.P. Mendis which I had seen earlier on P14.

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I did not discuss it with the 2nd accused. I took those documents and went with the 2nd accused to the C.I.D. office. When we were going upstairs he offered an explanation in regard to P15 and P16. He was puzzled as to why I took P15 and P16. He was wondering why I had taken them and he was offering an explanation about them. Then I went up and recorded his statement about them. After that I showed him P14 then I have recorded what he told me about P14." 10

p.76.

7. The Appellant gave evidence that he had been introduced to the 1st accused by Albert Perera the prosecution witness, as Piyadasa on 22nd September 1958 and had helped him over opening his Bank Account at Albert Perera's request. He denied writing P14, P15, or P16 although admitted P15 and P16 were found in his drawer. He denied telling Inspector Goonetilleke that he had written them.

8. Under cross-examination the Appellant said:- 20

p.84, 1.12.

"I was shown P14, on the 22nd night. I did not offer to give an explanation to Mr. Gunatilleke. Not even after it was shown to me. He asked me for an explanation, I said I do not know. I deny that I stated that "one evening one Albert brought back a letter typed, I signed this letter as such having first practised the signature on 2 letter head papers found in my chest of drawers today." I never said so. That is an invention by Mr. Gunatilleke." 30

9. Inspector Goonetilleke was called in rebuttal and said:-

p.91, 1.28.

"On 23.10.58 I recorded the statement of the 2nd accused S. Thambiah. At the time I recorded the statement I showed him P15 and P16 and subsequently P14. I produce the copy of his statement marked C. P14 is a typed letter." 40

p.124, 1.1.

10. The Appellant appealed to the Supreme Court on the ground, inter alia, that "the learned Trial Judge erred in law in admitting in evidence a statement alleged to have been made by the Appellant to Inspector Tyrell Goonetilleke which statement it is

respectfully submitted amounts to confession and is inadmissible".

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11. The Supreme Court set aside the conviction and sentence of the Appellant on Count 4 but upheld those on Count 8. No reasoned judgment was given.

p.125.

12. Special Leave to Appeal to Her Majesty in Council was granted by Order-in-Council, dated the 24th day of October 1961.

p.128.

10 13. The Respondent respectfully submits that this Appeal should be dismissed for the following, among other

R E A S O N S

(1) BECAUSE the statement made by the Appellant to Inspector Goonetilleke was not a confession and so not excluded by Section 25(1) of the Evidence Ordinance.

(2) BECAUSE Section 122 of the Criminal Procedure Code does not exclude oral testimony of answers given by persons during an enquiry.

20 (3) BECAUSE there has been no miscarriage of justice.

MARK LITTMAN.

THOMAS O. KELLOCK.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME
COURT OF CEYLON

B E T W E E N :

SUNGARAPILLAI THAMBIAH
Appellant

-- and --

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Respondent

CASE FOR THE RESPONDENT

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