

25, 1969

IN THE PRIVY COUNCIL

No. 11 of 1968

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N:

THIRUMAN PALANIMALAY VEERAPPEN

Appellant

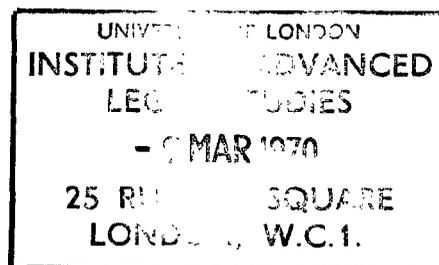
- and -

THE ATTORNEY-GENERAL

Respondent

C A S E F O R T H E A P P E L L A N T

LODGED the 16th May 1969



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Solicitors and Agents for the Appellant

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :-

THIRUMAN PALANIMALAY VEERAPPEN

Petitioner

- and -

THE ATTORNEY-GENERAL

Respondent

C A S E FOR THE APPELLANT

Record

- 10 1. This is an Appeal by Special Leave by Order of Her Majesty in Council dated the 13th day of November 1967 from the judgment and Order of the Supreme Court of the Island of Ceylon (Manicavasagar J.) dated 27th of February 1967 whereby the said Court upheld the appeal of the Respondent from a verdict of acquittal of Your Petitioner recorded by the Magistrate of Badulla upon the 7th of August 1966 on a charge of forgery punishable under Section 454 of the Penal Code. pp. 40-1
pp. 35-9
pp. 29-31
- 20 2. The principal questions raised in this Appeal are whether:
- (1) the Appellant was in law guilty of the offence charged upon the evidence of the prosecution
- (2) if there was a prime facie case against the Appellant, as was held by the Supreme Court, whether that Court was thereupon entitled to convict the Appellant and sentence him.
- 30 3. That on the 10th of March 1966 the Appellant was charged by the Magistrate (following report by the Police to that court on the 26th of August 1965 in which the Appellant was described. pp. 8-9

Record

as "Palanimalay Veerappen, Line No. 9 Lower Division, Haputale Estate, Haputale") as follows:

"That you did, within the jurisdiction of this Court at Bandarawela on the 26th August 1958, Did sign a document to wit: Application for a Certificate of Citizenship by descent, to be issued by the Minister of Defence and external Affairs in terms of Section 6 of the Citizenship Act (Chapter 349) with the intention of causing it to be believed that the said document was signed by Veerappan son of Thiruman, (who was born to Thiruman and Lechemey on Sherwood Estate on 1st May 1918, and in respect of whose birth the Birth Certificate No. 41904 had been issued by the District Registrar of Badulla on 12.6.58) by whom or by whose authority you knew that the said document was not signed, and you have thereby committed an offence punishable under section 454 of the Penal Code." 10 20

Sherwood Estate is part of Huputale Estate.

4. Sections 21, 22, 23, 27, 452, 453, 454, 457, 458 and 459 of the Penal Code are set out in Appendix "A" lodged with this Case. The wording of the above charge appears intended to be based on section 453 "Firstly" but omits to allege that the signature was done either dishonestly or fraudulently.

5. Relevant sections of the Citizenship Act, including Section 6, are set out in Appendix "B" lodged with this Case. 30

6. The principal events antecedent to the charge were as follows:-

That in July 1958, the accused who had been a watcher on an Estate in Haputale wrote (Pl in record) to the Permanent Secretary, Ministry of Defence and External Affairs at Colombo, saying "I require to clarify my position as a citizen of Ceylon by birth under Section 6"..... and asked to be sent an application form. He signed in Tamil "T.P. Veerappen" over his name Thiruman Alias Palanimalai Veerappen. 40

That a questionnaire Form (P2 in record) pp. 57-9
(not the application form) was sent by the
Ministry and filled up and returned by the
Appellant.

That in filling up the Form the space asking
for his name was filled in, - "Thirumalai
alias Palanimalai Veerappen" (not Thiruman).

10 That this difference between Thiruman and
Thirumalai was observed but little point was
made of it at the trial, either for or against
the accused.

That on the particulars supplied by him,
the Ministry sent him a letter (P.13) suggesting p. 60
that he worry about clarification when the
occasion actually arose.

That the Appellant replied (P.3) that he p. 61
desired to get licences for trade and asked for
clarification of his status.

20 That in response, the Ministry sent the
Appellant the application Form - (the impugned
document) (P.4 in record). pp. 62-6

30 That the application form dated 15th August
1958 was filled in by some unidentified person,
signed by the Appellant and, verified by his
affirmation made on the 26th August 1958, sent
to the Ministry. The Appellant does not
understand English. This application was p. 26 1.34
signed in Tamil "T.P. Veerappen", born on the
1st May 1918, Sherwood Estate, Haputale (i.e.
in Ceylon) and stated the full name of father
as "Veerakutty Thiruman born in 1898 Koslanda,
(i.e. in Ceylon)

That the Birth Certificate No. 41904 (P.14) pp. 42-3
was sent with the application P.4 and both were
received in the Ministry on 29th August 1958.

40 That this Birth Certificate related to the
birth on the 1st May 1918 at Sherwood Estate
of "Veerapen", father named "Tiruman" and gave
no information as to the place of the birth
of the father, described as "Coolie", Indian
Tamil".

Record

- pp. 67-8 and 71
pp. 72-3
- That, after correspondence (P.5 P.6 and P.7), a Citizenship Certificate (P.15) was issued to the Appellant, by the Minister of Defence and External Affairs on 22nd September 1959.
- p. 23 l.11
- That in the interval between August 1958 and September 1959 it seems from the evidence that the application was sent by the Minister for investigation to the Divisional Revenue Officer of the area and verification whether the applicant was born in Ceylon, whether his father was and whether his parents were married and on the Report, the Certificate of citizenship 'P.15' was issued. 10
- p. 77
- p. 77
- That thereafter in October 1963 a plaint was filed in the Joint Magistrate's Court at Colombo in case No. 29950 against the Appellant of cheating contrary to Section 400 read with Section 490 of the Penal Code. The particulars given were that the Minister S.W.R.D. Bandaranaike was deceived by the accused into issuing the Citizenship Certificate P.15. The Appellant was also charged with an offence under Section 25 of the Citizenship Act. 20
- p. 78
- That after several various preliminary proceedings and after the case was fixed for trial, the Crown Counsel prosecuting in the case on behalf of the Attorney General on the 24th February 1965 offered no evidence against the Appellant who was therefore discharged. 30
- p. 3
- That on the 26th August 1965, the Police filed the before mentioned Report in the Magistrate's Court of Bandarawela charging the Appellant with forgery contrary to Section 454 of the Ceylon Penal Code.
- p. 8
7. Forgery is not ordinarily triable summarily by a Magistrate's Court but the Magistrate, being also an Additional District Judge, on the 10th March 1966, after some preliminary evidence had been given, assumed jurisdiction in that capacity to try the Appellant summarily on the grounds (1) that the facts were simple (2) Expeditious disposal, as the offence alleged was in 1958 and (3) No complicated points of law, and he thereupon informed Your 40

Petitioner and charged him as is stated in paragraph 3 above whereupon the Appellant pleaded not guilty and the hearing was adjourned.

Upon the summary trial being resumed, it was submitted on behalf of the Appellant, that, in view of Case No. 29950, the Crown could not proceed but the Magistrate, treating this as a plea of autrefois acquit, over-ruled it. p. 10

10 It is submitted that such ruling was wrong in law. The learned Magistrate held that the Plea failed because the subsequent charges were under different sections of the Penal Code from the earlier charges. It is further submitted that such Plea should be successful where the same substantial issues are raised in the second proceedings as in the first.

20 8. At the trial, the prosecution called 22 witnesses, mostly of a formal character or to produce documents and to trace their possession. A handwriting and a finger-print expert were also called. On the 8th June 1966, the Magistrate before whom the declaration in support of the application had been sworn on the 26th August 1958, testified that the deponent was the Appellant. The prosecution contended that this evidence established that the particulars given in the application for Citizenship were not correct. Three things were relied upon: p. 24 p. 63

30 1. That, according to the Haputale Estate Medical Assistant, in registering the birth of his grandchild in 1955, the Appellant had stated he was not born in Ceylon. (Exhibit 16A). p. 53

2. That according to a Haputale Estate Clerk, in 1959, when giving particulars for his Provident Fund Record Card he gave his name as Palanimalay Veerappen and that he was born in South India (Exhibit P.8) p. 69

3. That when the Appellant went to India in 1953 the name of his father was given as Palanimalai (Exhibit P.12). p. 50

40 The above 1, 2 and 3 are so stated in the Magistrate's judgment. p. 29

Record

9. The Court Notes at the conclusion of the case for the prosecution are as follows:

p. 28

"I call the accused for his defence. Mr. Sittampalam is not calling any evidence. He tenders D.1."

pp. 77-8

D.1 comprised the Charge Sheet and Record of Discharge in Case No. 29950 referred to in paragraphs 6 and 7 above.

pp. 29-31

p. 62

p. 42

p. 62

10. After legal submissions had been made, the Appellant was acquitted of the charge and the learned Magistrate gave the Reasons for his decision upon the 7th day of August 1966. He considered the various documents before him and found that the basis of the charge was that the Appellant had signed the application (P.4) with the intention of causing it to be believed that he was the person named in the birth certificate No. 41904 (P.14). He found that this was the basis of the charge because, if the basis of the charge was that, when the accused signed the application for citizenship P.4, he signed on behalf of Veerappen mentioned in the last mentioned birth certificate, (i.e. on behalf of some other person than himself), then it would be necessary for the prosecution to have called the Veerappen so mentioned to show that the accused had no authority to put the signature but the prosecution had not done so, therefore there was no evidence to show that the Appellant was not acting on his behalf. 10 20 30

p. 30 11.23-30

The learned Magistrate further considered, that, as the accused had signed his correspondence with the Minister prior to the application form and the application form itself as "Thana Pana Veerappen" "which is not the same as T. Veerappen" in the birth certificate No. 41904, this tended to show that he was signing for himself "and not trying to make one believe that he was committing an act of forgery in respect of the Veerappen mentioned in" the birth certificate No. 41904. 40

10 The learned Magistrate then remarked that it was clear that the Appellant, upon a comparison of his application (P.4) and the birth certificate (P.14), was making a false document and trying to pass himself off as the Veerappen, apparently qualified for citizenship, named in the birth certificate. In so saying he appears to mean that P.4 is untrue as he has clearly negatived that it was a "false document" within the definition of making a false document in Section 453 of the Penal Code.

p. 30 11.31-6
p. 62
p. 42

p. 62

He continued -

"Since I have come to the above conclusion I find it difficult to visualise in whatever manner I look at it, that this accused was committing forgery in respect of the signature of the Veerappen mentioned in P.14.

p. 30 1.37-
p. 31 1.9

20 I might also mention that the entire case is built up on the statements made by the accused at different times and not on any other evidence. If that is so, then it may be open for the defence to further argue that the particulars mentioned in P.4 is in fact the truth and not the particulars mentioned in P.16A, P.8 and P.12. I also find that the charge does not set out necessary ingredients. To that extent this charge may be defective in law."

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(P.14 is the Certificate of Birth).

p. 42

(P.4 is the Appellant's Application for Citizenship).

p. 62

(P.8 is an Application Form (Estate Provident Fund)).

p. 69

(P.12 is a Discharge Certificate under Estate Labour Ordinance).

pp. 50-2

(P.16A is the Register of birth of Appellant's grandchild).

pp. 53-4

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He concluded by holding that the charge had not been proved and accordingly acquitted the Appellant.

p. 31 1.17

Record

It is submitted that he rightly did so.

p. 62 12. It is submitted that the case for the prosecution depends on the witnesses from the estate, who were called to say that at various times the accused had given details of his parents and place of birth which are different from those he gave in 'P4'. It is submitted that there is no compelling inference merely from these facts that the accused had any dishonest intention (even in a non-legal sense), as it may well be that he had been told by some person or persons that his birth and his parents' particulars were the one set, deposed as given by these witnesses, and by some other person or persons that they were the other set given on 'P4' and that this constituted for him the circumstances of doubt which prompted his application under Section 6 of the Citizenship Act. It is submitted that far less did the facts come within the "dishonesty" specified in Section 22 of the Penal Code read with Section 21. 10

p. 62 20

p. 62 It is further submitted that the prosecution has not discharged the burden of proof as to the Appellant's intention to cause it to be believed that 'P4' (the application) was signed by another person Veerappan son of Thiruman as opposed to the one intention to sign 'P4' as an application by himself using 'P4' (the Birth Certificate) as evidence to support his birth. It is submitted that the distinction between these intentions cannot merely be inferred but that there must be some evidence relating to the one intention as opposed to and distinguishing the other intention, before the prosecution has discharged its legal burden of proving the ingredients of the offence of forgery. It is submitted that even where the ingredient involves a negative averment the burden must be discharged positively by the prosecution - (vide Sanitary Inspector, Mirigama vs. Thangamani Madar (1953) 49 Ceylon Law Weekly 81). That on this authority even matters like knowledge and intention must be proved by a certain quota of evidence by the prosecution directed towards the proof of such knowledge and intention. Such elements cannot be merely inferred. It is further submitted that the inference of dishonesty or other criminal 30

p. 62 40

intention must be a necessary inference.

It is submitted that the charge itself is fatally defective in that it does not describe the intention contained in the definition in Section 453 of the Penal Code for a false document in that the necessary element of fraud or dishonesty is not alleged.

10 13. On the 7th day of September 1966 the Respondent appealed to the Supreme Court and by his Petition of Appeal he alleged (inter alia) that the present Appellant was not entitled to be acquitted having regard to the finding there set out as having been made by the Magistrate. In support, the Petition of Appeal cited the two following extracts from the Judgment:-

pp. 32-4

20 "It is quite clear that he was making false documents and cheating persons in authority when he applied for citizenship rights on document P.4".

p.31 11.11-19

"When one looks at P.4 and the birth certificate P.14 it is quite clear that the accused was trying to pass off for Veerappen mentioned in P.4 who apparently has the qualifications for citizenship rights in that he was born in Ceylon."

p.30 11.31-5

30 14. The appeal was argued on the 18th February 1967 and decided upon the 27th February 1967. In the course of his judgment Manicavasagar J. set out the following findings as having been made by the Magistrate:-

1. P.4 was signed by the accused,
2. the accused was born in India,
3. the statements in P.4 made by the accused were not true,
4. he was not entitled to be registered as a citizen of Ceylon, and
- 40 5. the accused was trying to pass off as Veerappen son of Thiruman whose birth certificate he had annexed to the application, and who apparently had the qualification for Ceylon citizenship.

p.36 11.5-17

Record

p. 62
p. 42

It is submitted that only the first of these findings was definitely made by the Magistrate and that the tenor of his judgment is that there was doubt whether the statements in the application P.4 were or were not true and that it might be that they were true and that the Appellant was the Veerappen son of Thiruman mentioned in the birth certificate P.14.

15. The Appellant respectfully submits that the learned Judge fell into error in concluding that, upon the findings which he stated had been made by the Magistrate, the Appellant was guilty of the offence charged and that, in particular, the learned Judge failed to consider whether any dishonest or fraudulent intent in any sense had been proved by the prosecution. 10

pp. 55-6
p. 42
p. 62

16. It is further submitted that the learned Judge fell into error in failing to construe the judgment of the Magistrate as a whole, from which it appears that certain observations which appear inconsistent with others are not in reality so but are related to the view that, while your Petitioner was not guilty of the offence of forgery, he may have been guilty of the offence of cheating. The Magistrate observes that when the accused signed documents P.1 to P.4, he was in fact signing for himself and not committing an act of forgery by making one believe that he was signing for the Veerappen described in the Birth Certificate P.14 (scilicet, if that person was another) which it is submitted is, standing by itself, a clear finding of fact against a charge of forgery. But in the next paragraph the Magistrate goes on to say that when he compares P.4 and the birth certificate P14, the accused was making a false document and was trying to pass off for the Veerappen mentioned in P.14 (scilicet, if that person was another), which latter observation standing by itself would be a finding supporting a conviction for forgery (if he were using the expression "false document" in any sense used in Section 453 of the Penal Code). It is submitted that this apparent contradiction in the Magistrate's reasoning is explained by the last paragraph in his reasons wherein he says that it was unfortunate that the prosecution sought to 20 30 40

charge this accused on the basis of forgery and not on any other offence. He goes on to say 'it is quite clear that he was making false documents and cheating persons in authority when he applied for citizenship rights on documents P.4. However, since the prosecution has chosen to charge the accused only on the basis of forgery, I find that for the reasons mentioned above, I am constrained to hold that this charge as presently set out has not been proved. I accordingly acquit the accused."

p. 62

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It is submitted that it is clear from these two passages that the apparent contradiction in reasoning is explained by the fact that the Magistrate actually meant to say that the accused was making false (i.e. untrue) statements in document 'P.4' and thereby cheating and was not making a false document as defined in the Penal Code, and committing forgery.

p. 62

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That, upon the Appeal, the prosecution relied upon this loose wording at two points in the Magistrate's reasons and claimed that the Magistrate had actually in those passages come to a finding of fact in favour of the prosecution. It is submitted that the learned Judge was in error in accepting this contention and in concluding that the Magistrate had found that the accused was trying to pass off for the Veerappen in the Birth Certificate without pausing to consider whether there was any proof that the Veerappen in the Birth Certificate was different from the accused, and also ignoring the rest of the reasons given by the Magistrate, which shows that it was the Magistrate's clear view that the offence might have been cheating (or some other offence) and was clearly not forgery. It is submitted that the decision of the Supreme Court does not analyse any part of the evidence in the case but merely goes on the loose wording at one point in the Magistrate's reasons.

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17. That having regard to the defects in the charge, it is submitted that they were of such an extent that the learned Magistrate was correct in taking them into account when arriving at his decision, in particular, that such defects included the omission of an allegation either of dishonesty or fraud and

Record

that the learned Judge should also have done so.

p.37 11.22-4 18. The learned Judge concluded his Judgment as follows:-

"I impose a sentence of 2 years Rigorous Imprisonment, which the Magistrate should communicate to the accused in Court."

It is respectfully submitted that at the trial, when Counsel for the Appellant stated that he was not calling any evidence but made submissions in law to the effect that the evidence for the Prosecution could not support a charge of forgery, he was making a submission of "no case to answer"; and that, if the learned Magistrate had overruled that submission, justice required that the learned Magistrate should have given the Appellant an opportunity of leading evidence. It is further submitted that the Supreme Court ought not, and could not, have set aside the verdict of acquittal entered by the learned Magistrate, without giving to the Appellant such an opportunity as aforesaid, since the Supreme Court was, in effect, doing no more than overruling a submission of "no case to answer".

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19. The sentence of 2 years rigorous imprisonment imposed by the learned Judge was the maximum sentence which a Magistrate could, in the circumstances, have imposed and it is respectfully submitted that the imposition of such a sentence, or of any sentence whatsoever, without affording to the Appellant an opportunity of pleading in mitigation was illegal. No opportunity of pleading in mitigation was in fact given to the Appellant, nor was there any argument relating to the question of sentence at the hearing of the appeal, and the learned Judge failed to give any reasons for the imposition of the maximum sentence permitted by law. In any event, the evidence on record indicates the presence of mitigatory circumstances, in particular, that the charge related to statements of belief entertained by the Appellant on matters of which he could not possibly have had first-hand knowledge.

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In his correspondence with the Ministry (P1 and P3) before making his application he expressly stated that he desired to clarify his position under Section 6 of the Citizenship Act (i.e. as one of doubt) and his application (P4) is expressed to be that of a person with respect to whose status as a citizen of Ceylon by descent a doubt existed.

p.56 1.23
p.61 11.29-31

p. 62 1.18

10 20. The Appellant humbly submits that the Judgment and Order of the Supreme Court of Ceylon dated the 27th day of February 1967 be set aside and that the verdict and Order of acquittal recorded by the Magistrate of Badulla upon the 7th day of August 1966 be restored and that this Appeal is allowed with costs for the following amongst other

p. 35-9

p. 29-31

R E A S O N S:

- 20 (1) BECAUSE the plea of autrefois acquit was correct in law and should not have been rejected by the learned Magistrate.
- (2) BECAUSE the verdict of the Magistrate that the Appellant had not, upon the evidence led by the prosecution, committed the offence charged, namely forgery, was correct in law.
- 30 (3) BECAUSE the learned Judge of the Supreme Court erred in law in setting aside the said verdict or, alternatively, if he were correct, the case should have been remitted to the Magistrate with a direction that there was a case for the Defence to answer.
- (4) BECAUSE a grave injustice has been occasioned to the Appellant by the imposition of a maximum sentence of rigorous imprisonment without reasons being stated and also without any opportunity being given for a plea in mitigation.

E. F. N. GRATIAEN

JOHN A. BAKER

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N:

THIRUMAN PARANTHALLY VEERAPPEN Appellant

- and -

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C A S E FOR THE APPELLANT

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