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IN THE PRIVY COUNCIL

No. 11 of 1968

ON APPEAL FROM THE SUPREME COURT OF CEYLON

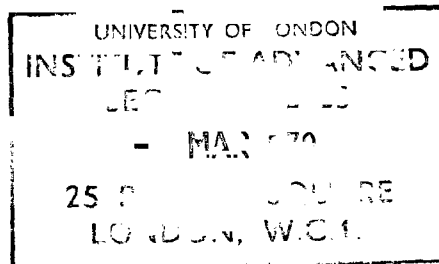
B E T W E E N :

THIRUMAN PALANIMALAY VEERAPPEN
Appellant

- and -

THE ATTORNEY GENERAL Respondent

CASE FOR THE RESPONDENT



HATCHETT JONES & CO.,
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Respondent

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Record

10 1. This is an Appeal against the Judgment and Decree of the Supreme Court of Ceylon dated the 27th day of February 1967 whereby the said Supreme Court allowed an Appeal by the Respondent against the Order of the Magistrate's Court, Bandarawela dated the 7th day of August, 1966 acquitting the Appellant of a charge of forgery. By its said Judgment and Decree the said Supreme Court set aside the order of acquittal, convicted the Appellant of the charge of forgery and sentenced him to two years rigorous imprisonment.

pp.35-39

p.2, 1.14
pp.29-31

20 2. The principal questions that arise in this Appeal are :

(a) whether the Supreme Court was right in holding that on the facts as found by the

Record

Magistrate, which findings were supported by the evidence, the Appellant was guilty of the offence charged.

- (b) whether the Supreme Court should have remitted the case to the Magistrate's Court in order to give the Appellant a further opportunity to call evidence, even although at the trial he had stated through his Counsel that he was not calling any evidence. 10
 - (c) whether there was any irregularity of procedure and injustice to the Appellant when the Supreme Court passed sentence upon him.
3. The following provisions of the Penal Code (Cap.19) are relevant to this Appeal.

Section 23

A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise. 20

Section 452

Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to the Government or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery. 30

Section 453

A person is said to make a false document - Firstly who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed, by or by the authority of a person 40

by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed;
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ILLUSTRATIONS

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(k) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate and thereby to induce Z into an expressed or implied contract for service.

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Explanation 1. - A man's signature of his own name may amount to forgery.

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ILLUSTRATIONS

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

Section 454

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

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4. The powers of the Supreme Court on an appeal against an acquittal in a Magistrate's Court are contained in Section 347 of the Criminal Procedure Code (Cap.20). This, insofar as it is material is as follows : -

Section 347

At the hearing of the appeal the Court may if it considers that there is no sufficient ground for interfering dismiss the appeal or may -

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(a) in an appeal from an order of acquittal, reverse such order and direct that further enquiry be made or that the accused be re-tried or committed for trial as the case may be or find him guilty and pass sentence on him according to law;

Provided always that the sentence awarded on an appeal shall not exceed the sentence which might have been awarded by the Court of first instance. 10

pp.8-9

5. The Appellant was charged in the Magistrate's Court on the 10th March, 1966 in the name of "Palanimalay Weerappan", the Magistrate assuming jurisdiction to try the case summarily under Section 152 (3) of the Criminal Procedure Code.

The charge sheet was as follows : -

"You are hereby charged, that you did, within the jurisdiction of this Court at Bandarawela on 26th August, 1958. 20

Did sign a Document to wit: Application for a Certificate of Citizenship by descent, to be issued by the Minister of Defence & 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 Weerappan S/O Tiruman, (who was born to Tiruman 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." 30

To this charge the Appellant pleaded not guilty. 40

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6. At the trial, S. Rambukwella, who in July, 1958 was a clerk in the Citizenship Division of the Ministry of Defence and External Affairs, gave evidence as to the circumstances in which the Appellant submitted the Application referred to in the Plaint (P.4). The witness said that he received a letter dated the 2nd July, 1958 addressed to the Permanent Secretary to the Ministry by one "Tiruman alias Palanimalay Veerappen" (P.1). This stated that the writer required to clarify his position as a citizen of Ceylon by birth under Section 6 of the Citizenship Act and requested that the usual form for forwarding his declaration should be sent to him. The witness in reply posted to the writer the appropriate form of questionair (P.2) which was duly answered and returned. In this the writer gave his name as "Thirumalai alias Palanimalai Veerappen", and stated that his father had been born in Ceylon and that he could produce documentary evidence of his own birth in Ceylon. Subsequently the witness issued to the applicant a form of application for a Certificate of Citizenship of Ceylon by descent, which was filled up and signed by the applicant and returned to the Department on the 15th August, 1958. This was the Application to which the charge related, and was produced as P.4.

p.11

p.62

p.56

pp.57-59

pp.62-66

The Application (P.4) was verified by an Affidavit of the applicant, and stated inter alia as follows :

A - Particulars Relating to Applicant

- (1) Full name: Thiruman alias Palanimalai Veerappen.
- (4) Date and place of birth: 1st May, 1918 Sherwood Estate, Haputale / in Ceylon_7

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B - Particulars Relating to Applicant's Descent

(6) Date (approximate) and place of marriage of applicant's parents 1916 - Koslande [in Ceylon]

(7) (a) Full name of father: Veerakulty Thiruman (in pencil - nationality not proven). 10

(b) Date and place of his birth: 1898 - Koslande

(10) (a) Full name of paternal great grand-father: (father born in Ceylon)

p.42 7. There was sent with the Application (P.4) a certified copy of a birth certificate (P.14). This recorded the birth of one "Veerapen", the son of "Tiruman" on the 1st May, 1918 as Sherwood Estate. 20

p.18 1.14 p.55 There was evidence that this birth certificate had been obtained from the Registry by a name named A. Velu on the 14th June, 1958

p.24 8. The Appellant was identified as being the applicant who had submitted P.4 by D.M.W. Perera. This witness was the Justice of the Peace before whom the Affidavit in support of P.4 had been made. His evidence was that he knew the Appellant and that it was the Appellant who had made the Affidavit. 30

pp.72-73 9. On the 22nd September, 1959 a Certificate of Citizenship (P.15) was issued to the Appellant, stating his name and place of birth as set out in P.4.

p.42 10. The prosecution case was that the Appellant was not the "Tiruman Veerapen" to whom the birth certificate (P.14) related and who was born in Ceylon, but was a "Palanimalay Veerappan" born in India. To prove this, the 40

prosecution relied on various formal documents which on previous occasions had been prepared upon information supplied by the Appellant and on the statements made by him which had preceded and been incorporated in these documents.

The three such documents relied on were -

- 10 (a) A birth certificate recording the birth of the Appellant's grandson on the Haputale Estate on the 31st May, 1955 (P.16A). This recorded that it was the Appellant ("the grandfather") who reported the birth and stated that the Appellant ("the grandfather") was not born in Ceylon. The Estate Medical Officer at the Haputale Estate, who entered the births and deaths in the hospital, gave evidence that he remembered the Appellant reporting the birth and that he made the entry in the register of births on the estate in accordance with the particulars supplied him by the Appellant. p.53
- 20 (b) An Employees' Provident Fund Record Card dated the 26th August, 1959 (P.8). This gave the Appellant's name as Palamimalay Veerappen and stated that he was born in South India and that the name of his wife was Mariae. M. Sinnadorai, a clerk on the estate at the time, gave evidence as to the filling in of the Record Card. He said that the particulars entered upon it were given by the Appellant and that the Appellant affixed his thumb impressions to the document. p.13, 11. 14-19
- 30 (c) A discharge certificate issued under Section 23 of the Estate Labour (Indian) Ordinance when the Appellant went to India in 1953 (P.12). K.S. Rajumani, the Head Clerk on the p.69
- 40 (c) A discharge certificate issued under Section 23 of the Estate Labour (Indian) Ordinance when the Appellant went to India in 1953 (P.12). K.S. Rajumani, the Head Clerk on the p.15, 11. 16-21

Record

p.21, 1.15 Estate, testified that this certificate was issued in respect of the Appellant. The document stated the name of the Appellant's father as "Palamimalai", and described the Appellant's height and distinguishing marks as respectively "5' 4 $\frac{1}{2}$ " - scar on the left thigh and on the left knee". There was evidence before the Court that the Appellant's height and distinguishing marks were indeed as so described. 10

p.26, 11.18-21

p.28, 11.8-10 11. At the conclusion of the prosecution case on the 8th July, 1966, the learned Magistrate called upon the Appellant for his defence, whereupon his advocate stated that he was not calling any evidence, but tendered a document D.1. The trial was thereupon adjourned to a later date for the addresses of Counsel. On the 7th August, 1966 the learned Magistrate acquitted the Appellant. 20

p.1, 1.20

p.2, 1.14

p.29 12. In his Reasons for Acquittal, the learned Magistrate reviewed the evidence and found that P.4 was a false document. This he stated explicitly in the following two passages.

p.30 11.31-36 (a) "When one looks at P.4 and the birth certificate P.14 it is quite clear that the accused was making a false document and was trying to pass off for the Veerappen mentioned in P.14 who apparently has the qualification for citizenship rights in that he was born in Ceylon".. 30

p.31, 11.11-14 (b) "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.30, 11.15-22 The learned Magistrate's acquittal of the Appellant in spite of these findings, appears to have been founded principally upon his view that "if the basis of the charge on behalf of the Veerappen mentioned in P.14, then, it would be necessary for the prosecution to have called 40

the Veerappen mentioned in P.14 to show that this accused has not authority to put the signature. This I find the prosecution has not done".

10 It is respectfully submitted that the document P.4 was plainly signed and sent by the Appellant on his own behalf and not on behalf of anyone else. It did not purport to be other than the Appellant's own document in support of his application for citizenship. Accordingly, there would have been no purpose or relevance in calling "the Veerappen mentioned in P.14 to show that this accused has no authority to put the signature".

20 The learned Magistrate appears to have recognised what it is submitted was the true position when in another passage he said that the documents tended to show "that the accused, when he signed P.1 to P.4 was in fact 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 P.14".

p.30, 11.
26-30

30 The learned Magistrate commented also that the case for the prosecution was founded on previous statements made by the Appellant and that "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". As to this, the submission of the Respondent is that the previous statements in question could be relied upon as admissions of the facts stated and that these statements and the documents in which they were recorded, showed prima facie that it was P.4 which was the false document. The Appellant called no evidence to rebut this and to show that P.4 was the genuine document and it was the other documents which were false.

p.30, 1.42
p.31, 1.4

40 The learned Magistrate referred also to the charge, which he said did not set out the necessary ingredients and "to that extent . . . may be defective in Law".

p.31, 11.4
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Record

In the submission of the Respondent, if there was any omission in the charge, such omission did not mislead the Appellant or prejudice him in his defence and, accordingly, as provided by Section 171 of the Criminal Procedure Code, is to be regarded as immaterial.

p.32

13. By Petition of Appeal dated the 7th September, 1966 the Respondent appealed against the learned Magistrate's order of acquittal to the Supreme Court.

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pp.35-37

14. On the 27th February, 1967, the Supreme Court (Manicavasagar J.) delivered Judgment allowing the appeal.

The learned Judge held that on the facts as found by the Magistrate, which findings were supported by the evidence, the Appellant was guilty of the offence charged. As to the form of the charge, the learned Judge held that there was an omission in it as it made no reference to the element of dishonesty or fraud in the making of a false document. However, this omission had not misled the Appellant or caused him any prejudice and had not occasioned a failure of justice.

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pp.38-39

The Decree of the Court was that the order of acquittal was set aside, and the Appellant was convicted of the charge of forgery and sentenced to two years' rigorous imprisonment.

No note of Counsel's submissions upon the hearing of the appeal appears in the Record, but there is nothing in it to show that the Appellant's Counsel at any stage of the hearing made any submission to the Court upon the matter of sentence or sought an opportunity to do so.

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p.40

15. The Appellant was given Special Leave to Appeal to the Privy Council against the said Judgment of the Supreme Court dated the 27th February 1967 by Order in Council dated the 13th November 1967.

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16. The Respondent respectfully submits that this Appeal should be dismissed and the said

Judgment of the Supreme Court of Ceylon dated the 27th day of February 1967 affirmed for the following among other

R E A S O N S

1. BECAUSE upon the facts as found by the learned Magistrate, which findings were supported by the evidence, the Appellant was guilty of the offence charged.
- 10 2. BECAUSE the prosecution made out a case against the Appellant which he failed to rebut.
3. BECAUSE the Appellant was not misled or prejudiced in his defence by any omission in the charge, and any such omission was accordingly immaterial.
- 20 4. BECAUSE it ought not to be taken that there was any irregularity or unfairness in the matter of the sentence passed by the Supreme Court, unless this plainly appears in the Record of Proceedings, and it does not so appear.
5. BECAUSE the Appellant's Counsel might have made any submissions with regard to sentence which he wished to make when he addressed the Supreme Court in opposition to the Respondent's appeal.
6. BECAUSE no injustice was caused to the Appellant by the said Judgment and the said Order of the Supreme Court.
7. BECAUSE the said Judgment of the said

Record

Supreme Court was right for the reasons
stated therein.

MONTAGUE SOLOMON

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