

IN THE PRIVY COUNCIL

No. 13 of 1969

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN :

RAJAMUNI GNANAMUTTU MOSES Appellant

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANT

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10 1. This is an appeal by Special Leave in forma pauperis from the Judgment and Order of the Supreme Court of Ceylon (Alles, J. and de Kretser, J.) dated the 23rd day of January 1969, whereby the said Court dismissed, without reasons, the Appellant's appeal against his conviction on a charge of bribery by the District Court, Colombo, and sentence of three years rigorous imprisonment and a fine of Rs.500/- and, in default, six months rigorous imprisonment.

p.51, 1.13 -
p.52, 1.17
pp.41-49.

20 2. The principal ground of this appeal is that the trial Judge wrongly admitted in evidence a previous conviction of the Appellant for obtaining money by false pretences and wrongly relied on the previous conviction in convicting him for the offence.

3. The Appellant was tried in the District Court of Colombo on an Indictment on the following charge -

p.1.

30 "That on or about the 3rd day of December, 1959, at Kalubowila, in the division of Colombo, within the jurisdiction of this Court, you did accept a gratification of Rs.500/- from Magamma Uggallage Thomas Singho as an inducement for Procuring for Uggallage Kumatheris employment in the Food Control

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Department and that you are thereby guilty of an offence punishable under Section 20 of the Bribery Act."

4. At the material time, the Appellant was a Clerk in the Nugegoda office of the Food Control Department. The case for the Prosecution was as follows:-

One Kumatheris who had passed the Senior School Certificate Examination was in search of employment. He sought the assistance of a relative, one Gunapala, who was a teacher at the Buddagosha Vidyalaya, Kalubowila. Gunapala mentioned the matter to one of his colleagues, Don David. A buddhist monk, Prematilleke, informed Don David that there was a person called Moses (the Appellant) who could get Kumatheris a job but he would want some money. This information was conveyed to Kumatheris by Gunapala. Towards the end of November, 1959, Kumatheris, Gunapala, Prematilleke and Don David met the Appellant at the Buddagoshe Vidyalaya. The Appellant stated that he was in Government employment attached to the Food Controller's office, Nugegoda, and that he was in a position to secure Kumatheris employment as a Clerk and that if he was given Rs.500/- on the 3rd day of the following month (i.e. 3rd December 1959) he would secure a job within a month of that date. If he failed he would return the money. Kumatheris informed his father, Thomas Singho, about the Rs.500/- and on the 3rd December went with his son Kumatheris to meet the Appellant at the Buddagosha Vidyalaya. Also present at this meeting was Gunapala, Don David and another teacher called Mayurapala.

The Prosecution case was that at this meeting, Thomas Singho handed the Rs.500/- to Gunapala to count, and Gunapala counted it, then gave it back to Thomas who handed it to the Appellant.

The Appellant then gave Thomas Singho a printed promissory note for Rs.500/- (P.1). Don David and Mayurapala signed the promissory note as witnesses. As there was no job forthcoming in spite of several visits and reminders to the accused, Thomas Singho

complained to Mr. Wijeratne, the Assistant Food Controller, Nugagoda. At the latter's request, Thomas Singho sent a written complaint on the 21st November 1960. On the 29th December 1960, Thomas Singho reported the matter to the Bribery Commissioner.

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10 5. The prosecution witnesses were Kumatheris, Thomas Singho, Gunapala, Don David and Prematilleke who all gave evidence corroborating each other on the material aspects of the Prosecution Case outlined in paragraph 4 above.

pp.4-28.

6. The Appellant, who was not represented at the trial, gave evidence which was summarised by the District Judge as follows:-

p.43, l.10 -
p.45, l.1.

20 "The accused gave evidence on his own behalf and stated that in 1953 he was in financial difficulties. He had a friend by the name of P.K.L. Gunaratne to whom he applied to get him a loan. Gunaratne contacted Thomas Singho, the father of Kumatheris, and got him Rs.400/- on a promissory note and the interest was Rs.40/- a month. The accused paid Thomas Singho interest regularly from 1953 to 1956, and in 1956 he got relief from the Lady Lochore Fund whereupon he settled the amount due to Thomas Singho. That was in January, 1956. Again in October of the same year, as the Christmas season was approaching, he made a further request to Gunaratne to get another loan for him. Gunaratne again contacted Thomas Singho and got him a loan on 15th December, 1956 of a sum of Rs.400/- at Rs.40/- a month as interest. He continued to pay the interest of Rs.40/- a month. When in 1958 the communal riots broke out, Thomas Singho fearing that he might run away from the area started pressing him for the return of his money. Besides Thomas Singho, his son Kumatheris, Rev.Prematilleke, Liyanage and Gunapala also used to meet him and press him to return the money due to Thomas Singho on the promissory note. Somewhere in July Prematilleke informed him that Kumatheris and the others were planning to come to his house one evening and cause trouble to him, and promised to find some money from somewhere and pay the amount to Thomas Singho. Accordingly, Prematilleke got a sum of Rs.200/- from

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Gunapala and paid Thomas Singho. The said sum of Rs.200/- was in reduction of the loan given by Thomas Singho to him. He had failed to pay the interest from February 1959 to the end of September 1959, which worked out to Rs.320/-. In all on the day the sum of Rs.200/- out of the loan of Rs.400/- was paid to Thomas Singho there was a sum of Rs.520/- still due. Prematilleke wanted him to give him a promissory note for this sum, but he explained to him and asked him to deduct the Rs.20/- out of the Rs.520/- and take a promissory note for Rs.500/-. Accordingly a promissory note for Rs.500/- was written out and given to Prematilleke. Prematilleke did not want any interest on the money, but requested him to pay Gunapala the money in instalments. The accused stated that promissory note D.1 was the one he gave Prematilleke on this occasion. Subsequently Gunapala started pressing him for the money which he had advanced on his behalf. For October and November he was unable to pay Gunapala any interest on the Rs.200/- which he had earlier been paying at the rate of Rs.15/- or Rs.20/- once a month. When he was being pressed by Gunapala, he appealed to Prematilleke, Liyanage, and K.A. Perera. Thomas Singho was also pressing for the balance Rs.200/- due on the loan of 1956. He accordingly decided to give Thomas Singho a promissory note for Rs.500/- exclusive of the arrears for October and November, and accordingly he arranged to meet Gunapala on 3rd December, 1959. On 3rd December 1959, Prematilleke, Liyanage and K.A. Perera met him and he wrote out promissory note P.1 in favour of Thomas Singho and handed it to Prematilleke. At the time P.1 was handed over the witnesses, whose names now appear on P.1, were not there, as he was informed by Prematilleke, Liyanage, and K.A. Perera that there was no need to insert any interest but only to give a promissory note. Thereafter Kumatheris and Gunapala with Thomas Singho used to call on him and press him for the money even from the Christmas Festival advance. He was unable to comply with their request. On 11th September 1960, Liyanage, Prematilleke, Gunapala, K.A. Perera and Kumatheris' father came to his house and

10 threatened him. He made a complaint about this to the Police. On 13th September 1960 Prematilleke again came with the same people, when he informed them that he had made a complaint to the police and not to give him trouble. The accused stated that it was thereafter that Thomas Singho made a complaint to the Assistant Food Controller and the Bribery Commissioner. His entire defence was that this was a money transaction and that he had not taken the money as a bribe to obtain a job for Kumatheris."

7. The Appellant called Mr. P.A. Abeyaratne who was attached to the Bribery Commissioner's Department. He testified that when he received Thomas Singho's complaint and the Appellant's reply, he investigated the matter. This was in 1961. He continued -

20 "Q. The accused has told you that he has renewed the promissory note of 3.12.59 in lieu of the old note for Rs.400/- of 1956?

p.37, l.26 -
p.39.

A. Yes.

Q. And after interrogations and investigations, you asked the accused to cite his witnesses?

A. Yes.

Q. The accused gave the names of one Mr. Peiris and one P.K.L. Gunaratne?

A. Yes.

30 Q. You told the accused that you will be writing to him fixing a date for inquiry?

A. Yes.

Q. Accordingly letter marked P5 was sent dated 9.6.61?

A. Yes. I.P. Wijesooriya has sent this letter to the accused.

Q. The accused appeared for the inquiry on 16.6.61 with Mr. Peiris as his witness?

A. Yes.

40 Q. And the accused made you understand that Mr. P.K.L. Gunaratne had shifted from his residence and that he did not know his whereabouts?

A. Yes.

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- Q. After 16.6.61 you did not file action on this matter because, most probably, you did not have the proof to file action.
 A. I made inquiries and I handed over the file to Mr. Werapitiya.
- Q. After 16.6.61 no action was filed on this case, is that not correct?
 A. After that we did not take any statement from the accused.
- Q. Neither did you inform him of the case? 10
 A. No.
- Q. You filed this case in this Court on 27.10.67?
 A. I cannot say that. I completed my inquiries and handed over the matter to Mr. Werapitiya.
- Q. You served summons on the accused on 7.12.67?
 A. I served a copy of the indictment on 7.12.67.
- Q. When you came to serve the summons, the accused was at home? 20
 A. Yes.
- Q. At that time, you very sympathetically inquired from the accused as to what he was doing.
 A. To everybody I am very sympathetic.
- Q. The accused asked you how you came to know about his position?
 A. I do not know that.
- Q. You have said that you came to know Sergeant 6453 Perera and another? 30
 A. No.
- Q. You told him that he told you that the accused was convicted in a case?
 A. No.
- Q. At that time the accused asked you whether Mr. Perera had told you that the accused had represented certain matters about him?
 A. No.

Q. At that time the accused told you, with regard to the case, that he had represented matters to His Lordship the Chief Justice?

A. No.

Q. And also the accused told you that he had represented matters to the Law Society of Colombo and the Public Service Commission about his matter?

A. No.

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Q. You did not file this case on the merits of that conviction in 1966?

A. I am not an authority to speak on those matters.

Q. And during the period 1960 to 1967 you have not taken any action on this case?

A. I completed my inquiries into this case on the 24th of October 1963, and I handed over the file to A.S.P. Werapitiya. I cannot explain the delay for that.

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Q. You will be sorry to see that the delay may accrue to the detriment of the defence?

A. (No answer)."

8. The Appellant respectfully submits that it is a reasonable inference from the above evidence that the Bribery Commissioner's Department were satisfied with his explanation in 1961 and for this reason took no proceedings against him. It was only some six years later - in 1967 - that a Bribery Charge was brought against the Appellant.

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9. During the cross-examination of the Appellant Crown Counsel prosecuting sought to question him on a previous conviction of falsely representing to one Rosalin Kariyapperuma that he would find her a job if she gave him Rs.500/-. The questioning was as follows:-

"A. I know a lady called Rosalin Kariyapperuma. I have borrowed money from her also. I did not pay that money to her. She took me to Court. I have borrowed money from so many. I did not promise to find out a job for Rosalin Kariyapperuma, and take the money.

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(At this stage, Mr. Adv. Wickremanayake, Crown Counsel, moves to put to the witness,

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certain facts which will prove system, and in consequence his state of mind.

I allow the application.

Sgd. C.V. Udalagama

A.D.J. 21.2.68)

Q. You said you did not cheat Rosalin Kariyapperuma?

A. Yes.

Q. You were charged and convicted in M.C. Gampaha, in Case No. 88081?

A. I was convicted.

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Q. You were charged with falsely representing to Rosalin Kariyapperuma that you will find a job for her and induced her to give Rs.500/-?

A. Yes.

Q. You were found guilty and sentenced to 4 months rigorous imprisonment?

A. Yes. I appealed and the appeal was dismissed.

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Q. You produced a writing given by you and you said it was a loan?

A. Yes.

Q. I suggest to you that you took a gratification from Thomas Singho and not a loan?

A. I borrowed a loan."

10. The learned District Judge, having reviewed the prosecution and defence evidence, concluded his Judgment as follows:-

p.48, 11.21-33.

"It appears that the accused on an earlier occasion too had promised one Rosalin Kariyapperuma a job and obtained money on a promissory note in similar circumstances. He admitted that he was charged in M.C. Gampaha case No. 88081 with falsely representing to Rosalin Kariyapperuma that he would find a job for her and induced her to give him Rs.500/- and was convicted and sentenced to four months' rigorous imprisonment. I disbelieve the accused and reject his defence.

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For the above reasons I find the accused guilty of the charge."

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11. With regard to the admission of the previous conviction, the Appellant respectfully makes the following submissions -

- 10 (a) It was not competent for the Prosecution to adduce evidence tending to show that the Appellant has been guilty of criminal acts other than those covered by the indictment. The admission of such evidence is contrary to Section 54 of the Evidence Ordinance, which provides:-

"In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant."

- 20 (b) No system was in fact proved in this case since the Appellant denied "cheating" Rosalin Kariyapperuma and the only competent way to prove such system would have been to call the said Rosalin to give evidence.

- (c) Even if such system was proved (which the Appellant denies) the learned District Judge failed, before admitting any such evidence to inquire into the question whether the facts sought to be put in evidence, in fact constituted systematic conduct.

- 30 (d) The facts adduced by the Prosecution (which in any case were not proved) amounted to only a single act of conviction of a different offence. They did not "form part of a series of similar occurrences" within the meaning of Section 15 of the Evidence Ordinance which provides:-

40 "When there is question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant."

- (e) Even if the facts were proved and did not

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amount to system (which the Appellant denies), the learned District Judge should have excluded such evidence, since its admission was clearly unjust and prejudicial in this case.

(f) The learned District Judge was wrong in relying on the previous conviction (as he clearly did in the concluding paragraph of his Judgment quoted in paragraph 10 above) for the purpose of convicting the Appellant for this offence. 10

(g) It appears from the evidence that the conviction in the Gampaha case was in 1966, a date subsequent, and not previous, to the facts giving rise to the charge in this case.

12. It is further submitted that the prosecution evidence consisted wholly of the evidence of accomplices, namely, Kumatheris, Thomas Singho, Gunapala, Don David and Prematilleke, all of whom were either principal offenders under Section 20 of the Bribery Act or abettors under Section 25(2) of the said Act. 20

13. Section 79(1) of the Bribery Act provides:-

"In any proceedings for bribery before a District Court or commission of inquiry, the giver of a gratification shall be a competent witness against the person accused of taking the gratification and shall not be regarded as an accomplice, and the decision or finding of the court or commission shall not be illegal merely because it proceeds upon the uncorroborated testimony of such giver." 30

14. The Appellant respectfully submits that Section 79(1) does not absolve a trial Judge from directing himself that the uncorroborated testimony of an accomplice is unworthy of credit. The learned District Judge failed anywhere in his Judgment to direct himself on this matter.

15. The Appellant appealed against his conviction and sentence to the Supreme Court of Ceylon. On the 23rd day of January 1969, the said Court, without giving reasons, dismissed the appeal. 40

16. On the 23rd day of May 1969, an Order-in-

Council was made granting the Appellant Special Leave to Appeal to Her Majesty in Council.

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17. The Appellant humbly submits that this Appeal should be allowed and that his conviction and the sentence passed upon him be quashed for the following among other

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- 10 (1) BECAUSE the one previous conviction of the Appellant was not relevant and inadmissible in these proceedings for the reasons stated in paragraph 11 herein.
- (2) BECAUSE the admission of this evidence was highly prejudicial and resulted in a miscarriage of justice.
- 20 (3) BECAUSE the Appellant, having given an explanation of the matter in 1961 to the apparent satisfaction of the Bribery Commissioner's Department, there was then a delay of some six years before the Appellant was charged with the offence.
- (4) BECAUSE the trial Judge failed to warn himself of the danger of convicting on the uncorroborated testimony of accomplices.

EUGENE COTRAN.

No. 13 of 1969

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COURT OF CEYLON

B E T W E E N :

RAJAMUNI GNANAMUTTU MOSES
Appellant

- and -

THE QUEEN
Respondent

CASE FOR THE APPELLANT

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