

No. 13 of 1969.

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :-

RAJAMUNI GNANAMUTTU MOSES

Appellant

AND

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

RECORD

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1. This is an Appeal by Special Leave from a Judgment 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 by the District Court of Colombo (C.V. Udalaguma A.D.J.) on the 21st day of February 1968 on a charge of bribery, and sentence of three years rigorous imprisonment and a fine of Rs. 500/- and in default six months rigorous imprisonment.

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p.40-48

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2. The Appellant was charged in the District Court as follows :

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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 Uggalage Thomas Singho as an inducement for Procuring for Uggallage Kumatheris employment in the Food Control Department and that you are thereby guilty of an offence punishable under section 20 of the Bribery Act.

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3. At the Appellant's trial in the District Court evidence was called by the prosecution to

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the following brief effect :

- p.28
p. 4-5
p.14-15
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p.25-26
- (a) The Appellant worked at all material times in the Food Controller's Office at Nugegoda. The witness Kumatheris was seeking employment as a clerk. As a result of arrangements made by or through other prosecution witnesses Gunapala, Don David and Prematilleke Wijesiri the Appellant attended a meeting with all four witnesses at a school towards the end of November 1959. The Appellant told Kumatheris that if he were given Rs.500/- on the 3rd day of December 1959 he, the Appellant, would secure employment for him in the Food Controller's Department within a month from that date. 10
- p.10-14
- (b) Thereafter, the witness Thomas Singho, father of Kumatheris on the 3rd day of December 1959 paid Rs. 500/- to the Appellant in the presence of his son Don David and Gunapala. The Appellant reiterated his promise to secure employment for Kumatheris within a month or otherwise to return the money. He gave Singho a receipt for the Rs. 500/-, which is a part printed promissory note (P.1.) which was also signed by Don David and a man named Mayurapala as witnesses 20
- p.57
- (c) The Appellant failed to obtain employment for Kumatheris within the time limit or subsequently, On the 17th and 29th days of December 1959 he wrote letters to Don David (P.5 and P.6.) which prosecution alleged referred to the Appellant not yet having found employment, and on 7th and 20th days of October 1960 he wrote letters to Kumatheris (P.2 and P.3) which the prosecution alleged referred to the repayment of the money. 30
- p.58
- p.59
- (d) The Appellant also failed to repay the money, and after verbal complaint to the Assistant Food Controller on the 29th day of December 1960, Thomas Singho complained in writing (P.4) to the Commissioner, Bribery Commission. 40
- p.60-61

- 10 (e) The Appellant, who was unrepresented in the trial cross-examined all the prosecution witnesses. During his cross-examination of Prematillake Wijesiri the Appellant produced a second promissory note also for Rs. 500/-. (D.1) which the witness stated had been issued to him by the Appellant after he had paid that sum to the Appellant upon the Appellant also promising to find some employment for him. p.57
- 20 (f) The Appellant gave evidence on his own behalf stating that the promissory notes had been issued by him after he had borrowed Rs. 400/- from Singho at Rs. 40/- interest per month and had failed to repay the capital sum and to keep up with the interest payments. He stated that he had issued a promissory note in respect of the Rs. 400/- loan as well; this was not produced. He said he issued the promissory note to Prematilleke (dated 30th September 1959) for Rs. 500/-. (D.1) being Rs. 200/- borrowed by him from Prematilleke together with Rs. 320/- representing interest owed, Rs. 20/- being forgone. He said he issued the second promissory note (P.1) only two months later as a result of pressure on him, although no further sum of money was borrowed by him. p.30-36
p.57
p.57
- 30 (g) During cross-examination of the Appellant by Crown Counsel he denied suggestions put to him that he had taken money from a Rosalin Kariyapperuma under a promise to find her a job (no date being specified), he said he had only borrowed money from her. Crown Counsel then obtained leave to put to the Appellant "certain facts which will prove system, and in consequence his state of mind". The Appellant was thereupon cross-examined as to a conviction recorded against him that he had induced that lady to pay him Rs. 500/- by falsely representing that he would find a job for her. The Appellant admitted the conviction. p.35
p.39.1.24

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(h) The Appellant called two witnesses whose evidence failed to corroborate his contentions and which is not germane to the issues raised on this Appeal. A third witness a police Sergeant attached to the Bribery Commissioner's Department gave evidence that he made enquiries into this matter including seeing the Appellant and a witness tendered by him in June 1961 and that in October 1963 he handed over the file of the case to a senior officer.

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p. 40

4. On the 21st day of February 1968 the trial Judge convicted the Appellant of the charge. On the 29th day of February 1968 he gave his reasons. He set out the evidence in detail and included these findings :

p. 41-48

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".... I was impressed with the evidence of Thomas Singho, Junapala, Don David and Kumatheris. Their cross-examination did not raise any doubts in my mind about their evidence. I accept their evidence".

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p.46

"... There were two letters P.5 and P.6 produced by the prosecution which gave the lie to the accused's defence apart from the obvious falsity of his evidence".

p.47

".... Further (to the part of the letter P.5 reading: 'there is a delay in finalising the application') the evidence of the accused rings untrue from beginning to end."

p.47-48

".... This story of the accused struck me as utterly false and not worthy of credit".

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At the end of the statement of his reasons the trial Judge referred to the conviction of the Appellant without comment. He then said:

"I disbelieve the accused and reject his defence. For the above reasons I find the accused guilty of the charge".

5. The sole issues raised on this Appeal are:

(i) Whether the trial Judge was right to allow

Crown Counsel to cross-examine the Appellant as to the conviction recorded against him:

(ii) Whether the trial Judge relied on that evidence in convicting the Appellant or not the conviction ought to be allowed to stand:

10 (iii) Assuming that all the prosecution witnesses were accomplices (a) whether their evidence required corroboration (b) whether the trial Judge should have directed himself on the dangers of acting on the uncorroborated evidence of accomplices, (c) whether there was any such corroboration

20 (iv) Whether the evidence established that the Bribery Commissioners Department were satisfied with the Appellant's explanation in 1961 and if so what attention, if any, the trial Judge ought to give to such evidence.

6. The Appellant appealed against his conviction and sentence to the Supreme Court of Ceylon by a Petition of Appeal dated the 29th day of February 1968 signed by himself. The grounds set out in the said Petition of Appeal are not relevant to the issues raised in this Appeal.

p.49-51

30 7. The Appellant was represented by Counsel (Mr. Advocate Y.C. David). The Appeal was heard on the 23rd day of January 1969 and was dismissed. No reasons were given.

p.51-52

8. By Order in Council dated the 23rd day of May 1969 the Appellant was given Special Leave to Appeal in forma pauperis from the said Judgment of the Supreme Court

p.52-54

40 9. The Respondent concedes that the cross-examination of the Appellant on the conviction (whenever recorded) should not have been permitted either on the grounds advanced or on any other ground. Subsequent enquiry establishes that the conviction was recorded on

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the 30th day of July 1964

10. However, the Respondent humbly submits that this Appeal should be dismissed, the conviction of the Appellant upheld and the Judgment of the Supreme Court of Ceylon affirmed for the following amongst other

R E A S O N S

1. BECAUSE section 36 of the Courts Ordinance Chapter 6 provides:

"The appellate jurisdiction of the Supreme Court shall be ordinarily exercised only at Colombo. Subject to the provisions in that behalf in the Criminal Procedure Code or any Ordinance amending the same contained, such jurisdiction shall extend to the correction of all errors in fact or in law which shall be committed by any Judge of the Supreme Court sitting alone as hereinafter provided, to the correction of all errors in fact or in law which shall be committed by any District Court, to the correction of all errors in fact or in law which shall be committed by any Court of Requests in any final judgment or any order having the effect of a final judgment, and to the correction of all errors in fact or in law committed by any Magistrate's Court or by the Court of any Municipal Magistrate. But no judgment, sentence, or order pronounced by any court shall on appeal or revision be reversed, altered, or amended on account of any error, defect, or irregularity which shall not have prejudiced the substantial rights of either party".

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2. BECAUSE section 5 (1) of the Court of Criminal Appeal Ordinance Chapter 7 (a parallel provision dealing with Appeals from criminal trials held before the Supreme Court) provides:

"The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that

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it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

10 Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred"

3. BECAUSE section 167 of the Evidence Ordinance Chapter 11 provides:

20 "The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decisions in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision."

30 4. BECAUSE the conviction of the Appellant in the charge was, or would have been, recorded by the trial Judge independently of the proof of the conviction previously recorded against the Appellant.

5. BECAUSE the substantial rights of the Appellant were not prejudiced by the cross-examination and there was sufficient evidence to justify the conviction of the Appellant independently of the proof of the conviction previously recorded against the Appellant.

40 6. BECAUSE (on the question of corroboration) Section 79 (1) of the Bribery Act provides:

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"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."

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7. BECAUSE corroboration was not required, nor was it necessary for the trial Judge specifically to direct himself with regard to it.

8. BECAUSE corroboration of the evidence existed, in particular in the letter P.5 (page 58) and in Singho's complaint P.4 pages 60-61 by reason of section 157 of the Evidence Ordinance which provides:

"In order to corroborate the testimony of a witness any former statement made by such witness, whether written or verbal, relating to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved."

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9. BECAUSE (on the question of the Bribery Commissioner's Department) there is no provision in the Bribery Act or any other Act or Ordinance which requires that any finding by the Bribery Commission shall be admissible upon or influence any trial of any offence committed contrary to the said Act, save that under the said Act the Attorney general may prefer an indictment for bribery without a preliminary investigation following an investigation by the Commissioner.

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RICHARD DU CANN.

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