

1900.
January 22.

THE QUEEN v. JASIK APPU.

D. C., Galle, 12,777.

*Giving false evidence intentionally—Penal Code, s. 190—Form of indictment—
Two irreconcilable statements—Evidence negating truth of either
statement.*

In a prosecution for intentionally giving false evidence, under section 190 of the Penal Code, the indictment set forth two irreconcilable statements made by the accused, and averred, according to the form given in the Procedure Code, 1883, "one of which statements you either knew or believed to be false, or did not believe to be true."

Held that such an indictment was good, and that in cases where the two statements are so irreconcilable that one or the other must necessarily be false, it was unnecessary to offer any evidence to negative either assertion.

THE indictment in this case of intentionally giving false evidence ran as follows:—

That you, on or about the 5th day of April, 1899, at Balapitiya, in the District of Galle, in the course of the inquiry into P. C. case 18,930 before A. C. Gunetilaka, Esq., Police Magistrate of Balapitiya, stated in evidence as follows:—" Whilst I, my mother " Pol Babahamy, my cousin Aralishamy, and my younger brother " Dedrick Appu were returning from the boutique, we met these " accuseds.....Thereupon an altercation followed between my " mother and the first accused (meaning Wijemuni Marthelis). " The first accused snatched a katti from the second accused " (meaning Wijemuni Amadoris) and aimed a blow with it on my " mother, when I interfered and pushed the first accused. When " first accused was advancing towards my mother, I thought he " was going to do some harm to her.....I did not hold the katti. " I held the first accused's hand with which he held the katti. " It was with my right hand I held the first accused, then he cut me " on my left and ran away. When I got the cut, I had hold of his " hand." And that you, on or about the 3rd day of July, 1899, at Galle, in the course of the trial of the said case before F. J. de Livera, Esq., District Judge, stated in evidence as follows:—" This hurt was caused when we were going to Umaris's boutique " to buy provisions. The hurt was not caused when we were " returning from Umaris's boutique We had bought no " provisions I did not hold the accused at all. I did not " hold his hand. I did not hold accused's hand; that is true." One of which statements you either knew or believed to be false or did not believe to be true, and thereby you have committed an offence punishable under section 190 of the Ceylon Penal Code.

The accused admitted that he made the two different statements disclosed in the indictment, but said that he made them by a mistake.

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The District Judge found him guilty " of the charge laid in the " indictment " and sentenced him to six months' rigorous imprisonment.

He appealed, but did not appear in support of his appeal when it came on for hearing on the 18th January, 1900.

In his appeal petition it was stated that it was not impossible for an illiterate person like the accused to forget the statement he made at the inquiry, and subsequently to make a different and contradictory one with regard to the same matter at the trial, especially when a period of about three months had elapsed from the date of the inquiry in the Police Court of Balapitiya up to the trial in the District Court of Galle; and a reduction of sentence was prayed for.

Ramanathan, S.-G., appeared for the Crown and referred to D. C., Galle, 12,370, decided on 7th June, 1897; and BROWNE, A.P.J., referred to D. C., Galle, 12,533.

Cur. adv. vult.

22nd January, 1900. BROWNE, A.P.J.—

The indictment in this prosecution for an offence against section 190 of the Penal Code was drawn in the alternative form, which was originally prescribed by section 509 of the Criminal Procedure Code of 1883, and Schedule III., 22, 2, fourthly, thereof. This requirement was not re-enacted in the new Procedure Code, and much therefore of the comments of WITHERS, J., in 12,533, Criminal, D. C., Galle, *S. C. M.*, 29th March, 1898 (2 *Vand. Rep.* 80), no longer apply. Mr. Solicitor has informed me that the indictment was designedly presented in this form in order that it might be ascertained whether, although no longer prescribed or sanctioned, it may not still be apposite. In view of its having been approved in India (*Mayne 511, Starling, 6th edition, p. 234*), and therefore followed by LAWRIE, A.C.J., in 12,370, D. C., Galle (*S. C. M.*, 7th June, 1897), I see no objection to its use " where the " two statements are so irreconcilable that one or other must " necessarily be false." In such a case it is unnecessary to offer, in addition to the statements themselves, any evidence to negative either assertion. The statements on the subject of this prosecution were entirely irreconcilable, and I therefore affirm the conviction.