TEYVANAI *v.* NATHANIEL.

P. C., Hatton, 37,194.

1902.
October 7 and 14.

False evidence—Summary punishment of—Criminal Procedure Code, s. 440.

The procedure prescribed by section 440 of the Criminal Procedure Code for the summary punishment of a person giving false evidence is not obligatory on the Magistrate. If he thinks fit, he may transmit the record to the Attorney-General or send the offender before a Police Court to be dealt with in the ordinary way.

It was not intended by the Legislature to dispose of cases of giving false evidence summarily, where such evidence involved the concoction of a false charge and the subornation of false testimony.*

THIS was an appeal from a conviction under section 440 of the Criminal Procedure Code for giving false evidence. The facts of the case are fully set out in judgment of the Supreme Court.

Bawa, for appellants.

H. J. C. Pereira, for respondent.

Cur. adv. vult.

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* The decisions pronounced by the Supreme Court in this case and in *Andris v. Juwanis* (*2 N. L. R. 77*), D.C., Ratnapura, 540 (*Koch's Reports 32*), *Queen v. Fernando (4 N. L. R. 218)*, and *Achchi Kannu v. Ago Appu (5 N. L. R. 87)*, appear to establish the following principles:

1. That the punishment of false evidence summarily as a contempt of court is justifiable either where a statement is on the face of the witness' deposition a false one, or where it is shown to be false by a contradictory statement of the same witness in the course of a previous judicial proceeding relating to the same matter.

2. That the summary method should not be adopted where, by reason of a conflict of evidence between witnesses, one or more of them is believed by the Magistrate or Judge to have given false evidence; or where the evidence found to be false was given in support of a concocted charge, or as the result of a conspiracy to suborn witnesses.

3. That in the latter class of cases it is the duty of the Magistrate or Judge to forward the record to the Attorney-General, or proceed in manner provided in section 380 of the Criminal Procedure Code.—ED.

1902. *October 7 and 14.*

14th October, 1902. WENDT, J.—

In this case two women, the appellants, charged one Nathaniel with using criminal force to them with intent to outrage their modesty, an offence punishable with two years' rigorous imprisonment and fine and whipping under section 345 of the Penal Code. Their story was that the accused, who was the conductor on Osborne estate, and in charge of the labour force to which these women belonged, ordered them to go to a secluded part of the estate for work, and there committed the offence, first on one of the appellants and then on the other. The acts deposed to by the appellants, if true, established the charge against the conductor. They called one witness Narayanen, who to a certain extent corroborated them. Before his evidence was taken the Magistrate, on the depositions of the women, issued a warrant against the accused, who, when he appeared, made a statement to the effect that the charge was absolutely false. He said it was got up against him because of his strictness with the labour force, and owing to his having earlier in the day in question had occasion to find fault with some coolies for shirking work, and this had led to an assault upon him by a number of coolies, among whom were Narayanen and the husband of one of the appellants. The case not being summarily triable, the accused did not give evidence, but he called two witnesses, who affirmed to having seen the attack on accused, the appellants being also present at it.

The Magistrate, without submitting the case to the Attorney-General, discharged the accused, considering the charge grossly untrue. He believed that the appellants had committed perjury in the course of the proceedings and proceeded against them under section 440 of the Criminal Procedure Code. The passage in first appellant's deposition upon which he elected to assign perjury was this: "Then he pulled me by both my arms, after taking off my *cumbli* and putting it on the ground. He then struck me with the umbrella till the handle broke." The passage selected in the case of the second appellant was this: "Then the accused came running and pulled my *cumbli* and asked me to lie down." The Magistrate convicted both appellants and fined them Rs. 50 each with two months' rigorous imprisonment in default of payment—being the maximum punishment he had it in his power to impose. The question is whether these proceedings can be supported.

It is clear from the view taken by the Magistrate that he believed the charge to be entirely without foundation. To quote his own words: "In the present instance the proceedings do not satisfy me

that the evidence is even faintly tinged with truth." The depositions of the two appellants were consistent and corroborated each other as to the incidents necessary to establish their charge, although discrepancies appeared in other details. If these depositions were false, they were wilfully false, and were clearly the result of a conspiracy between the two appellants; with the complicity possibly of their witness Narayanen. They conspired together to prefer a most serious and altogether unfounded charge against the accused—a charge which, if believed, would have led to his committal before a higher Court, and in the event of conviction there, would have ruined his prospects for life. I do not think that where so serious a crime is *primâ facie* established against a witness, he should be dealt with under the very limited powers which section 440 confers on inferior Courts. The procedure prescribed is not obligatory, and the section itself (sub-section 4) reminds the Magistrate that he is entitled, if he thinks fit, to transmit the record to the Attorney-General or to send the offender before a Police Court to be dealt with in the ordinary way. I think this view of section 440 is that established in the cases decided by this Court, the most important of which was cited to the Magistrate. *Andris v. Juwanis* (*2 N. L. R. 74*) was brought before the Full Court in order that an authoritative ruling might be given on what was then a new enactment, viz., section 12 of the Oaths Ordinance of 1895, which is copied into section 440 of the Criminal Procedure Code. The Court laid it down that "this summary procedure should only be used in cases where it is clear on the face of the proceedings that witnesses have been guilty of wilfully giving false evidence, not in a case where there is a conflict of testimony. In the latter class of cases Magistrates would do well to exercise one of the alternative courses open to them under section 12 of the Ordinance." Lawrie, J., said: "The Police Magistrate was of opinion that these appellants gave false evidence to secure the conviction for robbery of an innocent man. This serious perjury cannot adequately be punished by a Police Magistrate by a small fine, nor indeed can so serious an offence be summarily dealt with without a trial."

In D. C. (Criminal), Ratnapura, 540, (*Koch 32*), which was a similar case to the present, Withers, J., commented on and explained *Andiris v. Juwanis*. See also the remarks of Withers J., in *Silva v. Jonna* (*4 N. L. R. 26*). The Magistrate does indeed, in the case of one of the appellants, show that she contradicted herself, but he finds that this inconsistency was due to the untruthfulness of the witness's whole narrative.

I think the offence, if any committed by these appellants was of so grave a character that it was punishable with a much more

1902. *October 7 and 14.*

WENDT, J.

severe sentence than a fine of Rs. 50, and that the Court ought therefore not to have dealt summarily with them, but followed one of the alternative couses open under section 440.

I therefore set aside the conviction, and, as was done in the case of *Andris v. Juwanis*, direct the Magistrate to forward the record to the Attorney-General.

I am alive to the consideration mentioned by Bonser, C.J., in *Andris v. Juwanis*, that a light punishment, following with certainty close upon the offence, is far more efficacious than a mere chance of a much heavier punishment which may never be inflicted, but I think that the effect of Police Courts dealing summarily with cases of criminal conspiracy like the present will not be wholesome. It will induce the belief that the punishment for concocting a false charge and suborning false testimony to support it will be at the utmost a fine of Rs. 50, for a person fined under section 440 could not afterwards be prosecuted for the same offence.