

LILIAN MALINEE
v.
THE ATTORNEY-GENERAL

COURT OF APPEAL.

BANDARNAYAKE, J. AND JAYALATH, J.

C.A. APPLICATION No. 1365/85.

M.C. KULIYAPITIYA 84555, 84556, 84557 AND 84558.

MARCH 3, 1986.

Prevention of Crimes Ordinance—Interpretation of ‘previous conviction’—Sentence.

Two accused persons pleaded guilty to the charge of the robbery of gold chains on the highway in four cases, viz:

- No. 84555—offence committed on 27.9.85
- No. 84556—offence committed on 10.10.85
- No. 84557—offence committed on 15.10.85
- No. 84558—offence committed on 15.10.85

The Registrar of Fingerprints reported no previous convictions against them. Heavier punishment was imposed in case No. 84555 than in the other three: There was no doubt the Magistrate acted so taking into account the convictions in the other three

cases although the offences in those cases were committed on dates after the date of the offence in case No. 84555 was committed. In dealing with the accused in case No. 84556 the Magistrate referred to cases No. 84557 and No. 84558 where the date of commission of the offence was subsequent.

Held—

(1) There is no objection to a Magistrate dealing with an accused in several cases against him on the same day where the accused pleads guilty.

(2) For the purpose of passing an enhanced sentence a previous conviction as contemplated by the Prevention of Crimes Ordinance is a conviction of an offence committed on a date prior to the date of offence of the crime charged, that is a conviction for an offence committed anterior to the date of offence of the case being inquired into. The Magistrate had therefore made a wrong use of the provisions of the Prevention of Crimes Ordinance.

N. K. M. Perera with Miss L. S. Abeyskera for petitioner.

A. Gooneratne, S.C. for State.

Cur. adv. vult.

April 3, 1986.

BANDARANAYAKE, J.

Four cases were instituted in the Magistrate's Court of Kuliypatiya against two accused persons, Dias and Jayaratne with having committed offences of robbery in each case punishable under s. 380 of the Penal Code. These cases were registered under the numbers 84555, 84556, 84557 and 84558. When these cases were instituted on 17.10.85 each of the accused who were not represented by counsel pleaded guilty to the charges in each of the said cases. They were convicted in each case upon their own pleas. The Registrar of Fingerprints certified that both accused had no previous convictions.

On 31.10.85 the learned Magistrate proceeded to sentence each accused in each of the cases upon their own pleas of guilt. In case No. 84555 he has sentenced each accused to two (2) years' rigorous imprisonment plus a fine of Rs. 500, in default three (3) months' rigorous imprisonment. In Case No. 84556 the journal entry of 31.10.85 states that each accused has been convicted in case numbers 84555, 84557 and 84558. He has thereafter proceeded to sentence each accused to one years' rigorous imprisonment. In case

No. 84557 the journal entry of 31.10.85 reads that the accused have been punished in case Nos. 84555 and 84556 today and the Magistrate has proceeded to sentence each accused to one year's rigorous imprisonment. In case No. 84558 the journal entry of 31.10.85 is to the effect that "the accused have no record of previous convictions. Today each has been punished in case No. 84555". The Magistrate has thereafter imposed a sentence of one (1) years' rigorous imprisonment on each of the accused. From the references made to other convictions of that day it would appear that the Magistrate took up case No. 84555 first for sentence and then took up 84558, 84557 and 84556 in that order.

The four cases have been amalgamated for the purpose of this application.

Two matters of law were urged by learned counsel appearing for the petitioner. In the first place it was submitted that the Magistrate has been biased on account of the number of cases he has taken up against each accused that day. The Magistrate should not have dealt with a number of cases against an accused person on the same day as such a course would inevitably result in prejudice to the accused. The second matter of law raised was that by the fact that reference has been made in each of the cases to the convictions entered in the other cases that day the Magistrate has when dealing with each case treated the orders he made in the other cases as a previous conviction and has taken such 'previous conviction' into account in assessing the quantum of punishment he should award in the case. This it was submitted was an error which prejudiced the accused in regard to the sentence that was imposed on him. As the report of the Registrar of Fingerprints showed that these accused had no previous convictions it was wrong for the Magistrate to treat the convictions of that day, namely the 17th of October 1985, against each accused as previous convictions and enhance sentence. The convictions of 17.10.85 do not show the accused as being non-repentant, unreformed persons continuing in criminal activity notwithstanding earlier punishments and thus attracting the provisions of the Prevention of Crimes Ordinance meant for the supervision of criminals and their more effective punishment and for their prolonged detention away from society. In the result counsel urged that this Court should interfere with the sentences.

It is observed that when the cases were instituted against the accused they voluntarily pleaded guilty in each of the cases even without representation by counsel. They thus acknowledged the jurisdiction of the Court and accepted the bona fides of the Court. They cannot now therefore be heard to complain of bias or prejudice by reason of the fact that there was an expeditious disposal of the cases upon the pleas of guilt which apparently they themselves desired. The Magistrate's Courts of this country often experience persons charged with criminal offences being brought up before the same Court on numerous occasions and it is the duty of the Court to hear those cases impartially and without bias. In each of the cases under discussion the accused have pleaded guilty for the commission of a serious crime, namely, of robbery of gold chains on the highway.

The second matter of law raised as I have stated was that the convictions of 17.10.85 should not have been treated as previous convictions for the purpose of enhancement of sentence. It was submitted that convictions of that day were not 'previous convictions' as contemplated by the Prevention of Crimes Ordinance. I am of the view that a 'previous conviction' as contemplated by the statute is in relation to an offence committed prior to the date of offence of the crime charged. That is a conviction for an offence committed anterior to the date of offence of the case being enquired into.

It is necessary therefore to examine the records to ascertain whether the learned Magistrate has in effect acted under the Prevention of Crimes Ordinance in determining the sentence in each case. The charge in each case is identical. Except for the particulars in the charge no other facts were before the Court. But in this setting, differences in sentence in case No. 84555 and the other three cases is striking. In case No. 84555 each accused has been sentenced to 2 years' rigorous imprisonment, whilst only a sentence of 1 year's rigorous imprisonment has been imposed in each of the other cases. Again in case No. 84555 each accused has been fined Rs. 500 in default 3 months' imprisonment whereas in the other cases no fine has been imposed. How was this distinction made? In the other three cases reference has also been made to the convictions of 17.10.85. It is apparent in this background that the learned Magistrate has in fact taken into his reckoning the convictions of 17.10.85 in assessing sentence in each case. He has imposed a heavier sentence in the first case 84555 and in view of that given lighter sentences in the other

casés. Some convictions entered on 17.10.85 were not 'previous convictions' attracting the provisions of the Prevention of Crimes Ordinance. For instance in imposing a very heavy sentence of 2 years' rigorous imprisonment and Rs. 500 fine in case 84555 there is no doubt he has taken into account the convictions in the other three cases. But those offences have been committed after the date of offence in case No. 84555. The date of offence in case No. 84555 was 27.09.85 whereas the dates of offences in the other cases were 10.10.85 and 15.10.85 respectively. Again in case 84556 when the date of offence was 10.10.85, the Magistrate refers to cases Nos. 84557 and 84558 where the offences have been committed on 15.10.85, i.e. after the offence committed in case No. 84556. There was thus a wrong use of the provisions of the Prevention of Crimes Ordinance. This approach could well have influenced the quantum of sentence in cases 84557 and 84558: I, therefore, set aside the sentences in all the cases against each accused. Each offence to which the accused have pleaded guilty involves the use of violence. I sentence each accused to 6 months rigorous imprisonment in each of the cases 84555, 84556, 84557 and 84558.

JAYALATH, J. – I agree.

Sentences varied.
