

1933

Present : Koch A.J.

KING v. DAVID.

194—D. C. Colombo, 45,517.

Oaths Ordinance—Summary punishment for perjury—Procedure to be followed—Ordinance No. 9 of 1895, s. 12.

Where a District Court deals with a witness summarily for giving false evidence under section 12 of the Oaths Ordinance, the reasons given for doing so must follow upon and be subsequent to the explanation furnished by the accused.

The person charged should be confronted with the specific statements on which the charge is based and should be called upon to show cause why he should not be convicted and, thereafter, if no cause is shown, the Court should find which of those statements is false and record its reasons.

A PPEAL from a conviction by the District Judge of Colombo.

L. A. Rajapakse (with him *Atulathmudali*), for defendant (witness), appellant.

H. H. Basnayake, C.C., for Crown, respondent.

September 12, 1933. KOCH A.J.—

The appellant in this case, who is the defendant in D. C., Colombo, No. 45,517 (Civil), was convicted by the learned District Judge under section 12 of the Oaths Ordinance, No. 9 of 1895, of perjury as for a contempt of Court and was sentenced to pay a fine of Rs. 50. The circumstances under which the appellant was convicted and the procedure adopted are very material.

The learned District Judge, after dealing in his judgment with the facts of the case he was trying, proceeded in concluding his order to "call upon the appellant to show cause why he should not be punished for contempt of Court committed by his falsely stating—

- (1) that the lorry was in Julis' possession on August 3,
- (2) that the profit went to Carolis and he was paid Rs. 2 a day,
- (3) that he knew nothing about the payment of instalments on the hire purchase agreement.

I shall confine myself to these three points, though there are numbers of others.

The defendant states 'I did not state any falsehood'. I do not accept his explanation." The above passages, which I have quoted verbatim are taken from the concluding portion of the District Judge's judgment. I may be quite prepared to agree that the learned District Judge was very justifiably exasperated by statements made by the appellant in the course of his evidence before him and whose conduct in his opinion deserved to be condemned and the wrong-doer punished,

but the law is very strict as to the procedure that should be adopted in such a case, and it is very necessary to see that the requirements of the law have been duly complied with.

The trial Judge in such a case may take steps to see that the alleged perjurer is tried under section 190 of the Ceylon Penal Code, in which case the evidence alleged to be false has to be proved to be so. He may in the alternative, as the learned District Judge purported to do in this case, deal with the culprit under section 12 of the Oaths Ordinance which corresponds to section 440 of the Criminal Procedure Code, but in adopting the latter course he must be careful to see that the steps which have been considered necessary by law should be taken in due order. In the first place, considering that the offence is punishable with rigorous imprisonment on failure to pay a fine, one would be inclined to think that the witness should not be called upon to plead in the course of delivering the judgment, but that after the judgment is concluded the Court as a separate step should charge him with the specific statements on which the Court is relying, and that the person charged should next be confronted with these statements and asked to show cause, if any, why he should not be convicted, and thereafter if no cause, is shown or the cause shown is in the opinion of the Judge valueless the Court must find which of these statements is or are false and should record the reasons for so finding. The latter requirements in any event have been held to be absolutely necessary when this power is exercised by Courts other than the Supreme Court.

In *Sivakolunthu v. Chelliah*¹ Wood Renton J. states that although he had no sympathy with mere technical objections, and although he was prepared to interpret the section in a wide sense, he was at the same time not prepared to waive any of the requirements by which the Legislature and the Supreme Court have safeguarded the exercise of the power conferred on legal tribunals under section 12 of the Oaths Ordinance or section 440 of the Criminal Procedure Code. No doubt under this section the perjurer can be summarily sentenced, but that is all the more reason for insisting that whatever requirements have been laid down should be very strictly complied with.

This view has so conspicuously commended itself to Drieberg J. that His Lordship in a recent case, *Dewaya v. Bilinda*,² specifically drew the attention of the lower Court to it. In the course of his judgment he observed that it was necessary that the Court should be of opinion not merely that the evidence of a witness was generally false or unreliable but that specific statements made by him are false.

Now in the case before me all that the learned District Judge says is "I do not accept his explanation"; no reasons are given nor is the learned Judge specific in regard to which particular statement of the three referred to was the explanation not acceptable. The learned Crown Counsel who appeared in support of the conviction argued that the explanation was not presumably acceptable as to each and all the three statements. My answer to this firstly is that the requirements are strict and there should be no inferences, secondly, to take only one

¹ 13 N. L. R. 289.

² 6 C. L. R. 122.

such statement, "he knew nothing about the payment of instalments on the hire purchase agreement". If these were the exact words of the witness—I am assuming that the translation from Sinhalese to English was meticulously correct if the witness gave his evidence in the vernacular—the meaning or implication may be either that the witness did not know of even the existence of a hire purchase agreement and consequently was not aware of payments, or that he knew of the bare fact that an agreement was entered into but was deplorably ignorant of what payments had to be made and whether any of them had been actually made. All this requires investigation and discrimination and has *ex facie* not been done in this case. The learned counsel also argued that the reasons for not accepting the explanation had been given in the course of the judgment. I have already indicated that it was the concluding portion of the judgment that dealt with the appellant so far as this charge was concerned. The reasons contemplated in section 440 (1) of the Criminal Procedure Code or section 12 of the Oaths Ordinance must follow and take place subsequent to the accused being called upon and after conviction. If reasons have at all been given, they precede this step and were substantially necessary for arriving at a conclusion on facts raised by the issue at the trial of the civil case, and not for supporting a conviction for perjury which was contemplated later.

For these reasons the conviction must be set aside and the appellant acquitted.

Set aside

