

1944

Present : Moseley S.P.J.

ELLAWALLA, Appellant, *and* INSPECTOR OF POLICE,
Respondent.

234—*M. C. Colombo, 2,279.*

Cheating—One false representation—Three offences—Continuing representation—Penal Code, s. 398.

Where, on the strength of one expressed representation, which was false the accused was charged with three offences of cheating, committed within the course of three months—

Held, that the combination of three offences in one charge was not irregular if it could be inferred from all the circumstances that the representation was a continuing one.

¹ *11 Moore Indian Appeals, p. 486.*

A PPEAL from a conviction by the Magistrate of Colombo.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen*), for accused, appellant.

R. R. Crosette-Thambiah, C.C., for complainant, respondent.

Cur. adv. vult.

January 25, 1944. MOSELEY J.—

The appellant was convicted, on three counts, of cheating. He was charged with deceiving the Petrol Controller into the belief that coupons for an extra one hundred and fifty gallons per month were necessary for the requirements of the Aero Club of which the appellant was President, and that he thereby induced the Controller to deliver coupons to that extent during the months of February, March and April, 1942, respectively. It may be that the learned Magistrate in the course of an exhaustive and, on the whole, careful judgment has attached too much importance to certain items of evidence or has drawn an inference which cannot be wholly justified, but his findings in respect of the points essential to the constitution of the offence of cheating are unassailable. He found, as facts, that the appellant not only signed but was the author of the letter to the Controller which contained the representation as to the requirements of the Club. He found that that representation was palpably false and that the appellant was aware of its falsity. In regard to the dishonest intention of the appellant, he gave due regard to the infirmities in the evidence of the witnesses, Martin and Don Vincent, and to the character of the latter but had no difficulty in finding that such intention existed. With these findings of fact I am in complete agreement. It is abundantly clear that the Controller was cheated.

The only point which seemed to me to call for consideration is whether the appellant who had in fact made but one *express* representation, was properly charged with the commission of *three offences*. The extra coupons for the month of February were stated by the Controller to have been issued in view of the representation made to him on that occasion by the appellant. Thereafter no further representation was expressly made. It is not, however, necessary that the representation should be made in express words, if it can be inferred from all the circumstances attending the obtaining of the property. If authority is required for this proposition, it can be found in *Khoda Bux v. Bakeya Mundari*¹, approved in *Ram Chand v. Jai Dial*². The fact that no unexpended coupons, that is, coupons in excess of requirements were ever returned by the Club to the Controller seems to me to imply a representation on the part of the appellant that the extra coupons for which he had applied were still required. The representation made in the original letter, in the absence of express variation may properly be held to be a continuing one. I have no doubt but that the appellant was properly charged with, and convicted of three offences. The sentences imposed seem to me in no way excessive.

The appeal is dismissed. Conviction and sentences affirmed.

Appeal dismissed.

¹ 32 Cal. 941.

² 13 Cr. L. J. 456.