

*Present: Jayewardene A.J.*

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KANTHAR MURUGESU v. KANTHIAH SIVAGURU.

486—*P. C. Mallakam, 3,484.*

*Charge of perjury—One of the statements obviously false—Materiality of the inconsistent statements—Criminal Procedure Code, s. 440.*

Where a witness makes two contradictory statements one of which is obviously false, he may be punished summarily for perjury under section 440 of the Criminal Procedure Code.

It is not necessary that the false statement should be upon a material point in the case.

*Spencer Rajaratnam*, for complainant, appellant.

August 10, 1926. JAYEWARDENE A.J.—

In this case the appellant appeals against his conviction under section 440 of the Criminal Procedure Code and a fine of Rs. 50. The appellant is the complainant in the case, and in the course of his examination he stated on oath " I have not come to Court before ;

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I have come to watch cases; I have not come to Court as a party in any case." Then in examination he said "accused and his wife sued me in a dowry case. I filed answer."

In view of these two contradictory statements the learned Magistrate called upon the complainant to show cause why he should not be dealt with under the section I have already referred to. The complainant said "I forgot." The learned Magistrate considered this explanation unsatisfactory for reasons given in the judgment and sentenced him to pay a fine of Rs. 50. He appeals and on his behalf several legal objections are taken.

Reliance is placed on the case of *Sivakolunthu v. Chelliah*,<sup>1</sup> where it was held by a former Chief Justice of this Court that a Magistrate has no power to punish summarily as to contempt of Court a witness for making two contradictory statements. The principle laid down in that case might be accepted as a useful rule of guidance, but in that case the statements made by the complainant, who was fined, showed that either of the inconsistent or contradictory statements might have been true. It is not a case in which the falsity of one of the statements is obvious.

In the present case the falsity of the statement of the accused that he did not come to Court as a party in any case is manifestly untrue in view of his admission that he was a party in a civil case. In my opinion, therefore, the case of *Sivakolunthu v. Chelliah* (*supra*) has no application to the present case. Then it is argued that the point on which false evidence is given must be material to the case under investigation. A reference is made to the case of *Cooray v. The Ceylon Para Rubber Co., Ltd.*<sup>2</sup> That was a dictum of Sir Thomas de Sampayo in the course of his judgment in that case, but the decision of that case did not depend upon the fact that the statement made was not material to the case. The learned Judge came to the conclusion that the explanation offered by the witness, who was the appellant, was in the circumstances of that case a satisfactory one. The witness stated "I have forgotten," and the learned Judge observes "I am not surprised that the man forgot, or had no clear recollection of one small detail of a transaction which took place thirteen years before, and which, according to the District Judge himself, was carried through by his brother Medduma Bandara. I think either the appellant's explanation should have been accepted, or the matter should have been overlooked as not worth noticing."

I may point out that under the definition of false evidence as given in the Penal Code, and which has been incorporated into section 440 expressly, it is not required that the false statement should be on any material point. I believe the English law is different, and requires that the false evidence or false statement should be on a material point. In considering the sentence the materiality or otherwise of

<sup>1</sup> 13 N. L. R. 289.<sup>2</sup> 23 N. L. R. 321, at p. 320

the statement can be taken into consideration. In view of the character that the learned Judge gives the complainant I do not think that he deserves very much sympathy. I may also point out that in his evidence before the Magistrate he stated that he was fifty-five years of age, and in his petition of appeal he says he is sixty years of age and not of sound memory, and was therefore confused in the witness box. I think the appellant is scrupulous.

In any case, I think the fine of Rs. 50 is excessive, and I would reduce the fine to Rs. 25, or in default one month's rigorous imprisonment.

*Conviction affirmed; Sentence varied.*

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