

1935

Present : Macdonell C.J.

KING v. GUNERATNE et al.

41-42—D. C. (Crim.) Colombo, 10,637.

Appeal—Findings on fact—Duty of Court of Appeal—Three tests to be applied.

In an appeal from a judgment on questions of fact the Court of Appeal will apply the following tests, viz. :—

- (1) Is the verdict of the Judge unreasonably against the weight of evidence ?
- (2) Was there a misdirection either on the law or the evidence ?
- (3) Has there been wrong inference from matter in evidence which is as much before the Court of Appeal as it was before the trial Court ?

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

Francis de Zoysa, K.C. (with him *Sri Nissanka* and *Pandita Gunawardene*), for the first accused, appellant.

R. L. Pereira, K.C. (with him *M. C. Abeyewardene*), for the second accused, appellant.

J. E. M. Obeyesekere, Acting Deputy S.-G. (with him *M. F. S. Pulle, C.C.*), for Crown, respondent.

February 19, 1935. MACDONELL C.J.—

In this case the two accused were found guilty by the District Judge of Colombo on the second count of the indictment the effect of which was that they represented that the girl Mabel, daughter of the first accused, was a major on February 25, 1929, and by that false representation induced a certain Mr. Sivasubramaniam, a proctor, to advise his client a Mr. Rajendram, to purchase a certain land in the Colombo District. They were also found guilty on the third count of the indictment of falsely representing to the same Mr. Sivasubramaniam that the second accused was a proctor for one Mrs. Scharenguivel, mortgagee of the land, and thereby inducing Mr. Sivasubramaniam to deliver to the second accused a cheque for Rs. 1,240.

The evidence has been analysed so completely on both sides—and I am very grateful for that analysis in a somewhat complicated case—that it is unnecessary to go through it at length.

This is an appeal mainly on facts from a Court which saw and heard the witnesses to a Court which has not seen or heard them, and in dealing with this judgment I have to apply the three tests, as they seem to be, which a Court of Appeal must apply to an appeal coming to it on questions of fact. Can we say that the verdict of the learned District Judge, namely, that these people are guilty, was unreasonably against the weight of the evidence adduced on both sides? Clearly it is not possible to say that. Can we say that there has been any misdirection either on the law or on the evidence? Again I do not think it would be possible to say so. There was a point of law argued here that accused had no intention to 'cause loss in the end'; I have considered that, and properly understood, I do not think it is a misdirection in law at all. I do not remember any other point that was seriously raised to this Court as a misdirection. Then there is the third ground of interference, that the Court of trial has drawn the wrong inference from matter in evidence which is as much before this Court as it was before the Court of trial, for instance, documents. Again, I do not think it can be said that there has been any such wrong inference drawn by the Court of trial. On the contrary, the documents put in seem, rightly apprehended, to support the findings of fact arrived at by the learned District Judge.

I have read through all the evidence carefully because I wished to satisfy myself that both the accused took part in these two separate false representations which misled Mr. Sivasubramaniam and his client, and I am satisfied that there was ample evidence to convict them both. These appeals must therefore be dismissed.

Affirmed.