

1916.

Present: De Sampayo J.

MANUEL APPU *v.* PILORIS SINGHO *et al.*

595 to 597—P. C. Negombo, 25,354.

Counter cases—Agreement by parties and proctors to read evidence for prosecution in one case as evidence for defence in other case, and vice versa.

There was an encounter on the high road between the complainant and the accused, out of which two counter cases arose.

It was agreed by the parties and their proctors that the evidence for the prosecution in one case should be taken as the evidence for the defence in the other case, and *vice versa*, and the Magistrate after trial dealt with the evidence in both cases in one judgment, and convicted the accused and acquitted complainant.

Held, the proceedings were not irregular.

THE facts appear from the judgment.

Zoysa, for accused, appellant.

July 11, 1916. DE SAMPAYO J.—

This appeal raises a point of law as to admissibility of evidence. There was an encounter on the high road between the complainant

and the accused, out of which two counter cases arose. In this case the complainant charged the accused with theft and assault (to which the Magistrate added a charge of wrongful confinement), and in the counter case, No. 25,355, the accused charged the complainant with theft of a bull. The two cases came on for trial on the same day before the same Magistrate, and it was agreed by the parties and their proctors, in order to save the trouble of recording evidence twice over, that the evidence for the prosecution in one case should be taken as the evidence for the defence in the other case, and *vice versa*. The proceedings, in fact, constituted one trial, and the Magistrate dealt with the evidence on both sides in one judgment, with the result that the complainant was acquitted of the charge made against him, and the accused were convicted on the charge of wrongful confinement. It is objected that it was irregular to admit against the accused in this case the evidence given by them or on their behalf in the other case, and *Hanniappu v. Babappu*¹ is cited in support of the objection. The proposition there laid down that "no consent on the part of the accused or his proctor can make depositions of witnesses taken in another case legal evidence in a criminal prosecution" is, of course, quite acceptable. The facts of that case, however, are not fully reported, though it appears that there, too, there were counter cases. Whether the cases were heard in the same way and under the same circumstances as the present cases were does not appear. No specific provision of law has been cited, and I am unable to regard the decision as governing this case. I fail to see on what principle the evidence given by and for the accused themselves, and considered by the Magistrate at their own request, can be ruled out as inadmissible. This is not a case of depositions falling under section 33 of the Evidence Ordinance, which requires certain conditions to exist for the admission of the depositions in that sense, but it is evidence given practically in the same judicial proceeding and for the purpose of defence against the very charge made by the complainant though at the same time it was intended to support the counter charge as well. The evidence was taken in the presence of both the parties, and with the same facilities of examination and cross-examination. The fact that the evidence was recorded in separate paper books makes, in my opinion, no difference; the evidence for both sides must, I think, be considered as a whole, and as one entire body of evidence. If any prejudice was caused to the accused by the nature of the proceedings, I might interfere without reference to the soundness of the legal objection, but no such prejudice has been or can be suggested as having occurred.

There is no good ground for interfering with the conviction on its merits, and the appeal is therefore dismissed.

Appeal dismissed

¹ (1885) 1 S. C. R. 120.

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DE SAMPAJ.
J.

*Manuel
Appu v.
Piloris
Singho*