

1934

*Present : Akbar J.*RUBEN *v.* SHEENGHYE.120—*P. C. Kandy, 43,308.*

*Dentists, Registration of—Dental operation or service—Meaning of expression—  
Fitting of artificial teeth—Ordinance No. 3 of 1915, s. 18 (1).*

The expression "dental service" in section 18 (1) of the Dentists Registration Ordinance would include the act of making artificial teeth to fit the gap in the teeth of the person to whom the service is done and of fixing it into position.

**A** PPEAL from a conviction by the Police Magistrate of Kandy.

*Athulathmudali*, for accused, appellant.

March 16, 1934. AKBAR J.—

The accused was convicted under section 18 (1) (c) of the Registration of Dentists Ordinance, No. 3 of 1915, because he had performed for gain a dental operation or service on November 24 last, in that he had fitted on an artificial tooth to one Punchiappu without being registered as a qualified dentist under that Ordinance. He has been fined Rs. 50. The appeal is from this conviction and fine.

Under the sub-section the prosecution must prove three elements, namely: (1) that the accused was not a registered dentist under the Ordinance, (2) that he performed a service which must amount to a

dental service or in other words dental advice or operation or service, (3) that the accused performed this act for gain. Now Mr. Athulathmudali has quoted a case in the English Courts, of 1934, under the Dentists Act which is of some importance in this case—the case of *Hennan & Co. v. Duckworth*.<sup>1</sup> The words in the English Act are “dental operation, dental attendance or advice”. Wills J. stated as follows:—“I say with some reluctance because, probably, there is no part of a dentist’s work which requires more care and very often more skill than the preparation and manufacture of false teeth, and it might very well have been that the words would have covered such a case as this. But I do not think that it is possible to say that making the teeth can come under ‘dental attendance or advice’. Therefore we are really driven to the question whether the words ‘dental operation’ are sufficiently large to include such work as this. It seems to me that a dental operation—an operation in respect of the teeth—really means an operation in a surgical sense, something that is to be done, not upon the false teeth, but upon the living person, and that what really is charged for here is that which was not done upon the person, but was done upon the incomplete set of false teeth, in order to make them fit to the person; and I do not think that ‘dental operation’ can reasonably be construed to cover such a state of things as that”. It will be seen from this extract of the judgment that the words “dental operation” meant something not to be done upon the false teeth but upon the living person. Unfortunately the words “dental service” do not occur in the English Act. Adopting the criterion suggested by Wills J., one can perfectly explain the meaning of the words “dental service” if we consider the words as meaning some service which will include the skill of the accused in making artificial teeth to fit the gap in the teeth of the person to whom the service is done, and also in actually fixing it into position in the gap. If such additional facts are proved beyond the mere selling of the artificial tooth, the words “dental service” will cover such a case.

In my opinion after hearing the evidence which was read out to me very carefully by Mr. Athulathmudali, I think the conviction is wrong for the following reasons:—The three prosecution witnesses Punchiappu, Marthelis, and Illukkumbure had a very great interest in the prosecution. Illukkumbure, who gave information to the Inspector, is a practising dentist and he set the law in motion against the accused. Competition affected his practice considerably and the way he set about getting the Inspector to prosecute was as follows:—he had a servant Marthelis, and, according to Illukkumbure, he made use of a decoy in the person of Punchiappu to set a trap for the accused. The learned Magistrate is quite right in his judgment when he says that both of them are servants of Illukkumbure. That is the only conclusion to which one can come from the contradictions that one finds about the status of Punchiappu in the evidence of these three witnesses. According to Punchiappu he went to Illukkumbure on the day before November 22, to get a tooth fitted on, later he contradicted it and said it was to get it extracted and a new one fitted; it was Illukkumbure who gave money to Punchiappu to go to the Chinese dentist and get a tooth fitted—the

<sup>1</sup> Volume 90, *Law Times*, page 546.

ference is that it was Illukkumbure who pulled out the tooth which made way for the new tooth—in the presence of Marthelis, but Marthelis says that Punciappu paid his own money and no money was paid to Punciappu by Illukkumbure; further Marthelis admitted in cross-examination that Punciappu used to come frequently to Illukkumbure to take his meals there; he also admitted that Punciappu was not a great friend of his. I think from these circumstances and other circumstances which I need not detail it is not difficult to say that Punciappu and Marthelis were servants of Illukkumbure whom he utilized that day for the purpose of the trap. On November 22 Punciappu went to the accused who is a Chinese dentist and ignorant of any knowledge of the Sinhalese language and asked him to fit on a tooth. He asked for Rs. 4 and was given an advance of Re. 1 and the accused took an impression of the gap. Punciappu was to go on the 24th to have the tooth fitted on, but before he could go there he was taken by Illukkumbure to the Police Inspector and he was shown a gap in the man's jaw and they arranged that, after the tooth was fitted on by the accused, Marthelis was to signal to the Inspector and the Inspector was to effect a raid. After that Punciappu in the company of Marthelis went to the dentist, the accused, and paid him Rs. 3 and after an interval of half an hour which the accused took in order to fit on the tooth, to file it and accept the money Marthelis stepped on to the pavement and waved his hand; the Inspector went there and found Punciappu with a tooth fixed in the gap. It is extraordinary how the Inspector set about on the day in question. The prosecution had to prove that the accused fitted the tooth and that it was for gain. Rs. 3 was actually paid for the tooth just before the Inspector came. The Inspector could have marked these Rs. 3. As a matter of fact, according to the Inspector, when he searched the accused he found no money on him. Further if he took half an hour to fit the tooth, I cannot understand why the Inspector did not effect the raid just at the critical moment when the tooth was being fitted on. The accused is said to have filed the tooth, and one of the witnesses, Punciappu, says that he actually pointed out the instrument to the Inspector but the Inspector says not a word about finding the file. Marthelis says on this point that he told the Inspector about the filing, "Punciappu showed where it was filed. I did not show the instrument to the Inspector". Further if Punciappu is right when he said that the accused took an impression, the wax impression must have been in the accused's shop. All that the Inspector said that he saw in the accused's shop was a number of artificial teeth. These are very important elements to consider whether the accused was merely selling artificial teeth or if he went further and did the acts which would appear to come within the words "dental service". For the proof of the third element, namely, that it was for gain, we have to rely on the evidence of Punciappu and Marthelis, both in my opinion tainted witnesses.

The learned Magistrate in his judgment seems to base his belief of their evidence on the fact that the contradictions were not grave, but one must take a proper view of the evidence and when we have interested persons interested in putting a stop to perhaps the legitimate trade of the accused, and when one finds an Inspector who has not followed the ordinary

rules of Police detection, all these factors I say must be taken into account in judging whether the evidence on a certain point is to be believed so as to tell against the accused. The accused, as I have stated, is a Chinese who cannot talk Sinhalese and that may be the reason perhaps why he was not called to give evidence.

In my opinion the prosecution fails not only in the absence of any reliable evidence to prove that the dental service, if it was rendered that day, was for gain but also on a question of inference in the chain of circumstances against the accused, viz., that if we accept the Inspector's evidence in full it was possible for Illukkumbure and his two satellites to have so arranged that the tooth was really provided by Illukkumbure himself and that the accused was not responsible for the supply of even the artificial tooth, and that the Inspector was signalled to after the coast was clear for them to make the Inspector believe that the tooth was fitted on by the accused.

For these reasons I think the conviction and sentence should be set aside and the accused acquitted.

*Set aside.*

