

1953

Present: Gratiaen J.

P. M. PETER SINGHO, Appellant, and M. B. WERAPITIYA
(S. I., Police), Respondent

S. C. 835—M. C. Badulla-Haldumulla, 10,128

*Evidence—Character—Evidence of pending prosecution—Presumption of innocence—
Evidence Ordinance, s. 54—Effect of reception of inadmissible evidence in
Magistrate's Court.*

An accused person who put his "good character" in issue was asked in cross-examination whether there was not pending against him a criminal case—

Held, that the question was inadmissible.

Where a trial Judge has permitted himself, through an improper appreciation of the law, to allow evidence to be led which is of such a character as to prejudice the chances of a fair trial on the real issues in the case, the improper reception of the evidence is fatal to the conviction of the accused, although the accused has been tried not by lay jurors but by a Magistrate trained in the law.

APPPEAL from a judgment of the Magistrate's Court, Badulla-Haldumulla.

H. V. Perera, Q.C., with M. M. Kumarakulasingham, for the accused appellant.

N. T. D. Kanakarathne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 14, 1953. GRATIAEN J.—

This is an appeal against two convictions on charges of cheating.

The evidence in the case discloses a most disturbing state of affairs in regard to the techniques which are unashamedly claimed to be employed by certain classes of people in the hope of securing employment for their friends or relatives as Government school teachers.

The case for the prosecution is that in 1949 a contractor of moderate means in Bandarawela was anxious that his daughter Leelawathie, who had recently passed her S. S. C. Examination in Sinhalese, should obtain employment as a school teacher. He consulted his friend, an Ayurvedic physician, who apparently devotes his spare time to the activities of a "contact man", as to how this ambition could be realised. This friend suggested that they should approach the Headmaster of a Government school (the accused) who was believed to enjoy the confidence of a certain Education Officer. Indeed, the physician concerned asserts that he had obtained similar employment for his own daughter by bribery through the agency of "another headmaster". The accused was accordingly approached; and, after certain preliminary discussions of a thoroughly discreditable nature had been concluded, it was agreed that he should offer a bribe of Rs. 100 to an Education Officer. A few months after the money was paid, the girl was still unemployed. The accused explained that a further bribe of Rs. 100 was necessary. This sum was also handed to him for transmission to the "proper authority". A considerable time elapsed, but the girl did not receive her promised letter of employment. The disappointed parent complained to the authorities, who ordered a departmental inquiry, which curiously enough, resulted in a compromise whereby the parent agreed to treat the sum of Rs. 200 as a "loan" granted by him to the accused. *Two years later* the accused was prosecuted in the Magistrate's Court of Badulla-Haldumulla for cheating the parent in respect of each sum of Rs. 100 by "deceiving him into the belief that he would get his daughter a teacher's appointment by offering a bribe to the Education Officer, Badulla".

The manner of cheating specified in the charge is not quite clear, and one is left in doubt as to what precisely was the false representation complained of. If, for instance, the alleged bribe was actually offered and accepted, was the offence nevertheless established because the alleged assurance of employment had failed to materialise? Was the false representation complained of that the bribe would be offered or that the employment of Leelawathie would be secured? A charge of cheating should always particularise the facts relied upon as constituting the offence which is sought to be established. I have not been able to ascertain with any certainty how the learned Magistrate or the parties understood the case which the accused was called upon to meet in the lower Court.

The defence set up by the accused was itself thoroughly discreditable. He admits some of the facts spoken to by his self-confessed accomplices, but his version, if true, exonerates him of cheating. In the sharp conflict

of testimony which arose on the vital issues in the case, the learned Magistrate accepted the evidence led by the prosecution, and convicted the accused on both counts.

Mr. Perera has criticised the judgment in many respects, but, in the view which I have taken, it is sufficient to say that the convictions cannot stand owing to the gravely prejudicial misreception at the trial of one particular item of inadmissible evidence.

The accused had advisedly taken the risk of putting his "good character" in issue. It was, therefore, open to the prosecution, if they could, to prove his "bad character" under section 54 of the Evidence Ordinance. Instead of doing so they suggested to him in cross-examination (and he was forced to admit) that there was pending against him at the time a criminal case in which he was charged with forgery.

"The mere fact that a man has been charged with an offence is no proof that he committed the offence. Such a fact is irrelevant; it goes neither to show that the prisoner did the acts for which he is actually being tried nor does it go to his credibility as a witness". *Maxwell v. D. P. P.*¹. This principle was reaffirmed by Lord Simon in *Stirland v. D. P. P.*². "It is no disproof of good character" he said, "that a man has been suspected or accused of a previous crime. Such questions as 'Were you suspected?' or 'Were you accused?' are inadmissible because they are irrelevant to the issue of character, and can only be asked if the accused has expressly sworn to the contrary".

If and when the pending charge of forgery is taken up for trial, the accused will be entitled to rely on the presumption of innocence until his guilt is established beyond reasonable doubt. How then can the mere existence of that charge which has not yet been established, be regarded as a slur on his character for the purpose of discrediting him in the present trial? Any such notion, as Lord Sankey pointed out in *Maxwell's case* (supra), is contrary to the whole idea of criminal jurisprudence.

Learned Crown Counsel conceded that this evidence should not have been admitted, but he invited me to hold, as was done in *The King v. Perera*³, that its improper reception was not fatal to the conviction because the accused had been tried not by lay jurors but by a Magistrate trained in the law. I do not see how this distinction can be drawn where a Judge of first instance has, in spite of his legal training and experience, permitted himself, through an improper appreciation of the law, to allow evidence to be led which was of such a character as to prejudice the chances of a fair trial on the real issues in the case.

I have anxiously considered whether I should send the case back for re-trial before another Magistrate. The charges against the accused are of a serious nature and it may be that, upon the relevant and admissible evidence, his conviction would have been justified. But we are here concerned with offences alleged to have been committed over four years

¹ (1935) A. C. 309.

² (1944) A. C. 315.

³ (1941) 42 N. L. R. 526.

ago, and it does not seem to me just to call upon him to defend himself a second time after such an unconscionable lapse of time. I, therefore, set aside the convictions and acquit the accused.

I cannot conclude without a reference to one aspect of the evidence of the accused. He expressed the view, without any apparent sense of shame, that he saw no particular harm in bribing a public officer to secure employment for Leelawathie, "because it was a meritorious thing to get a job for a girl". One can but hope that this Headmaster of a Government school has not imparted these contemptible doctrines to the children entrusted to his care. Upon his own version of this sordid incident, the accused stands condemned as a person who is disqualified to undertake the responsibilities of a school-teacher.

Convictions set aside.

