1931 *Present :* **Akbar J.**

KING *v.* DHARMASIRIWARDENE.

110—D. C. (Crim.) Colombo, 9,874.

Perjury—Explanations demanded from accused—Onus wrongly placed—Penal Code, s. 190.

A conviction for perjury cannot stand where the onus has been wrongly placed and explanations demanded from the accused, when there was no occasion to give any.

APPEAL from a conviction by the District Judge of Colombo.

H. V. Perera (with him *Sri Nissanka*), for accused, appellant.

Deraniyagala, Acting C.C., for Crown, respondent.

November 23, 1931, AKBAR J.—

The appellant was charged on two counts with giving false evidence at an election inquiry, held by the Supreme Court on October 30, 1930, by stating falsely as follows:—"It is not true that I went to see Rajaratnam and Karunaratne with Mr. de Soyza, Brampy Bass, and K. G. Silva between the 2nd and 7th or at any time or that I received any payment whatsoever in connection with this election." On the second count he was further charged with giving false evidence when he stated as follows:—" It is not a fact that I received Rs. 75 in connection with this election." The learned District Judge acquitted the accused on the second count and when the case for the prosecution was closed, he asked the accused's Counsel to restrict himself only to that portion of the first statement given above ending with the words " or at any time ". It will be seen that the first count contains answers given to really three questions. The Shorthand Writer who produced the evidence given by the accused stated that he had taken down the evidence in narrative form, whereas answers are elicited from witnesses by questions put to the witnesses by Counsel. So that it may well be that Counsel put one long statement containing really three questions and that the accused answered the whole statement in the negative. As Counsel for the

accused point out, an answer given in this form may well have been given by the witness with his mind concentrated on the last question which contained the most serious charge against him, namely, that he had received money illegally in connection with the election. Therefore Counsel urged that it was not fair for the District Judge to have acquitted the accused with regard to the most serious part of the statement and then to have called upon him for his defence with regard to what after all was the most trivial part of the alleged false statement. I think Counsel is clearly right in urging this plea in these circumstances (see *Rex v. Lee* [1]). I have no doubt at all that Crown Counsel who framed the indictment regarded the answer as one answer given to three questions rolled into one statement, for otherwise there would have been four charges on the indictment which is against the Criminal Procedure Code. But apart from this objection it seems to me that on the facts the conviction is wrong. The prosecution case really depends on the evidence of Rajaratnam and Karunaratne who said that they were present on the occasion when the accused came there along with the others. So that in effect the two witnesses, Rajaratnam and Karunaratne, who were really speaking to the same incident may be regarded as one witness. It was held by the Supreme Court in the case of *King v. Sirimana* [2] that an accused should not be convicted of perjury on the uncorroborated evidence of a prosecutor. The two witnesses, Karunaratne and Rajaratnam, are the only material witnesses against the accused and their were bribed by Mr. de Soyza on the occasion in question and actually received payment thereafter. There is a notable contradiction between the evidence of Rajaratnam and Karunaratne as to who actually introduced Rajaratnam to Mr. de Soyza. The accused gave evidence and stated that he went in a car with Brampy Bass to see Mr. Proctor Abeyanayake over a certain temple dispute in which Brampy Bass was interested as trustee and his evidence is corroborated by Mr. Proctor Abeyanayake. The accused stated that as they passed Karunaratne's shop, Brampy Bass got down and went to Karunaratne's shop and that the accused did not go into the shop. His evidence is corroborated by that of O. S. Perera who was the owner of this shop and under whom apparently Karunaratne worked. Nothing has been urged against O. S. Perera and if he is believed the accused never went into Karunaratne's shop. It is unsafe to convict on a charge of perjury on the evidence of witnesses of the character and standing of Karunaratne and Rajaratnam, in the absence of other corroborative material. As Jenkins C.J. stated in the case of *Emperor v. Tilak* [3] a conviction for perjury cannot stand where the onus has been wrongly placed and explanations have been demanded from the accused when no occasion for them existed; he further remarked that the rule was that there must be something in the case to make the oath of the prosecution witnesses preferable to the oath of the accused. As I have pointed out the evidence of Rajaratnam and Karunaratne is really the evidence of one witness; moreover, it is tainted, and against this evidence there is the evidence of the accused and O. S. Perera.

[1] *2 Campbell 759.* [2] *7 C. L. R. 7.* [3] *28 (Bombay) I. L. R. 479.*

The learned District Judge convicted the accused because he was not satisfied with the accused's statement that it was on June 8 that the incident of Brampy Bass going into Karunaratne's shop took place and because he thought the truth was what the prosecution witnesses said namely, that it was on June 7. In my opinion, as stated by Jenkins C.J., there was really no case for the accused to meet after the prosecution case was closed. On a review of the whole evidence I have grave doubts whether the prosecution case is true and I would set aside the conviction and sentence, and acquit the accused.

Set aside.