

1961

Present : L. B. de Silva, J.

K. G. SOMAPALA, Appellant, *and* THE ATTORNEY-GENERAL,
Respondent

S. C. 933—M. C. Gampola, 1124

Evidence—Criminal prosecution—Evidence of motive for alleged offence—Admissibility.

In a criminal prosecution, evidence of the bad character of the accused, which is not necessary or relevant to prove the alleged motive for the offence, is inadmissible.

The accused was charged with voluntarily causing hurt to one R. S. The prosecution led evidence of motive for this offence. R. S. stated that the accused was under the impression that he had instigated the Engineer of the Ceylon Transport Board to stop the accused's work. He further stated that accused's work was stopped as a result of his attempt to stab the Engineer.

Held, that the evidence was inadmissible.

APPEAL from a judgment of the Magistrate's Court, Gampola.

F. A. Abeywardene, with *K. Shinya* and *N. Senanayake*, for Accused-Appellant.

M. Hussein, Crown Counsel, for Complainant-Respondent.

Cur. adv. vult.

March 14, 1961. L. B. DE SILVA, J.—

The Accused-Appellant was charged for voluntarily causing hurt to one B. Robert Silva, a driver in the Ceylon Transport Board with hands, punishable under Section 314 of the Ceylon Penal Code. Accused was a mechanic employed in the Ceylon Transport Board. He was found guilty of the charge and was sentenced to 2 months' rigorous imprisonment and to pay a fine of Rs. 50/-. In default of payment of the fine, he was sentenced to one month's rigorous imprisonment.

At the trial, the prosecution led evidence of motive for this offence. Robert Silva stated that the accused was under the impression that he had instigated the Engineer to stop the accused's work. He further stated that accused's work was stopped as a result of his attempt to stab the Engineer of the Ceylon Transport Board.

Clearly the evidence that accused's work was stopped because he attempted to stab the Engineer of the Ceylon Transport Board was not necessary or relevant for the purpose of proving the motive that the accused had against the complainant Robert Silva. The alleged motive that Accused had against the Complainant was that he suspected that the Complainant was instrumental in having him interdicted from work over another incident.

Learned Crown Counsel conceded that this evidence was inadmissible to prove the alleged motive. He argued, however, that no prejudice has been caused to the accused as the learned Magistrate has not referred to this aspect of the evidence in his reasons for the conviction.

It is quite clear in this case that the Magistrate has taken a very serious view of the offence of this accused in view of the sentence passed in this case. There is no doubt that he was strongly influenced by the evidence that the accused had previously attempted to stab the C. T. B. Engineer. He commenced his reasons by stating, "The sooner the Ceylon Transport Board gets rid of undesirable people like the accused the better it is for this establishment".

Even if it can be said in this case which I am not prepared to do, that the learned Magistrate was in fact not prejudiced against the accused by this inadmissible evidence of accused's previous bad character, this evidence is very likely to prejudice any judge deciding this case.

In *V. Coomaraswamy v. M. Meera Saibo and 5 others*¹ it was held "It is not suggested that the learned Magistrate was influenced by these statements but the accused may very well have gained the impression that he was so influenced. It is necessary not only that administration of justice should be pure but it should be seen to be pure and considered to be pure". The case was sent back for a retrial.

In this case I have carefully considered whether this case should be sent back for a retrial as the conviction of the accused cannot possibly stand. [His Lordship then discussed the evidence, and continued :—]

Considering the trivial nature of the charge and the nature of the evidence in support of the prosecution case, I do not think that the accused should be put to the trouble and expense of standing another trial in this case.

I accordingly allow the appeal and set aside the conviction and sentence of the accused and acquit him.

Appeal allowed.

