

1973

Present: Wijayatilake, J.

S. WINTER, Appellant, *and* THE CEYLON ESTATE STAFFS'
UNION, Respondent

S. C. 286/71—L. T. Case No. G/5821

Labour Tribunal—Order granting relief to a workman—Requirement that the employers should be designated without inconsistency.

Where, in an application for relief made on behalf of a workman under the Industrial Disputes Act, the finding of the Tribunal was that the employer was a Company, but an award in favour of the workman was made against certain individuals who were named in the application as respondents—

Held, that there was inconsistency in the order of the Tribunal as to the parties against whom the order could be executed.

APPPEAL from an order of a Labour Tribunal.

E. R. de Fonseka, with Siva Rajaratnam, for the 2nd respondent-appellant.

Applicant-respondent absent and unrepresented.

February 21, 1973. WIJAYATILAKE, J.—

Learned Counsel for the 2nd respondent-appellant submits that the workman was in fact employed by A. W. Winter and Sons Estates Limited. The notices A1 of 28.5.69 and A2 of 25.6.69 confirm this fact. The learned President has also held that the workman was in fact employed by A. W. Winter and Sons Estates Ltd. However, the Ceylon Estates Staffs' Union appearing on behalf of the workman has named as respondents to their Application—

1. R. M. Winter,
Pillagoda Valley Estate,
Baddegama.
2. Sydney Winter,
Messrs. Rowlands Ltd.,
Colombo.
3. M. Fonseka,
Superintendent,
Pillagoda Valley Estate,
Baddegama.

Despite the fact the learned President has held that the employer was in fact A. W. Winter and Sons Estates Ltd., ultimately in his order he has made the award against the respondents as appearing in the application. It is also submitted that M. Fonseka was only the Acting Superintendent of Pillagoda Valley Estate.

I am inclined to agree with learned Counsel for the appellant that there is inconsistency in the order of the learned President. The question will arise with regard to the execution of the order made by the President, whether the Union could proceed against the Company or the respondents named in the application. My attention has been drawn to the judgments reported in 70 N. L. R. page 279, 71 N. L. R. pages 47 and 142 and also to the amendment to the Industrial Disputes Act 39 of 1968.

I set aside the order of the learned President subject to the right of the Union to renew their application against the proper party or parties.

The appellant shall be entitled to the costs of this appeal fixed at Rs. 100.

Order set aside.

[COURT OF CRIMINAL APPEAL]

1971 Present: H. N. G. Fernando, C.J. (President),
Sirimane, J., and Weeramantry, J.

W. A. FERNANDO, Appellant, and THE QUEEN, Respondent

APPEAL No. 44 OF 1971, WITH APPLICATION 63

S. C. 424/70—M. C. Chilaw, 26953

Evidence—Charge of murder—An item of evidence casting serious doubts on guilt of accused—Duty of prosecutor to mention it to Court.

Where, at a trial upon an indictment for murder, extracts from the Police Information Book disclosed an item of evidence which cast serious doubts on the accused person's guilt—

Held, that, though a prosecutor is not bound to expose every infirmity and weakness in his case, yet when a person is brought up on a capital charge, and there is some item of evidence which casts serious doubts on his guilt, it is the duty of the prosecutor to draw the attention of the trial Judge to such evidence.

APPPEAL against a conviction at a trial before the Supreme Court.

M. A. Mansoor (Assigned), for the accused-appellant.

J. R. M. Perera, Senior Crown Counsel, for the Crown.

Cur. adv. vult.

June 6, 1971. SIRIMANE, J.—

This appeal is against the conviction for murder and sentence of death passed on the appellant.

The prosecution alleged that, around mid-night, the appellant had entered the house of the deceased through the roof, and struck both the deceased and his wife Maria with a blunt weapon, probably an iron rod.

The deceased succumbed to his injuries a couple of days later. He and his wife were both over 70 years of age; and as there were no other inmates of that house, the prosecution case depended mainly on the identification of the appellant by Maria. She stated in evidence that on hearing a noise she got up, lit a lamp and saw the appellant striking a blow on her husband followed