[IN THE COURT OF CRIMINAL APPEAL]

1955 *Present :* Gunasekara, J. (President), Pulle, J., and Weerasooriya, J.

REGINA *v.* V. P. M. MUNIDASA

APPEAL 11, WITH APPLICATION 16, OF 1955

S. C. 33—M. C. Colombo, 1,648

Evidence—Indictment containing two counts—Acquittal on one count—Effect on verdict on the other count—Sentence—Penal Code, s. 478 D.

Acquittal of an accused person on one count owing to the rejection of the evidence of a particular witness for the prosecution is not necessarily a bar to his being convicted at the same trial on a second count for a similar offence on separate and independent evidence.

Sentence reduced on the ground that it had been imposed on an erroneous basis.

APPEAL against a conviction in a trial before the Supreme Court.

R. R. Crossette-Thambiah, Q.C., with *V. K. Palasuntheram*, for the accused appellant.

V. T. Thamotheram, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

April 21, 1955. PULLE, J.—

The appellant was tried on an indictment which charged him on the first count with having had, in or about July or August, 1952, in his possession five etched metal blocks for the purpose of being used or knowing or having reason to believe that they were intended to be used for forging or counterfeiting rupees-ten currency notes, an offence punishable under section 478 D of the Penal Code. The second count charged him under the same section with having had in his possession in or about March, 1953, five etched metal blocks for the purpose of being used for forging or counterfeiting rupees-ten currency notes. On the first count he was acquitted. On the second count he was convicted and sentenced to fifteen years' rigorous imprisonment. Of the grounds taken in the petition only two were pressed at the argument, namely, that the verdict of the jury was unreasonable and that, in any event, the sentence was excessive.

On the first point learned counsel for the appellant submitted that once the evidence of the witness W. Gerrard Perera called by the prosecution to prove the first charge is excluded, either on the ground that it was irrelevant to the second charge or that it had been rejected by the jury,

the rest of the evidence bearing on the second count was not even sufficient for the case to go to the jury, and that, therefore, the verdict of guilty was unreasonable.

The evidence connected with the second charge is as follows: The appellant who was an ayurvedic physician had a dispensary at Nagalagam Street. He lived with a woman in one of a row of houses at Sedawatta. One Gabriel Perera and his wife were occupying a house a short distance away. On the night of the 12th February, 1953, in the course of a quarrel with a woman in a neighbouring house the appellant used obscene language. When Gabriel Perera remonstrated, the appellant turned round and abused both him and his wife in foul language. He made a complaint to the Police on the following day and thereafter they ceased to be on speaking terms. The case for the prosecution is that the appellant out of revenge attempted on the 6th March, 1953, to implicate Gabriel Perera on the grave charge of being in possession of instruments for counterfeiting currency notes by introducing into his house the five etched metal blocks which are the subject matter of the second count in the indictment. On the evening of the 5th March, 1953, the appellant and one Ansari called on the witness E. S. Candappa who was living in a house at Nagalagam Street and invited him for a drink at a restaurant in Layard's Broadway. When they were at the restaurant the appellant told Candappa that Gabriel Perera had given him a parcel to be delivered at his house, but that as he, the appellant, was angry with Gabriel Perera's wife he wanted it to be delivered by Candappa the next morning. He consented. The appellant again called at Candappa's house on the 6th March in the company of Ansari between 7.30 and 8 a.m. and took him to the dispensary. The appellant gave Rs. 2 to a servant boy to bring some vegetables from the market. After the boy returned with the vegetables the appellant went with Ansari to the upper floor of the dispensary, brought down a box wrapped in paper and tied with a piece of twine and handed it to Candappa along with the parcel of vegetables to be put into appellant's car. Candappa having placed the parcels in the car got into the rear seat and Ansari sat by the appellant who drove the car to Sedawatta and near the turn off leading to the house of Gabriel Perera the car was halted and the appellant instructed Candappa to deliver the parcels to the wife of Gabriel Perera whose house he indicated was the sixth in the row. He took the parcels and delivered them to Mrs. Perera and the party returned to Nagalagam Street. Mrs. Perera felt uneasy about the parcels and having taken advice from a Police constable who was living in the same row she awaited the return of her husband. When he came she informed him of what had happened. He denied that he had sent any parcels and promptly informed the Wellampitiya Police who took action immediately. They proceeded to the house of Gabriel Perera and found the parcel of vegetables and a cardboard box containing five etched metal blocks which undoubtedly could have been used for counterfeiting Rs. 10 currency notes.

It was contended on behalf of the appellant that the evidence of Candappa was consistent with the five blocks having been made not for the purpose of counterfeiting notes but only for implicating Gabriel Perera in a false charge of possessing instruments for counterfeiting. The

question then arises whether the prosecution has discharged the burden resting on it to prove affirmatively that the appellant possessed the blocks " for the purpose of being used or knowing or having reason to believe that they were intended to be used for forging or counterfeiting ". To decide this question one has to examine certain other incidents which occurred towards the end of February and on the 5th and 6th March and also the evidence of the Government Analyst and the Government Printer.

On the 26th February the appellant communicated to Police constable Gunapala that he had received information that Gabriel Perera was in possession of some blocks for printing currency notes and promised to get more information in a few days. On the 5th March the appellant again met constable Gunapala and informed him that Perera had brought the blocks to his house and was preparing to dispose of them. The constable took the appellant to a C. I. D. Inspector who wanted further information. Early on the 6th March the appellant again met constable Gunapala and stated definitely that Perera had made arrangements to remove the blocks and wanted a search to be made before 1 p.m. that day. A police party was deputed to accompany the appellant presumably to surprise Perera in the act of removing the blocks but the plan miscarried. By the time the police party were lying in wait for Perera, the etched blocks had already passed into the custody of the Wellampitiya Police. It is reasonable, therefore, to infer from constable Gunapala's evidence that at least a week prior to the 6th March the etched blocks were under the appellant's control, if not actually in his possession.

The evidence of the Government Analyst was that the five blocks represented different aspects of a ten-rupee currency note all of which would be required to produce a complete note. He added,

> " I found traces of blue, green and purple colours on the blocks and they suggested the possibility of ten-rupee notes having been printed by them ".

The Government Printer's evidence was also to the same effect.

It remains now to consider the evidence of W. Gerrard Perera on whom the prosecution depended largely to prove the first charge. According to this witness—who was employed at the Caxton Printing Works as a stereocaster—he was approached by the appellant about the month of May, 1952, to have certain deficiencies in five blocks used for counterfeiting Rs. 10 currency notes rectified. He informed him that he was unable to undertake the work nor was he in a position to name a process block maker who could make good the deficiencies. He did not see any of the metal blocks but was shown by the appellant five metal block proofs of a Rs. 10 currency note. The appellant also told him that " he had those blocks and that the proofs had been taken out from them ".

In the absence of any explanation by the appellant we are of the opinion that the jury had sufficient evidence upon which they could properly find a verdict against the appellant on the second count. Indeed, the presence of traces of blue, green and purple colours on the blocks spoken to by the Analyst and the Government Printer could by itself have led them reasonably to the inference that the blocks had been made for

purposes of counterfeiting Rs. 10 currency notes or that the appellant knew or had reason to believe that they were intended to be used for such counterfeiting.

It has been submitted to us that if the jury had acted on the evidence of Gerrard Perera as well in reaching a verdict on the second count they acted unreasonably in view of their finding of acquittal on the first count. We are unable to speculate as to the reasons which led the jury in finding the verdict on the first count. That count fixed the date of the offence as " in or about July or August, 1952 " whereas Gerrard Perera who made a statement to the Police on the 13th January, 1953, said that he was approached by the appellant to have the blocks rectified " about eight months " previously, thereby fixing the date of the offence in April or May, 1952. It is quite possible that the jury acquitted the appellant on the ground that the first offence was not committed " in or about July or August 1952 " in the sense that possession of etched blocks in those months had not been brought home to the appellant. We are unable to accept the argument that the acquittal on the first count necessarily involved the rejection by them of the whole of Gerrard Perera's evidence or that the jury were precluded thereby from acting on such parts of his evidence as were relevant to the proof of the mental elements necessary to constitute the offence as charged in the second count.

It is urged that the acts which formed the subject matter of the two counts were not committed in the course of the same transaction and that, therefore, the evidence of the incidents spoken to by Gerrard Perera were irrelevant to the second count. In our opinion the relevancy of Gerrard Perera's evidence to issues arising on the second count was not conditioned solely on proof that the offence alleged in both counts were committed in the course of the same transaction. To prove any of the ingredients of the offence charged in the second count the prosecution was entitled to rely on any fact relevant to such proof, even though such fact would have been equally relevant to establish any of the ingredients of the offence charged in the first count.

Lastly, after judgment had been reserved, a submission was made to us in writing based on the decision of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya* [1] that the verdict on the first count so operated as *res judicata* that " the Crown cannot at this stage seek to impute a guilty mind to the prisoner in respect of any matter referred to in count 1 of the indictment ". In the case cited there was a trial on two counts on the second of which the prisoner was acquitted. Owing to a disagreement as to whether the first count was proved there was a second trial on that count when the prosecution proved a confessional statement a part of which amounted to an admission of the charge on which the prisoner was acquitted at the first trial. The Privy Council said in the course of its judgment at p. 479 :

" The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the

[1] *(1950) A. C. 458 at 479.*

adjudication. The maxim "Res judicata pro veritate accipitur" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other."

The answer to this submission is that no question of *res judicata* can arise because the appellant was tried at one trial on both counts and the Crown has not sought, in supporting the verdict on the second count, to challenge the correctness of the verdict on the first count. All that the Crown has done is to maintain that there was evidence relevant to the second count on which the jury would have been entitled to find a verdict against the appellant and that, even if one assumed that the entirety of Gerrard Perera's evidence was rejected, there was still the evidence of the Analyst, the Government Printer and constable Gunapala on which the jury would have been justified in convicting the appellant.

The maximum sentence of imprisonment provided by section 478 D is twenty years. In sentencing the appellant to fifteen years the learned Commissioner said,

"This is a very serious offence. I know of two such cases, one many years ago in which the accused was given the maximum sentence of twenty years for having an instrument like this for counterfeiting currency notes. Some years later there was another case and there also the accused was given twenty years imprisonment".

Section 478 D was added to the Penal Code by the Penal Code (Amendment) Ordinance, No. 19 of 1941 replacing similar provisions in the Paper Currency Ordinance (Cap. 291). We have not been referred to any case decided since 1941 in which the maximum sentence had been awarded under section 478 D. The Commissioner had apparently in mind two cases decided prior to 1941. His impression does not appear to be correct that in those cases the accused persons were convicted of being in possession of instruments which could have been used for counterfeiting currency notes. Section 18 of the Paper Currency Ordinance provided a maximum penalty of twenty years imprisonment for counterfeiting notes, while section 20 which penalised the possession of an instrument for counterfeiting provided for a maximum of only five years' imprisonment.

The assessment of sentence by a trial Judge is essentially a matter of discretion. We are, however, satisfied in this case that that discretion has been exercised on an erroneous basis and accordingly reduce the sentence to ten years' rigorous imprisonment. Subject to this variation the application for leave to appeal is refused and the appeal dismissed.

Sentence reduced.