

1943.

*Present : Soertsz and Hearne JJ.*THE KING v. SUNDERAM *et al.*

79-80 D. C. (Crim.) Jaffna, 4,230

Joinder of charges—Conspiracy to commit three offences of cheating and forgery—Charge of three conspiracies committed in one transaction—No illegality—Failure to frame separate charges for each offence—Curable irregularity—Criminal Procedure Code, ss. 178, 179, 180 (1).

Section 178 of the Criminal Procedure Code, which lays down that there shall be a separate charge for each distinct offence, includes offences committed on different occasions even though they fall under the same section, but non-compliance with the section in regard to the frame of the charge is a curable irregularity.

Where the offences of cheating, consisting of three acts committed within the space of twelve months, and forgery are committed in the course of one transaction, they may be tried together and included in the same indictment.

Where accused persons are charged with three conspiracies committed not within the space of twelve months but in the course of the same transaction and with the offences committed in pursuance of those conspiracies,—

Held, that there was no misjoinder of charges.

It should have been made clear that one conspiracy was charged to commit offences by means of acts, which themselves amounted to offences.

A PPEAL from a conviction by the District Judge of Jaffna.

H. V. Perera, K.C. (with him H. W. Thambiah and V. Arulambalam), for accused, appellants.

H. W. R. Weerasooriya, C.C., for Crown, respondent.

Cur. adv. vult.

February 19, 1943. HEARNE J.—

The appellants, the first and second accused, and the third accused, who was acquitted, were tried in the District Court of Jaffna on an indictment which consisted of three charges—

(1) That between May, 1936, and September, 1937, at Karanavai and other places in the district of Jaffna, you did act together with a common purpose for committing one or more of the following offences to wit, (a) cheating the Sun Life Assurance Co. of Canada, Colombo, by inducing the said Company to deliver to you certain policies of life assurance in favour of one T. Chellappah (since deceased), personated by the third accused, (b) cheating the said Company by dishonestly inducing the said Company to deliver to you a sum of Rs. 9,000, falsely alleged to have been due on the said policies, (c) forgery of applications for the issue of the said policies of assurance on the life of the said T. Chellappah, personated by the third accused, and thereby committed the offence of conspiracy in consequence of which were committed the offences of cheating, attempting to cheat and forgery or any of them punishable under sections 113, 102, 403, and 457 of the Penal Code.

(2) That at the times and places aforesaid and in the course of the transaction set out in count (1), you did deceive the Sun Life Assurance Co. of Canada by falsely representing to the said Company that the applicant for assurance in certain policies of Life Assurance was one T. Chellappah (since deceased) and that third accused was the said T. Chellappah, whereas in fact the applicant was not the said T. Chellappah nor was third accused the said T. Chellappah, and thereby dishonestly induced the said Company to accept the applications for assurance and to issue the said policies, to wit, Nos. 3240071 of July 24, 1936, 3243162 of September 12, 1936, and 3250422 of May 20, 1937, in favour of T. Chellappah, in an aggregate sum of Rs. 9,000, which acts the said Company would not but for the said deceit have done and which acts were likely to cause damage to the said Company in the sum of Rs. 9,000 or part thereof, and that you have thereby committed an offence punishable under section 403 of the Penal Code.

(3) That at the times and places aforesaid, and in the course of the same transaction as aforesaid, you did with intent to commit fraud make a false document, to wit, an application for a policy of life assurance on the life of one T. Chellappah, dated May 4, 1936, and purporting to have been made and signed by one T. Chellappah, by whom you knew it was not made or signed, and that you did thereby commit forgery, intending that the said false document shall be used for the purpose of cheating the Sun Life Assurance Co. of Canada, Colombo, an offence punishable under section 457 of the Penal Code.

The first and second accused were found guilty on the first and second charges and the former was also found guilty, on the third, of an offence under section 459 of the Ceylon Penal Code.

The second charge sets out three offences of cheating which, even if they were not committed in the course of the same transaction, would appear from the dates of the policies to have been committed within the space of twelve months. There is non-compliance with section 178 of the Criminal Procedure Code which lays down that for every distinct

offence there shall be a separate charge, and distinct offences include offences committed on different occasions even though they may fall under the same section. This non-compliance, however, has reference merely to the "frame of the charge" and not to the "mode of trial". It is not governed by the decision of the Privy Council in *Subrahmania Ayyer's*¹ case, and is a curable irregularity. This does not mean that an irregularity of this kind should not be avoided; but, conceding that there was no more than irregularity in the charge counsel for the appellants did not press any objection to the second charge.

The third charge sets out one offence of forgery. It is clear that this offence was alleged to have been committed in the course of the same transaction as the offence of cheating, which resulted in the issue of one of the Assurance Policies referred to in the second charge. Under the law in India the sections which correspond with sections 179 and 180 (1) of our law are "mutually exclusive", but this is not the case in Ceylon by reason of the additional words "which said sections may be applied severally or in combination" which appear in section 178. It follows, therefore, that the offences contained in the second charge may be tried with the offence of forgery alleged in the third. This leaves the first charge alone for consideration.

From a perusal of the second charge it appears, Counsel for the appellants argued, that on three separate occasions, according to the case for the prosecution, the Assurance Company was deceived and thereby dishonestly induced to issue three separate policies. Each of these policies which were in the name of Chellappah required in the first place a forged application in his name. The ultimate object of the appellants, according to the prosecution, was to commit the offence of cheating of Rs. 3,000 in respect of each of the three policies. When, therefore, the indictment charged the appellants (a) with conspiracy to commit offences of cheating of one kind, (b) with conspiracy to commit offences of cheating of another kind and (c) with conspiracy to commit offences of forgery, they were charged with three conspiracies to commit cheating in (a), three conspiracies to commit cheating in (b) and three conspiracies to commit forgery in (c). With this I do not agree. The gist of the offence of conspiracy is agreement and one agreement to commit cheating (or forgery) does not become three agreements to commit cheating (or forgery) because, as it transpires, three offences of cheating (or forgery) are committed in pursuance of the agreement. If there is an agreement to commit one offence of cheating, or three, or as many as are found to be possible, it is one conspiracy.

The second argument of Counsel is this. Under section 113B of the Penal Code if two persons conspire to commit an offence, say falsification of accounts, they are punishable as abettors of that offence; if they conspire to commit falsification and criminal breach of trust they are punishable as abettors of two distinct offences, viz., falsification and criminal breach of trust. It follows from this that in the latter case they are guilty of two conspiracies, one to commit falsification and one to commit criminal breach of trust. With this view of our law I am in agreement.

¹ 28 Ind. App. 257 (P. C.).

Applying his argument to the first charge Counsel argued that it contained, assuming we were against him in regard to his first submission with which I have dealt, three charges of conspiracy—(1) to cheat in a particular way as in (a), (2) to cheat in another way as in (b) and (3) to commit the offence of forgery as in (c). These conspiracies, he went on, not being within the space of twelve months, as stated in the charge were not triable together unless they were committed in the same transaction and the charge alleged that they were.

It is claimed that A. I. R. (1938) P. C. 1930 is an authority for the latter. I do not see that it is. *King v. Saibo*¹ appears to be an authority to the contrary. *Emperor v. Shahapurkar*² certainly is.

Were the conspiracies in the same transaction? If there was a conspiracy, to put the matter succinctly, to obtain one policy for Rs. 3,000 and, the object having been attained except the actual receipt of the sum assured, which was only payable on the death of Chellappah, the conspiracy, so to speak, spent itself, or more correctly was in abeyance till Chellappah died, whereupon there was another conspiracy the whole process was begun again and, on its termination in the issue of a second policy or its suspension pending Chellappah's death, there was still another conspiracy to carry out the same process, the criminal activities of the appellants would have fallen into three water-tight compartments corresponding with the three policies, each of them being independent of, and unrelated to, the other two. But it is not in this unrealistic way that the prosecution has looked at the matter or is obliged to look at it. In framing the indictment the draftsman, on the material available at the time, was justified in taking the view, as in the result he was also justified, that if there were three conspiracies (to cheat, again to cheat and to commit forgery) these conspiracies came into being as the starting point of one transaction of carefully planned fraud of the Assurance Company and co-existed throughout such transaction. The transaction did not come to an end when, as the result of one offence of forgery, or, as was found, one offence of uttering a forged document, and one offence of cheating, the first policy was issued by the Company. That would be a confusion of transaction with offences. The term transaction is not synonymous with the term offence. It cannot be said to be complete as soon as the offence is completed. It is clear that so long as the conspiracy continues, the transaction which began with the forming of the common intention continues" (42 Cal. 1153). There was in this case, in my opinion, one transaction and one only. It continued as long as the three conspiracies continued.

And what were these conspiracies? The conspiracy to commit forgery was to facilitate the commission of the offences of cheating (in respect of policies) which was the criminal object of the second conspiracy—I am now speaking chronologically—while the criminal object of the third conspiracy (cheating in respect of the sums assured) could only be achieved if the offences, which formed the criminal object of the second conspiracy, were successfully committed and remained undetected. In fact, these conspiracies were so inextricably bound up with each other as to form one conspiracy.

¹ 1 Bal Notes of Cases 35.

² 30 Bombay 49 (54).

Mr. Weerasuriya, for the Crown, claimed that this was the view that was taken and that it was intended to charge the appellants with one conspiracy. I think that, following certain Indian models, this is what could have been done. It could have been made clear that one conspiracy was charged to commit offences of cheating *by means of* acts which themselves amounted to offences. But this was not done. In the first charge three conspiracies were clearly laid.

In this way there was non-compliance with section 178 of the Ceylon Penal Code involving, as I think, no prejudice to the appellants, but there was no misjoinder of charges. The appellants were properly charged with three conspiracies in one transaction and with the offences committed in pursuance of those conspiracies.

The evidence against the appellants was overwhelming and their appeals are dismissed.

SOERTSZ J.—I agree.

Affirmed.
