

1968

Present : Pandita-Gunawardene, J.

P. V. YOGAGURU, Appellant, and V.A. KANDIAH (Inspector of Police),
Respondent

S. C. 685/68—M. C. Point Pedro, 2028

Immigrants and Emigrants Act (Cap. 351), as amended by Act No. 68 of 1961—Section 45 A (1) (b)—Charge of concealing or harbouring a person who has entered or is remaining in Ceylon illicitly—Whether such charge is bad for duplicity—Criminal Procedure Code, ss. 179, 180, 181, 184.

Where a person is charged under section 45 A (1) (b) of the Immigrants and Emigrants Act with having concealed or harboured a person who entered Ceylon or is remaining in Ceylon, in contravention of the provisions of the Immigrants and Emigrants Act, it cannot be said that there are two offences in one charge and that, therefore, the charge is bad for duplicity. In such a case, the words "conceals or harbours" involve one single act and do not constitute two distinct and separate acts.

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

S. C. Crossette-Thambiah, with *A. M. Coomaraswamy*, for the Accused-Appellant.

Ranjith Gunatilleke, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 4, 1968. PANDITA-GUNAWARDENE, J.—

This is an appeal by the accused-appellant from his conviction of concealing or harbouring ten persons to wit : Vaithianathan Renganathan, Sellappa Babu, Muthusamy Kasyappan, Vengadasamy Sethuraman, Mariappan Ramasamy, Ramasamy Muthiah, Rajagopal Govindasamy, Renganathan, Ramu, Muthusamy Ramasamy and Ramasamy Viswanathan, all of South India knowing that such persons had entered Ceylon in contravention of Sections 9 and 10 of the Immigration and Emigration Act Chapter 351 of L. E. C. or has remained in Ceylon in contravention of Section 15 (e) of the said Act as amended by Act No. 68 of 1961 punishable under section 45 A (1) of the Act as so amended.

The facts are these : on 9.4.68 upon receipt of certain information police sergeant Ratnasabapathy of Point Pedro Police proceeded to No. 415 Imbiliddy, Alvai North. These premises had a cadjan fence enclosing it. There was one gate leading to the premises which had been secured with a coir rope. In these premises there were two buildings about 18 to 25 feet apart, their entrances facing each other. One of the buildings was a house consisting of a room and a hall. The other was an open hut. The accused and his wife were in the open hut while the 10 persons named

in the charge were found in the house which has also been described as an enclosed hut. Ratnasabapathy had to force open the gate to enter the premises. The ten persons who were found in the house in these premises are clearly immigrants. There is ample evidence to establish the fact that the accused was the chief occupant of these premises and was living there at this time. The learned Magistrate has examined the evidence very closely and exhaustively and I am satisfied that his findings of fact are correct and beyond challenge. Learned Counsel for the appellant has however strongly urged that the charge is bad for duplicity, in that there are two offences in one charge and the conviction cannot therefore stand. Section 45 A (1) (b) of the Immigration and Emigration Amendment Act, No. 68 of 1961 provides that "any person who conceals or harbours any other person in any place whatsoever, or transports any other person or causes any other person to be transported by any means whatsoever, knowing that such other person has entered Ceylon or is remaining in Ceylon in contravention of any provision of this Act or of any order or regulation made thereunder shall be guilty of an offence under this Act and shall on conviction be liable to rigorous imprisonment for a term of not less than two years and of not more than five years."

It has been argued that the words 'conceals or harbours' create in this section two distinct offences. If these be two distinct offences then the law requires that in respect of each distinct offence there should be a separate charge and every such charge must be tried separately except in the cases mentioned in Sections 179, 180, 181 and 184 of the Criminal Procedure Code.

The fundamental question therefore is, "Do the words 'conceals or harbours' in this section involve one act or do they constitute two distinct and separate acts?" For a consideration of this question it would primarily be obligatory to understand what the words 'conceal' and 'harbour' mean. It would seem necessary in the first instance to seek the definition of these words. In the Oxford English Dictionary 'conceal' means "to keep out of sight, to hide"; 'harbour' means "to lodge, take shelter" (and shelter "to screen from punishment").

It is apparent that these words "conceals or harbours" allege one activity, namely 'of keeping away'. In this connection it is useful to mention the case of *Thomson v. Knights*¹ which would seem to be of assistance. In that case the charge was one of being in charge of a motor vehicle whilst under the influence of drink or a drug in contravention of section 15 (1) of the Road Traffic Act, 1930 (1). It was contended that there were two offences: 1. being in charge of a motor vehicle whilst under the influence of drink. 2. being in charge of a motor vehicle whilst under the influence of drug. Lord Goddard, C.J., said²:

"I do not think parliament here meant to create one offence of being incapable by reason of a drug and another offence of being incapable by reason of drinks. What parliament intended to provide was that

¹ [1947] 1 K. B. 338.

² *ibid.* at page 338.

a man in charge of a motor car in a self-induced state of incapacity, whether that incapacity was due to drink or drugs, the man commits an offence in each of those cases. In my opinion the conviction is not for an alternative offence nor can it be said to be in respect of two offences. The offence was being in charge of the car when in this particular state of incapacity.”

Similarly I do not think parliament here intended to create two offences: one of concealing any other person knowing that such other person has entered Ceylon or remaining in Ceylon in contravention of any provision of this Act and the other of harbouring any other person in any place whatsoever knowing that such other person has entered Ceylon or is remaining in Ceylon in contravention of any provision of this Act.

The gravamen of the charge under this section can be rightly said to be one of ‘keeping away’. It would appear to me that the words ‘conceal’ and ‘harbour’ are used adjectively to describe more fully the one act complained of.

For these reasons it is abundantly clear that what was being considered in this section was a single act. Therefore the submission that the charge is bad for duplicity must fail.

The appeal is dismissed.

Appeal dismissed.

