

Present : Jayewardene A.J.

THE KING v. SOYSA.

71—D. C. (Crim.), Galle, 14,750.

*Police Information Book—Use of entries by Judge—Corroboration of evidence for the prosecution—Criminal Procedure Code, s. 122 (3).*

A Judge is not entitled to use statements, made to the police and entered in the Information Book, for the purpose of corroborating the evidence for the prosecution.

The improper use of such entries will not necessarily vitiate a conviction, provided there is independent evidence to support it.

*Hamid v. Karthen*<sup>1</sup> followed.

**A**PPEAL from a conviction under section 382 of the Penal Code by the District Judge of Galle. In view of certain comments made on the conduct of the Inspector of Police, the learned District Judge read certain extracts from the Information Book filed in the case. On finding that the evidence of certain witnesses corresponded with the statements made by them when they were first examined by the police, he accepted the evidence for the prosecution, and found the accused guilty.

*F. de Zoysa*, for accused, appellant.

*Illangakoon, C.C.*, for the Crown.

<sup>1</sup> (1917) 4 C. W. R. 363 ( 365 ).

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In this case the accused appeals against his conviction under *The King v. Soysa* section 382 of the Penal Code. Having considered the evidence carefully and the reasons given by the learned District Judge for the conviction, I feel that there are grave doubts as to the guilt of the accused. Owing to comments made on the methods adopted by the Inspector of Police which the learned District Judge thought were not entirely groundless, he has read the extracts from the Information Book filed in the case. After reading these extracts he finds that the evidence of certain witnesses for the prosecution is practically the same as the statements made by them when first examined by the police, and is convinced that the case against the accused is true. The learned District Judge was not entitled in law to use the statements to the police which were entered in the Information Book for the purpose of corroborating the evidence given for the prosecution. By doing so he has disregarded the prohibition contained in section 122 (3) of the Criminal Procedure Code.

Entries in the Information Book can be used to assist the Court by suggesting means of further elucidating points that need clearing up, or for the purpose of contradicting a witness's evidence in Court, but not as evidence of any date, fact, or statement therein. *Hamid v. Karthen (supra)*.

In the case of *Dal Singh v. King Emperor*<sup>1</sup> the Privy Council had to deal with a similar case. There a Court of Appeal in India with the view of making its opinion of the guilt of the accused more conclusive proceeded to test the evidence of the witnesses for the prosecution by reading the earlier statements of these witnesses made to the police and entered in the Police Diary or Information Book under section 172 of the Indian Criminal Procedure Code. "In their Lordships' opinion" said Viscount Haldane "this was clearly wrong. It was inconsistent with the provisions of section 172 of the Criminal Code." This improper use of the entries in the Information Book would not necessarily vitiate the conviction of the accused if there is other reliable and independent evidence to support the conviction. The only other evidence against the accused on which the learned District Judge relies is the fact that an American gold coin was pawned by the accused with a pawnbroker the day after the attack, in the course of which the complainant had stated he had lost his watch and chain and a bunch of American gold coins. The complainant has attempted to identify a coin traced to the possession of a pawnbroker in Colombo, named Henry de Silva, who says that the accused pawned it with him and signed his name as H. S. Soysa in a book kept by him, whilst the accused's name T. S. de Zoysa. The pawnbroker's book (1) was produced. The accused

<sup>1</sup> (1917) 116 L. T. 621 (624), 20 Cal. L. J. 13 (22).

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denies pawning the coin in question or signing the book (I). The complainant says that the coin pawned belongs to him. It has no distinctive marks, but he says he knows it because he has used it. This evidence of identification is hardly satisfactory, and the evidence of the pawnbroker is equally unsatisfactory and the learned District Judge has sought corroboration of it in the similarity which he says exists between the accused's admitted signature on pages 12 and 24 of the Police Court record and his signature in the pawnbroker's book (I).

I have very carefully examined the signatures and compared those on pages 12 and 24 with that in (I), but I am unable to find any similarity. I requested Crown Counsel to point out the similarity referred to by the District Judge, but he himself failed to notice the similarity found by the District Judge or any other similarity between these signatures. The independent evidence which must be present, if the "improper" use of the entries in the Information Book is to be overcome, is not forthcoming in this case.

The conviction must accordingly be set aside, and the accused acquitted.

*Conviction set aside.*