

1948

Present : Basnayake J.

ATHAMLEBBE, Appellant *and* INSPECTOR OF POLICE,
BATTICALOA, Respondent.

S. C. 9—M. C. Batticaloa, 4,097.

Criminal Procedure Code—Foreign language—Translation—Tamil—Section 301 (2).

Tamil is not a foreign language within the meaning of section 301 (2) of the Criminal Procedure Code.

APPEAL from a judgment of the Magistrate, Batticaloa.

H. V. Perera, K.C., with *B. G. S. David*, for accused, appellant.

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

Cur. adv. vult.

March 10, 1948. BASNAYAKE J.—

The accused-appellant has been convicted of the offences of—

(a) fraudulently or dishonestly using as genuine a forged document, and
(b) attempting to cheat the Government Agent of the Eastern Province by dishonestly representing to him that he had passed the 8th standard in Tamil, and sentenced to a term of three months' rigorous imprisonment for each offence, the sentences to run concurrently.

¹ (1918) 118 *Law Times* 177.

Briefly the material facts are as follows :—The Government Agent of the Eastern Province called for applications for the post of Headman of Kattankudy Division No. 5. The accused, who was Headman of Kattankudy Division No. 4, was one of those who applied for the post. Along with his application he sent a school certificate which showed that he had passed the 8th standard in Tamil.

The accused was selected along with some others for an interview. At the interview too he represented to the Government Agent that he had passed the 8th standard in Tamil. Finally the Government Agent provisionally selected the accused for the post. He says he would not have done it if the accused did not in fact possess the educational qualifications claimed. As a matter of caution the Government Agent thereafter sent the accused's school certificate to the Education Officer for verification and report. It then turned out that the accused had not passed the 8th standard in Tamil, but had only passed the 6th standard. These proceedings are the sequel to that discovery.

Counsel for the accused has taken the following objections to his conviction—

- (a) that there is no proof that the document P 3 which is pronounced to be a forgery is the very document which the accused sent to the Government Agent ;
- (b) that a document in the Tamil language was irregularly admitted in evidence in the course of the proceedings without a duly authenticated translation thereof being filed ;
- (c) that the accused has in fact passed the 8th standard in Tamil.

I have examined the evidence as to the identity of the document P 3 and am satisfied that the evidence establishes that the document P 3 is the very school certificate which the accused sent to the Government Agent.

The document to which objection is taken on the ground of its improper admission in evidence is P 6, the log book of the school which the accused attended. Some of the entries in it are in Tamil, others in English. Pages 62, 67 and 75 which contained entries in Tamil were referred to in his evidence in chief by one Thuraiappah who was the headmaster of the school from its inception till he left it in 1919. Counsel for the accused took no objection and was in fact, at his request, given time to examine the log book before cross-examining that witness. His cross-examination shows that the witness has been questioned about not only the entries he referred to in his evidence in chief but also others. The accused has therefore not been prejudiced and the interests of justice have not suffered.

But quite apart from that I am unable to read section 301 (2) of the Criminal Procedure Code as applying to a document in the language of the native inhabitants of this country. Tamil is the language of a large section of the people and cannot, in my opinion, be regarded as a foreign language within the ordinary meaning of that expression in an enactment of our legislature. According to the Standard Dictionary the word

"foreign" means belonging to, situated in, or derived from another country, not native, alien, exotic. In this context, where there is no indication that the word is used in a special sense, it should be given its ordinary meaning. I hold therefore that by the admission in evidence of the Tamil entries in P 6 no provision of law has been disregarded. It should however be borne in mind that English is still the language of our Courts and that great inconvenience to counsel and judges, hardship and even injustice to accused persons can result from the absence of duly authenticated English translations of documentary evidence in a language other than English even though that language be not a "foreign language" for the purposes of section 301 (2).

I wish to make it clear to all judges of first instance that my decision as to the true meaning of section 301 (2) of the Criminal Procedure Code should *not* be regarded as an indication that the strict observance of paragraph 102 (i) of the Manual for Judicial Officers is no longer required. The requirements of that paragraph should be scrupulously observed in all criminal proceedings.

In regard to the third and last point urged by counsel for the appellant the learned trial judge has accepted the prosecution evidence and disbelieved the accused on whose unsupported testimony rests the claim that he has passed the 8th standard in Tamil. I have perused the evidence of the accused along with the other evidence in the case and I am not prepared to say that the learned Magistrate was wrong in holding that the accused has not passed the 8th standard in Tamil.

I have considered the question of sentence and can find no sufficient ground on which I can interfere. The appeal is dismissed.

Appeal dismissed.
