

1952

Present: Gunasekara J.

RANHAMY, Appellant, and JAYAWARDENA (Police Sergeant),
Respondent

S. C. 1,337—M. C. Hatton, 17,674

Criminal Procedure Code—Section 122 (1) and (3)—Statement to police—Admissibility in evidence—Signature of witness taken—Irregularity—Evidence Ordinance, s. 157.

Section 122 (1) of the Criminal Procedure Code provides that any police officer investigating an offence "may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined, but no oath or affirmation shall be administered to any such person, nor shall the statement be signed by such person". The purpose of the express prohibition in regard to taking the signature of a witness is that, otherwise, the witness would have a strong motive for standing by the statement imputed to him in the police records irrespective of the accuracy of the statement that he actually made or of the police officer's note of it.

Although a statement made by a witness to a police officer in the course of an inquiry under section 122 (1) of the Criminal Procedure Code is admissible either as corroboration of his evidence under section 157 of the Evidence Ordinance or for the purpose of contradicting him, it cannot be led in evidence until after the witness has given the evidence that is to be corroborated or contradicted by the statement to the police.

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

S. Nadesan, for the accused appellant.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

¹ (1943) 44 N. L. R. 470 at 475.

² (1921) 22 N. L. R. 385 at 391.

September 12, 1952. GUNASEKARA J.—

The appellant, Ranhamy, was convicted on charges of voluntarily causing hurt to one Charles Fernando and grievous hurt to one Wilbert de Silva by stabbing them with a knife on the 1st December, 1950, at Logie Estate in Talawakele. At the close of the argument in appeal I set aside the conviction and said that I would give my reasons later.

A man named Kalyanaratna Hemachandra who was tried jointly with the appellant on charges of abetment of the offences alleged against the latter was acquitted by the Magistrate on the ground that the evidence against him was unreliable. This was the evidence of Kalyanaratna's own brother Chandradasa Hemachandra and the two injured men, Charles and Wilbert, each of whom gave direct evidence of instigation. The main ground of appeal was that having rejected the evidence of these three witnesses on this point the Magistrate could not reasonably accept the case against the appellant.

The prosecution arose out of an incident that occurred on the eve of a poll for the election of a member of the local urban council to represent the ward in which the Logie Estate lines were situated. Chandradasa, who belonged to a party headed by one Wickremasooriya, was one of the candidates; and Kalyanaratna, who was contesting Wickremasooriya himself in another ward, supported Chandradasa's opponent. According to the case for the prosecution, Chandradasa, Charles, Wilbert and two others went to Logie Estate at about 10 p.m. on the day in question to canvass votes. They went there in Chandradasa's car, driven by his chauffeur David, and alighted from it about 50 feet in front of the estate factory. They found the factory lit up and a bon-fire outside, and there was a crowd of some 200 persons between the car and the factory, some of whom wore the emblem of the opposing party, and a smaller number that of their own party. A sub-inspector of police, Nandalochana, was there when they arrived and was seen by Chandradasa in the light of the headlamps of his car as he stepped out of it. At that time, according to Chandradasa, Charles and Wilbert, the crowd was peaceful and orderly and not even noisy, and they walked towards the crowd. Charles was leading, followed by Wilbert at a distance of about 15 feet and Chandradasa, who was about the same distance behind Wilbert. According to all three of them, Kalyanaratna, who was one of the crowd, called out as they approached, "These are the chandiyas! stab them!" or words to that effect, and Charles and Wilbert were quickly surrounded and stabbed. Each of them received two stabs on the back of the chest, and each stated in evidence that when he was stabbed he turned round and saw the appellant behind him with an uplifted knife. Chandradasa stated that he saw the appellant stab Charles once and he himself immediately got back into his car and went to Wickremasooriya's house which was half a mile away, and told him "what took place". Before he left he had heard Wilbert cry out that he too had been stabbed; but he did not hear him say by whom. Charles was stabbed, according to both Chandradasa and himself, about 10 to 15 feet from where Sub-inspector Nandalochana was, and Charles stated in his examination in chief that he

immediately ran up to the sub-inspector and told him that he had been stabbed. Under cross-examination he improved upon this evidence and claimed to have told him that he had been stabbed by the appellant.

Sub-inspector Nandalochana too gave evidence for the prosecution. His account of what was happening at Logie Estate when he arrived there contradicts the account of the circumstances of the stabbing that was given by Chandradasa and the two injured men. Nandalochana had been patrolling the district by car and had gone towards Logie Estate because he had heard that there was a disturbance there. When he got near the factory he saw a very large crowd and, far from finding them behaving in a peaceful and orderly fashion, he heard shouting and the noise of a disturbance while he was yet approaching the place by car. He got out of the car and tried to restore order, with the help of a sergeant and two constables. Having failed in their efforts they got back into the car to go to the Lindula police station to fetch a party of armed police. As Nandalochana was about to get in, Charles came up to him and said that he had been stabbed. "I was on the road", says Nandalochana. "I had not got into the factory premises. I only know that when I was about to get into the car Charles Fernando came and told me that someone stabbed him. At that time Sergeant Jayawardena was already in the car." He does not support Charles's evidence that he said that it was the appellant who had stabbed him. "I do not remember his having mentioned a name", he says. "At that time there was a big din. There was a free fight in the crowd."

Police Sergeant Jayawardene gave similar evidence. According to him, too, there was already a great disturbance at Logie Estate when he and the sub-inspector arrived there: "When we got to Logie there was a big commotion there. There were two P. C.'s trying to separate a fight. Sub-inspector Nandalochana ordered a baton charge. This was of no effect. It was then that I saw two or three people bleeding. The sub-inspector asked me to get into the same car and went to Lindula and brought an armed party."

Upon the information that Hemachandra gave Wickremasooriya the latter telephoned successively to the police stations at Talawakele and Lindula and the office of the assistant superintendent of police at Nuwara Eliya. There is no evidence that any of these messages contained any reference to the appellant. Hemachandra himself does not say that he told Wickremasooriya, or any one else at any time, that he had seen the appellant stab Charles; and Wickremasooriya does not say that Hemachandra gave him that information. It appears that Hemachandra made no statement to the police until after the statements of Charles and Wilbert had been taken by Sergeant Jayawardene at the hospital at 7 a.m. on the next day. In the meantime he had visited the injured men at the hospital in the course of the night and again at about 6 a.m. He admitted that he had to pass the Lindula police station on his way to the hospital and that nevertheless he volunteered no statement to the police that night.

One of the grounds upon which the learned Magistrate has rejected the evidence against Kalyanaratna is that no complaint was made against him at any time during that night. He considers it to be probable that the

delay on the part of the police in taking the statements of Charles and Wilbert gave them and Chandradasa an opportunity of conspiring to implicate Kalyanaratna falsely. "It is difficult to understand", he says, "why there should have been a delay of about 3 hours at least before the officer in charge saw the injured persons at the hospital and record their statements. If that were done promptly, probably the 2nd accused would not have had to stand his trial."

The case against the appellant, in so far as it rests on the evidence of Charles, Wilbert and Chandradasa, is open to the same criticism.

The only other evidence implicating the appellant was that of David (the driver of Chandradasa's car) and a man named Peter who had been a lorry driver in Chandradasa's employ at the time in question. The former stated that he did not see Kalyanaratna at the scene of the stabbing, but that when the car was stopped the appellant approached them uttering obscene language, to which Charles objected, and there followed a fight in which he saw "three or four people assaulting each other" and that after the fight he saw Charles bleeding. Then, he says, Charles said that the appellant stabbed him. Peter too stated that he saw the appellant and Charles at Logie Estate on the occasion of the stabbing and that he saw a fight there. He also said that he heard Charles cry out that the appellant had stabbed him. The learned magistrate has found in this evidence of Peter sufficient confirmation of the evidence of Charles, Wilbert and Chandradasa to enable him to act upon their evidence against the appellant.

It does not appear when David made a statement to the police. He says that he was taken to the Lindula police station by Chandradasa and he made a statement there. The police included him and Chandradasa among the witnesses for the prosecution only on the 30th June, 1951, seven months after the stabbing. The circumstances in which the evidence of this servant of Chandradasa came before the court render it valueless as corroboration of Charles's evidence implicating the appellant.

In the case of Peter too there is no evidence as to when he made a statement to the police. His name appears in the court proceedings for the first time in a list of witnesses, appended to a police report under section 148 (1) (b) of the Criminal Procedure Code, that was filed on the 28th February, 1951, three months after the offence. He had been taken by Wickremasooriya to the assistant superintendent of police at Nuwara Eliya and had there made a statement to an inspector of police in the presence of the assistant superintendent. It appears that in spite of the express prohibition contained in section 122 (1) of the Criminal Procedure Code the inspector took the witness's signature to the note that he had made of the statement; and according to this document made by the inspector, which the witness was unlawfully made to adopt as his own by signing it, the witness heard Charles cry out that the appellant had stabbed him. He said the same thing in his evidence at the trial, but only in response to prompting by the prosecuting officer, who first reminded him that he had signed a statement to that effect.

Before the witness was prompted in this fashion the learned magistrate had allowed an application by the assistant superintendent of police, Mr. Jonklaas, who was conducting the prosecution, for leave "to treat

this witness as adverse". The justification for this order is not apparent from the record. The witness's evidence up to that point had been as follows :—

" On the 1st December I went to Logie at about 10 p.m. There were 200 or 300 people in front of the factory. It was at night and I did not observe whether they were wearing badges. I know Mr. C. Hemachandra. He was there. I saw the 1st accused also there. I know Charlie Bass. Charlie Bass did not speak to the 1st accused. I did not see the 2nd accused there. I did not see Wilbert Silva there. I saw Charlie Bass and the 1st accused. I saw a fight. I saw some blood. That is all I saw. "

The record proceeds : " Mr. Jonklaas moves to treat this witness as adverse. Allowed.

Q. Did you make a statement to the police ? (I caution this witness that I shall punish him if he perjures.)

A. I made a statement to the police and I signed it I told the police that I heard Charlie Bass shout : ' Ranhamy stabbed me '. It is true that I heard it. "

The procedure by which this evidence was elicited from Peter, that he heard Charles shout " Ranhamy stabbed me ", is open to objection on several grounds. The fact that Peter said so to the police was not admissible either as corroboration of his evidence under section 157 of the Evidence Ordinance or for the purpose of contradicting him, until he had given the evidence that was to be corroborated or contradicted by the statement to the police. At the stage at which he was asked about what he had said to the police he had not given any evidence as to whether he did or did not hear Charles utter those words. The question was therefore inadmissible even if the magistrate's discretion under section 154 of the Evidence Ordinance, to permit a party to cross-examine his own witness, had been properly exercised. Moreover, this questioning about the witness's statement to the police was accompanied by a warning from the magistrate that he would punish him if he gave false evidence. It would not be surprising if the witness understood this warning to mean that he would be punished if he did not stand by the statement to which, as he was ominously reminded, he had set his signature, and the contents of which were now being recalled to his mind so that he might know what evidence he must give in order to avoid punishment. The witness would thus have a strong motive for standing by the statement imputed to him in the police records irrespective of the accuracy of the statement that he actually made or of the police officer's note of it. It is precisely this kind of situation that the law seeks to prevent by the prohibition in section 122 (1) of the Criminal Procedure Code to which I have referred. That enactment provides that any police officer making an inquiry under Chapter 12 of the Code " may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined, but no oath or affirmation shall be administered to any such person, *nor shall the statement be signed by such person*".

When the learned magistrate wrote his judgment he appears to have regarded Peter's evidence as that of a witness whose credibility was beyond question :

“ Even Peter says that Fernando shouted ‘ Ranhamy stabbed me ’. If it was not Ranhamy who stabbed him of all the crowd present I fail to understand why he should have shouted that Ranhamy stabbed him. ”

It is clear that he has altogether failed to appreciate that this evidence was given in circumstances that detracted greatly from its probative force.

It cannot be said that the verdict in favour of Kalyanaratna was erroneous. There was no substantial ground for the differentiation of the case against him from that against the appellant. The conviction of the appellant and the sentence passed on him were therefore set aside.

Appeal allowed.
