

1946

Present : Cannon J.

ATTORNEY-GENERAL, Appellant, and VISUVALINGAM,
Respondent.

352—*M. C. Kayts, 6,996.*

Evidence—Contradictions of witnesses—Duty of Court to distinguish between material and immaterial contradictions.

Before the evidence of a witness is rejected on the ground of contradictions it is very important that the tribunal should direct its mind as to what contradictions matter and what do not and that the witness should be given an opportunity of explaining those that matter.

A PPEAL against an order of acquittal entered by the Magistrate of Kayts.

J. G. T. Weeraratne, C.C., for the complainant, appellant.

S. N. Rajaratnam (with him *S. P. M. Rajendran*), for the accused, respondent.

May 24, 1946. CANNON J.—

In this case the complainant, a woman, charged the accused, a man with causing her grievous hurt by fracturing three of her ribs with the handle of an axe.

For the prosecution two eye-witnesses and two medical witnesses gave evidence. The eye-witnesses were the complainant herself and her daughter aged ten. They stated that the complainant was dragged by the accused to a tree to which she was tied and that the accused hit her on the body a number of times with the handle of an axe. On the same day Dr. Chelliah examined the complainant and found on her the following injuries:—(1) a contusion on the back of the left chest; (2) a contusion on her left shoulder blade and (3) an abrasion on her right chest. After three days in Jaffna hospital she left. Two days later she went to Dr. Ponniah complaining of pain and he decided that an X-ray examination was advisable. X-ray examination revealed that her 8th, 9th and 10th ribs were fractured on the back of the left side of the chest. It requires no acute powers of reasoning to understand that the strong probabilities are that the blows which caused the contusions on the back of the left chest which Dr. Chelliah found, also caused the fractures of the ribs, and there is the evidence of the complainant and her daughter that the accused hit her on the body with the handle of an axe. But the Magistrate, without calling upon the accused for his defence, acquitted him. Therefore, it is not surprising that the Attorney-General asks this Court to intervene.

The Magistrate in his reasons states that the evidence of the complainant is contradicted by the daughter. Now, it is conceded by Mr. Rajendram that there is only one contradiction in the evidence of these two witnesses. That contradiction relates to something which happened after the assault. The complainant said that after the accused had gone away she was taken to the hospital by one Sinnadurai whom her child went to bring. The daughter in her evidence stated, "He came there having heard about this. I did not go to tell him". It is very important that a tribunal should direct its mind as to what contradictions matter and what do not. This contradiction seems to have very little bearing on the question whether the accused assaulted the complainant, and had the witnesses been questioned about it, the matter might have been explained.

The Magistrate in his judgment further states, "According to complainant's evidence recorded as far back as May 31, 1945, she makes mention of accused's brother only being at the scene and released her". Now, on May 31, the complainant gave evidence; but the record shows that that was evidence tendered merely for the purpose of enabling another Magistrate to formulate a charge and was, therefore, not necessarily exhaustive. After this evidence was given the accused was charged and the trial fixed for October 11, on which date the hearing was continued by the Magistrate whose reasons are now being examined. On this latter date the complainant, when she gave evidence, stated in cross-examination that the accused's family were present at the time of the assault. Apparently the Magistrate thinks that because she did not mention this in her evidence given in May that she must be deliberately telling lies. He further states that the complainant's evidence is not supported by the medical evidence given by Dr. Chelliah. I have already dealt with that point. Dr. Chelliah's evidence is clearly not

inconsistent with the evidence of Dr. Ponniah and that of the complainant. "It is not possible" the Magistrate goes on "to say whether this accused caused the fracture of the ribs on May 10, 1945. When she was examined on May 15, 1945, by the J. M. O., Jaffna, under X'ray a fracture of the ribs was revealed. She had been discharged from the Pungudutivu hospital on May 12". If the suggestion here is that the complainant had had her ribs fractured between May 12 and 15, I can only say that there is no evidence to support it nor was it suggested in the cross-examination of the complainant, a cross-examination which did not reveal what the nature of the defence was.

This was clearly a case in which the defence should have been called upon.

I set aside the order of acquittal and send the case back for re-trial before another Magistrate.

Acquittal set aside.

