

1931

*Present : Akbar J.*KING v. PEIRIS *et al.*161-162—*D. C. (Crim.), Colombo, 9,525.*

*Evidence—Possession of used stamps—
Evidence of possession on a previous
occasion—Evidence Ordinance, ss. 9 and
14.*

Where a person was charged with being in possession of used stamps and evidence was led to show that a document tendered by the accused in a previous legal proceeding bore a similarly used stamp,—

Held, that the evidence was admissible to rebut a defence, which would otherwise be open to the accused, viz., that he was mistaken by the supposedly genuine appearance of the stamps.

Held, further, that in the circumstances of the case, it was also relevant under section 9 of the Evidence Ordinance as a fact necessary to explain a fact in issue.

A PPEAL from a conviction by their District Judge of Colombo.

Earle Wijewardene, for first accused, appellent.

B. F. de Silva (with him *de Jong* and *Rodrigo*), for second accused, appellent.

Crossette Tambiah, C.C., for the Crown.

February 10, 1931. AKBAR J.—

The first accused was charged with selling a used Rs. 10 stamp on February 12, 1930, an offence punishable under section 256 of the Ceylon Penal Code and the second accused, with aiding and abetting him in the commission of this offence. The second accused was further charged with having in his possession three used stamps of the value of Rs. 10, Rs. 5, and Rs. 5, respectively, also punishable under the same section of the Penal Code.

The learned District Judge in a closely reasoned judgment has found both the accused guilty under the respective counts, and has sentenced them both to terms of rigorous imprisonment, aggregating in the case of the first accused to one year's rigorous imprisonment and the second accused to 18 months.

It appears that the Additional District Judge, Mr. de Kretser, noticed that several stamps were missing from the records and also that stamps which had been once used were used again after being "treated." He held an exhaustive inquiry and found that processes issued by certain Proctors had defaced stamps affixed to them. The fact that he found certain Proctors associated with these stamps does not, of course, show that these Proctors were not duped themselves by their employees. His attention was directed particularly to 3 summonses marked P6, P7, and P8, and also to a petition (P4) by a petitioning creditor in an insolvency case, namely, D. C., Colombo, No. 3,984. All these documents undoubtedly contained treated stamps and the summonses, P6, P7, and P8 were

issued from a firm of Proctors under whom the second accused is employed as a process clerk. As regards these documents, P6, P7, and P8, the District Judge stated as follows :—

"I do not propose to deal or comment upon the summonses P6, P7, and P8 as I am satisfied from the evidence in the case that although the second accused was the clerk of Messrs. Wilson & Kadirgamar, whose chief duty was to issue processes, there were other clerks also who at times attended to this work.

"There was also the evidence of Mr. Ondaatjie, who was the District Court clerk, who attended to processes, who said that P6, P7, and P8 were issued by Messrs. Wilson & Kadirgamar, but that in his knowledge several clerks from that firm attended to processes. Under these circumstances I do not propose to base any conclusion or inference from the nature of the stamps affixed to these summonses."

As regards P4, however, there is no doubt that the stamp was initialled by the second accused and that the second accused himself was the petitioning creditor.

Mr. de Kretser held an inquiry and examined the Proctor appearing in the record for the petitioning creditor in the insolvency case and also the second accused ; but the second accused denied that he put the stamp on the petition. The result of the inquiry was to leave the question doubtful whether the second accused had any conscious knowledge of the fraud committed by affixing a used stamp on P4. The District Judge himself in this case has not attached any further importance to this document (P4) than what appeared at the inquiry held by the Additional District Judge, for he states as follows :—"But the Rs. 20 stamp affixed to P4 chiefly points to the second accused as having been in some way or other concerned with the affixation of it to petition P4. But I must say at the same that it was

not possible to definitely point to the second accused and say that it was he who personally affixed that stamp to that petition."

As a result of these frauds, the Additional District Judge communicated with the Criminal Investigation Department, and Inspector Peiris was detailed to investigate the matter. He made use of a sergeant as a decoy, namely, one Rajapakse, who posed as a village litigant and Inspector Peiris also made use of a police informant of the name of Samarawickrama, a sworn translator at Hulftsdorp. Keeping in view the suspicion that pointed to the second accused and also having received information against the first and second accused, the Inspector decided to lay a trap against them both, and on February 10, 1930, he showed Sergeant Rajapakse the second accused's house and the second accused. The arrangement was that Rajapakse was to buy a treated stamp and he was to pay by means of a marked Rs. 10 note and this stamp was to be bought from the first accused, through the instrumentality of the witness Samarawickrama. On February 10, Rajapakse stated that Samarawickrama spoke to the first accused and that the first accused told Samarawickrama there were three or four stamps of Rs. 5 each and that the first accused agreed to get the stamp from the second accused. Rajapakse heard the details of this conversation and he followed the first accused some distance behind and saw the first accused entering the house of the second accused. Moreover he saw the second accused at the entrance to his house. After seeing this, Rajapakse rejoined Samarawickrama but the first accused returned and told Samarawickrama that the stamps were not very clean and he asked both of them to come the next day. The next day, *i.e.*, February 11, Inspector Peiris was in the Crown Hotel watching some of the incidents. The first accused spoke to them and Rajapakse handed the first accused the

marked Rs. 10 note and when the first accused went towards the second accused's house, Rajapakse followed him. He saw the first accused enter the second accused's house and he also saw the second accused at the entrance to the house and both of them going inside the house. He saw the first accused coming out and he then hurried back and joined Samarawickrama. The first accused brought three stamps wrapped up in a piece of paper. They all met at the gate of the Crown Hotel and the first accused gave these stamps to Samarawickrama, namely, P9, P10, and P11, of the value of Rs. 10, Rs. 5, and Rs. 5. They were wrapped in the paper P12. Rajapakse offered to pay Rs. 7 only for the Rs. 10 stamp and the party went to the office of the first accused to adjust the difference between the price offered by Rajapakse and the Rs. 10 note given to the first accused. As they were leaving the gate of the Crown Hotel upon a signal from the Sergeant, Mr. Peiris who had been watching the incidents taking place near the gate of the Crown Hotel, followed the party to the office of the first accused and seized the two Rs. 5 stamps, P10 and P11, which had been handed by the first accused to his clerk, Mr. Perera, and the first accused had in his hand the paper, P12, which played a prominent part in this case. Inspector Peiris promptly searched the office of the first accused and went in search of the second accused, but he was not at home. At 1.30 P.M. Inspector Peiris saw the Additional District Judge and showed him the three stamps and the piece of paper P12. Later at 3 or 3.30 P.M., he searched the house of the second accused, arrested him and came across the diary (P 13). It was in a pocket of the second accused's coat, which was hanging from a peg in his bedroom. The Inspector found a tear on a page bearing dates November 1, 2, 3, and 4, and he found that P12 exactly fitted this tear. At the trial only the first accused gave evidence. I have stated the main facts in full

because Mr. de Silva, who argued the case for the second accused, has taken a point of law of some importance.

As regards the appeal of the first accused, which was only on the facts, I do not propose to interfere either with the sentence or the conviction. The case against him has been fully proved not only by the evidence of Samarawickrama but by that of Sergeant Rajapakse and also by the important evidence of Inspector Peiris. He gave evidence at the trial and I agree with the District Judge that his explanation is too childish to be believed. As regards the second accused it will be observed that on the facts the case against him depends not only on the evidence of Samarawickrama but also on that of Sergeant Rajapakse. On each occasion Sergeant Rajapakse saw the first accused going into the house of the second accused and he was also seen by the Sergeant at the entrance to his house. On the second occasion, *i.e.*, on February 11, the first accused was seen by the Sergeant to go into the house of the second accused and to return from it and to hand over the three used stamps immediately afterwards to Samarawickrama. The second accused was seen by the Sergeant at the entrance to his house and both the first and second accused went into the house. The Rs. 10 marked note was not found on the person of the first accused and it has disappeared. A fair inference is that the money was handed by the first accused to the second accused and then there is the startling fact that these stamps were wrapped in a piece of paper torn from a diary, which was subsequently found in the coat pocket of the second accused. All this evidence has been believed by the District Judge and it all points to the undoubted guilt of the second accused. Mr. de Silva who argued this case with his accustomed ability took the point of Law that the admission of the evidence relating to the document (P4) was irrelevant and that it has seriously prejudiced the mind of

the District Judge and he cited many cases for the purpose of proving that evidence with regard to an offence with which an accused was not charged was irrelevant for the proof of the charge laid in the indictment. All these authorities are referred to more or less in a case of the Full Bench, namely, *the King v. Seneviratne*¹. These authorities are all based on the Privy Council case of *Makin v. the Attorney-General of New South Wales*. I need only quote one passage of Lord Herschell's judgment which is often quoted as it sets forth the principles in clear terms. The passage is as follows :—

“ It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purposes of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental or to rebut a defence which would otherwise be open to the accused. The statement to these general principles is easy, but it is obvious that it may often be very difficult to draw the line and to decide whether a particular piece of evidence is on the one side or the other. ”

The evidence based on the document (P4) would be admissible if it is relevant to the issue before the Court, and it is relevant for two reasons. In the first place it is relevant under section 9 of the Evidence Ordinance as a fact necessary

¹ 27 N. L. R. 100.

to explain a fact in issue, namely, as to how a trap came to be laid against the second accused.

It will be remembered that Inspector Peiris took particular care to show the second accused's house and also the second accused to Sergeant Rajapakse before he organized the trap. It is also relevant, according to the dictum of Lord Herschell, as it may rebut a defence which would otherwise be open to the second accused. The second accused might have pleaded that he himself was mistaken by the supposedly genuine character of the three stamps P9, P10, and P11. As a matter of fact the second accused in his petition of appeal, paragraph (e), states as follows :—

“ There is no evidence to prove that second accused had knowledge of the fact that the stamps were to be used for the purpose of an affidavit nor that the second accused had them in his possession with guilty knowledge. ”

Mr. de Silva also argued that the evidence relating to P4 had the effect of making the District Judge suspect the second accused and that this suspicion had prejudicially affected the Judge's mind against the second accused. In this respect reference may be made to the case of the *King v. Pila*¹, where it was held that if a fact is relevant it may be proved “ even though such evidence amounted to evidence that the accused had a bad character ”. As a matter of fact in this case the District Judge was not prejudiced in this sense because he says that the document (P4) “ chiefly points to the second accused as having been in some way or other concerned with the affixation of it to the petition (P4). But I must say at the same time that it was not possible to definitely point to the second accused and say that it was he who personally affixed that stamp to that petition. ”

¹15 N. L. R. 455.

This passage clearly shows that his mind was not prejudiced.

In all the circumstances I think the appeal of the second accused fails and his appeal must be dismissed.

Affirmed.