*Present:* Bertram C.J.

1920.

ANANTHAM *v.* SAIADO.

*67—P. C. Mannar, 9,633.*

*False evidence—Contradictory statements—Prosecution must allege which is false—Loose statements in immaterial introductory matters not to be made subject of charge.*

When a witness is charged for giving false evidence, it is not competent to the prosecution to allege that the witness made two contradictory statements, one of which must be false. The prosecution must commit itself to one which it alleges to be false, and prove that it is false to the knowledge of the person making it. "Loose statements in immaterial introductory matters, made in such a manner that it is obvious that the witness is not thinking what he is saying are not appropriate subjects for a charge of giving false evidence."

THE complaint in this case was as follows:—

Seemampillai Mudaliyar Anantham, Additional Police Magistrate, Mannar, complainant.

*Vs.*

Kader Mohideen Saiado of Jaffna, accused.

On this 8th day of January, 1920.

I do hereby complain that the accused above named did on or about the 30th day of December, 1919, at Mannar, being examined as a witness in Police Court, Mannar, case No. 9,633, a judicial proceeding then pending before the said Court, and being bound by an affirmation to state the truth, intentionally give false evidence by knowingly and falsely stating:—

(*a*) "Last Thursday morning (meaning December 25, 1919)—do not know the date—I left Jaffna for Eantilampiddy. I broke journey at Medawachchiya, and started again by the night mail. No, I came by the day train and got down at Maliwady and went to Eantilampiddy." Whereas in truth and in fact he did not travel on that day by train from Jaffna or break journey at Medawachchiya and start again by night mail or day train and got down at Maliwady.

(*b*) "Reached Talaimannar next morning" (meaning December 28, 1919).

"No, I reached Talaimannar that night about 10 P.M." (meaning night of December 27, 1919).

One of which statement must be false.

(*c*) "I did not see the dog."

"I saw the dog running."

One of which statement must be false, and that he has thereby committed an offence punishable under section 190 of the Ceylon Penal Code

(*Signed*) S. M. ANANTHAM,
Additional Police Magistrate.

1920.

*Anantham v. Saido*

The following was the judgment of the learned Police Magistrate (B. G. de Glanville, Esq.):—

Accused is charged with giving false evidence in making the statements indicated in the plaint. It is quite clear from the evidence of the Magistrate before whom the statements were made that they were not made inadvertently or without intention, but that in each case the accused, when he found that he had made a statement which could not be true or which was leading him into difficulties, promptly and deliberately contradicted his first statement and made a completely opposite statement.

Reading through his evidence as a whole, it is very difficult to get away from the conclusion that the accused was inventing the greater part of his story, but of this there is, of course, no proof, and it is not asserted by the prosecution.

There can to my mind, however, be no possible doubt that the accused deliberately on the three occasions indicated made statements which he knew to be false. It is contended on behalf of the accused that no motive is shown, but I see no reason to come to any finding as to his motive, whether his motive was originally to deceive the Court or to conceal his own actions, or whether he made the statements recklessly, and on finding they led to trouble equally recklessly contradicted them, is, I consider, immaterial.

The statements standing above may appear to be insignificant, but on taking them in conjunction with the rest of the accused's evidence and the account of the Magistrate as to how they were made, it is clear that they were of considerable importance, as being details elicited from the accused in his account of his own actions and in support of his own story.

I find the accused guilty under section 190, Ceylon Penal Code. I consider the offence a serious one, and one for which a fine alone is inadequate. His evidence was being given in connection with a very serious charge brought by him, and if believed would have led to very srious consequences for the accused.

I sentence the accused to three months' rigorous imprisonment.

*H. J. C. Pereira* (with him *Retnam*), for appellant.

*Jansz, C.C.*, for the Crown.

February 13, 1920. BERTRAM C.J.—

In this case the charge practically consists of three counts. In its last two paragraphs it has certain statements in the alternative, that is to say, it alleges that the witness made two contradictory statements, one of which must be false. With regard to these two counts—if I may call them counts—the form of the charge is contrary to the law as stated in *R. v. Dias*.[1] It is not competent to the prosecution to charge certain statements in the alternative. The prosecution must commit itself to one which it alleges to be false, and prove that it is false to the knowledge of the person making it. This objection does not apply to the first count. There it is definitely alleged that the accused made certain statements knowing them to be false. It appears, however, from an examination of the facts, that the point to which these statements were

[1] *(1903) 6 N. L. R. 258.*

directed was one of no material importance, and that there can have been no real intention in the mind of the accused to mislead the Court. He said that he was going on a particular journey by a particular train, and that that train stopped at a particular place, where he alighted. It appears that the train in question, which he said was a night train, did not stop at that particular place. He, thereupon, altered his statement, and said that he went by the day train. It may be quite true that no ordinarily intelligent person, who has travelled by a night train, does think afterwards that he has travelled by a day train. But whether or not this actually happened, in the present case must depend upon what is called the mentality of the accused, which in this case was obviously a very low one.

The real principle at issue, I think, is this. Loose statements in immaterial introductory matters made in such a manner that it is obvious that the witness is not thinking what he is saying are not appropriate subjects for a charge of giving false evidence. Under such circumstances, as the mind of the speaker is not at the time conscious that the statement is false (inasmuch as his mind is not really directed to the question of its truth or falsity), it can hardly be said that he knows or believes the statement to be false at the time he makes it. It would be otherwise if the witness is speaking of something which is obviously crucial to the case, inasmuch as this would be a point to which his mind would in the circumstances necessarily be directed. This is in accordance with the law as laid down by Bonser C.J. in the case of *Q v. Habibu Mohamadu*,[1] which Mr. Pereira has brought to my attention. The Chief Justice there says: "Of course, the materiality of a statement, although not of the essence of an offence, may have a considerable bearing on the intention of the accused. The statements may be so entirely unimportant that a jury may be justified in coming to the conclusion that the attention of the accused was not called to what he was saying, and that there was an absence of any intention to wilfully mislead them and to make an untrue statement." I may further say that there appears to me to be good reason why the law does not allow contradictory statements to be charged in the alternative, except under the special provisions of section 439 of the Criminal Procedure Code. It is not the intention of the law to punish every loose and unthinking statement which a witness makes in the box, but only such statements as are deliberately made with the intention of bringing about a miscarriage of justice. That appears to me to be the reason why it is incumbent on the prosecution to allege definitely the falsity of the statement on which the charge is based. I allow the appeal.

*Appeal allowed.*

[1] *(1894) 3 C. L. R. 57.*