

1948

Present : Basnayake J.

KITNAPULLE *et al.*, Appellants, and CHRISTOFFELZ
(S. I. Police), Respondent.

S. C. 43-45—M. C. Point Pedro, 9,747.

*Information Book—Use of it by Magistrate—Discretion of Court—Criminal
Procedure Code—Section 122 (3).*

The use of the Information Book is a matter entirely within the discretion of the Judge. He must take care, however, not to make use of statements or facts contained in it as evidence for any purpose whatsoever or to draw any conclusion of guilt from such statements.

A PPEAL from a judgment of the Magistrate, Point Pedro.

H. V. Perera, K.C., with *H. W. Tambiah*, for the accused, appellants.

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

Cur. adv. vult

¹(1947) 1 All E. R. 567 at 575.

April 5, 1948. BASNAYAKE J.—

The first appellant has been convicted of the offence of grievous hurt, the second and third appellants have been convicted of the offence of abetting the offence of the first. The evidence for the prosecution, if believed, is sufficient to establish the charges against all the appellants. The learned Magistrate, who has seen and heard the prosecution witnesses, accepts their evidence and is convinced of the truth of the prosecution case. I see no sufficient ground for interfering with his finding of fact.

I shall now deal with the submission of learned counsel for the appellants that the learned magistrate made improper use of the information book in these proceedings. The action taken by the learned magistrate appears from the following passage in his judgment. "Next the statement made to the Udayar was made use of by the defence. Kulandaivelu had made the statement that Annapillai wife of Selvanayagam asked him to inform the Udayar that 'Someone' had stabbed her husband. Kulandaivelu gave evidence for the defence and said that he inquired from Annapillai who stabbed her husband and she replied that she did not know. After that Kulandaivelu before going to the Udayar saw the injured man surrounded by people but never questioned as to who had caused the injuries. If Kulandaivelu was curious enough to find out the assailants from Annapillai he would have inquired from the people as well. This clearly shows that he never inquired from Annapillai and Annapillai stated that Kulandaivelu never questioned her about this. Annapillai when she sent Kulandaivelu knew who the assailants were, but she was not an eye-witness to the incident and her whole desire was to get the K. V. to the scene. Hence she naturally told Kulandaivelu that her husband was stabbed and so inform the Udayar. From this no inference can be drawn that at the time of the incident the names of the assailants were not known. As I am not conversant with the Tamil language I got the statement of Annapillai written by the Interpreter and translated. There were some discrepancies between the statement to the Police and evidence but these do not go to the root of the incident. On the evidence it is clear beyond doubt that the accused are the persons who committed this offence". I have quoted the learned Magistrate at length so that the reference to his examination of Annapillai's statement to the Police may appear in its true and proper context. The learned Magistrate has not used Annapillai's statement as evidence and I see nothing in his use of the statement that is in the circumstances of this case obnoxious to the provisions of section 122 (3) of the Criminal Procedure Code, the relevant portion of which reads: "But any Criminal Court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information, not as evidence in the case, but to aid it in such inquiry or trial". Commenting on this provision in the case of *King v. Cooray*¹, a decision of three judges of this Court, Garvin A.C.J. observes: "A court is entitled to use the information book to assist it in elucidating points which appear to require clearing up and are material for the purpose of doing justice (*Queen Empress v. Manu (1897) I. L. R. 19 Allahabad 390*). The information book may show that there exists a witness, whom neither side has called,

¹ (1926) 28 N. L. R. 74 at 83.

able to give material evidence which a Judge may think should be placed before a jury. It may indicate lines of inquiry which should be explored in the highest interests of justice, or may disclose to a judge that a witness is giving in evidence a story materially different from the story told by him to the investigating officers shortly after the offence ”.

It would be inadvisable in my view to fetter the provisions of section 122 (3) by laying down fixed rules which should guide a judge in exercising his power to make use of statements made to a police officer or an inquirer in the course of an investigation under Chapter XII of the Criminal Procedure Code. As observed by Garvin A.C.J. (*supra*) “ The practice of individual judges as to the use of the information book may vary. Some judges may prefer not to see it at all ; others may take the view that in the interests of justice the fullest use should be made of the book ; others again may take the view that it should be resorted to only when in their judgment the circumstances of a particular case require such a course if justice is to be done ”.

The matter is entirely in the discretion of the judge and he is free to exercise the power within the limits set to it by law. Care should, however, be taken not to use such statements or the facts contained therein as evidence for any purpose whatsoever. A judge should also guard against drawing any conclusions of guilt from such statements.

As I have observed earlier the learned Magistrate has not transgressed the limits imposed by law in using the statement of Annapillai. The appeals are dismissed.

Appeals dismissed.
