

1948

*Present : Wijeyewardene A.C.J.*

LAMBADUSURIYA, Appellant, and ROBINS (Superintendent of Police), Respondent.

*S. C. 529—M. C. Colombo, 25,267*

*Penal Code, s. 158—Charge of accepting illegal gratification—Discrepancy between charge and evidence—Evidence only of loan—Validity of conviction.*

A public servant who is charged with accepting an "illegal gratification of cash Rs. 250" in respect of a particular official act cannot be convicted for obtaining "an illegal gratification of a loan of Rs. 250" for doing another official act when the case presented by the Crown at the trial is in accordance with the charge preferred against him.

**A**PPEAL from a judgment of the Magistrate, Colombo.

*H. V. Perera, K.C., with G. P. J. Kurukulasuriya and Vernon Wijetunge, for the accused, appellant.*

*Boyd Jayasuriya, Crown Counsel, for the Crown.*

*Cur. adv. vult.*

June 15, 1948. WIJEYWARDENE A.C.J.—

The accused was charged with accepting on October 21, 1946, while being a public servant, "a gratification of cash Rs. 250" other than legal remuneration from Sirisoma Ranasinha as a reward for doing an official act in the exercise of his official functions, to wit, obtaining for the said Sirisoma Ranasinha from the Government Agent, Western Province, a permit to cut and remove earth from the premises of the Government Girls' School.

Non-summary proceedings were instituted on this charge. After several witnesses including Mr. Ranasinha had given evidence the Magistrate discovered that the offence with which the accused was charged was a summary offence. The Magistrate, thereupon, discharged the accused and ordered the Police to file a fresh plaint. That plaint was filed before another Magistrate who, after hearing evidence, convicted the accused and sentenced him to six weeks' rigorous imprisonment.

Mr. Ranasinha appears to be a man of some education and is the proprietor of a printing and publishing business. The accused is a Government servant with "an excellent record of service" according to his official superior, the Government Agent, Western Province. In 1946 he was conferred the titular rank of Muhandiram in recognition of his services to Government. At the time of the alleged offence, the accused was occupying a responsible position as Land Clerk in the Kachcheri and had a large number of clerks working under him.

The accused admitted receiving a sum of Rs. 250 from Ranasinha on October 21, 1946, but stated that he was given the sum as a temporary loan.

It will thus be seen that the matters in dispute between the prosecution and the defence lie within a very small compass, and that fact makes the decision of the case somewhat difficult.

After discussing the evidence given by Ranasinha, accused and some witnesses the learned Magistrate found the accused guilty because he was inclined to believe Ranasinha's version that the sum of Rs. 250 was given as a "bribe". This certainly raises some doubt in my mind whether the Magistrate did not decide this case on a balance of evidence. Moreover, the Magistrate rejected the evidence given by the defence witness, Mr. Siriwardene, a young clerk employed in the Kachcheri, as he was a clerk working under the accused and "one who can be made to say anything in favour of the accused". Apart from the fact that the proceedings do not disclose any grounds for that observation by the Magistrate, it has to be remembered that at the time Mr. Siriwardene gave evidence the accused had been interdicted from duty and was, therefore, not in a position to exercise any influence over Mr. Siriwardene. The Magistrate has also failed to consider the evidence of Mr. K. T. de Silva, retired Korale Mudaliyar, though that evidence is relevant to the defence. In view of all these circumstances I think it necessary to examine carefully the evidence in the case.

I may state at this stage that on a strict interpretation of the charge it is not possible to sustain the charge on the evidence led by the prosecution even if that evidence is accepted. That evidence proves only that the accused asked for and obtained a bribe of Rs. 250 for enabling Ranasinha to obtain a concession from the Government Agent to remove earth from the Crown land *without payment for the earth so removed*. According to that evidence it was never suggested by the accused to Ranasinha that Ranasinha should give a bribe to the accused for the mere issue of a permit by the Government Agent. The charge, however, states that the gratification was for obtaining a permit in favour of Ranasinha to cut and remove earth.

The evidence of Ranasinha before the trial judge was to the following effect :—

- (a) He wrote letter P1 of July 1, 1946, asking for a permit to cut or remove earth from a Government land and pointing that the Government would be benefited by issuing him such a permit.
- (b) In August, 1946, the accused saw him at his business place and told him that he would have to pay the Government about

Rs. 1,000 for the earth which he sought to remove but undertook to get the Government to waive the amount if he "saw to his trouble". He replied, "I need not pay anything for the cutting of earth and I have adduced all reasons for doing so". He added "I knew that no payment need be made and I was not ready to make a payment. I was not prepared to pay a cent up to the last. The position I took was that the Government should pay me. I even told the accused so".

- (c) In September he went to the Kachcheri. He met the accused there and learnt that his application had been forwarded to the D.R.O. On that occasion the accused said, "Mr. Ranasinha, I am in need of Rs. 250. Can you give it to me?". He went away without saying anything.
- (d) On October 16, the accused phoned to him from the Kachcheri and said that if Ranasinha paid him Rs. 250 he would "allow the application to cut earth free". Ranasinha agreed to pay Rs. 250 and accused undertook to have the permit ready on October 21.
- (e) On October 18, Ranasinha went to the Police Station, Pettah, and made a statement to the Inspector of Police. Arrangements were then made for the Inspector to be present when the accused came to Ranasinha's place of business on October 21, for his bribe.
- (f) Accused came about 4.20 P.M. on October 21. The Inspector was in the adjoining room but he could see and hear what passed between the accused and Ranasinha. What then happened is narrated by Ranasinha as follows :—

"He said, 'How are you Mr. Ranasinha?' and took his seat. He said 'hurry up and cut the earth' and inquired whether there are produce trees in the garden. I said there are no produce trees and asked him to get me a permit to cut those trees also. The accused asked me to send an application for that purpose. Then I took the envelope P10 in which I kept the money and asked him to reduce something saying that it was too much. The accused said he could not reduce anything. He said that he would not do it even for Rs. 500 to any other man. I gave him the money. The accused thanked me, put the money into his pocket and went away".

Now that evidence is contradicted on several points by the evidence given by him in the non-summary proceedings and by the statement made by him to the Inspector of Police on October 18.

In the non-summary proceedings he did not say a word about the accused telling him in August that he could remove the earth from the Government land without payment, if he "saw" to accused's "trouble". His position then was that the first mention of a gratification was on October 16th when the accused phoned to him that if he gave Rs. 250 the accused would "put through the matter". It was then that he tried to reduce the amount, but the accused "would not listen".

In his statement to the Inspector of Police which was freely used at the argument before me by both the Counsel the first suggestion of anything in the form of a money payment was made by the accused on October 16th. The relevant passage in that statement is as follows :—

“ On the 16th October at 2.12 P.M. Mr. Lambadasuriya telephoned to me to my office and stated that the D.R.O. had returned the papers stating that there are a number of coconut trees and cadju trees. Mr. Lambadasuriya asked me whether I could cut earth without damaging the trees. I said I could do it. He then asked me how much I could give him to get the matter passed. I asked him how much he expects. He then told me that that is a matter where I would have to pay Rs. 1,000 to the Government but that he would arrange to do it at a nominal rate if I give him Rs. 250. I told him it was too much and to reduce the amount. He then told me that he could not reduce the amount. I then agreed to pay Rs. 250.”

It will thus be seen how Ranasinha has given different versions of the circumstances connected with the accused's demand for a bribe.

I shall now proceed to consider the evidence of the Inspector of Police which according to the prosecution supports to some extent the case against the accused. Speaking of what happened just before the sum of Rs. 250 was handed by Ranasinha to the accused on October 21 the Inspector says :—

“ At about 4.35 P.M. the accused came to the complainant's office. The accused sat opposite the complainant at his table. The accused said you will have to cut the earth and finish the work soon. The accused asked whether the trees were in bearing. I heard the complainant saying, ‘ It is too high. I thought of reducing the amount ’. The accused said ‘ No ! No ! ’ ”

It will be seen that the Inspector who could have heard and seen distinctly what passed between the accused and Ranasinha does not give the same account of the conversation as Ranasinha (*vide (f) above*). Moreover it is very difficult to understand what the accused could have meant by saying “ No ! No ! ” to Ranasinha's observation that “ It is too high. I thought of reducing the amount ”. The conversation was in Sinhalese and the accused reply should have been not නැ ! නැ ! which was meaningless but some such words as දපොයි එහෙම කරන්නට එපා. It is admitted and proved beyond any doubt that the accused is very deaf. Could it not be that Ranasinha said something for the benefit of the Inspector of Police so as to convince the Inspector that the accused was being given a bribe but spoke in a low tone so as not to be heard by the accused who misunderstanding what Ranasinha was saying replied “ No ! No ! ” to what he thought Ranasinha was telling him ? It may be mentioned here that Ranasinha stated that he intended “ to get the permit and put him (accused) into trouble ”.

The accused himself gave evidence and stated that he approached Ranasinha for a loan of Rs. 250, as he wanted to get together Rs. 1,000 for the purchase of a motor cycle for a nephew of his, who was expecting to be employed shortly in a Government department. He admitted that he had money in the Bank but added that he could not operate on it without

the knowledge of his wife who was opposed to his financing his nephew. I think the Magistrate has rejected without due consideration the evidence of the accused that he wanted to raise a loan for the purchase of a cycle. Mudaliyar de Silva supports the accused when he says that the accused mentioned to him about the beginning of September his need for Rs. 1.000 for the purchase of a cycle and that he promised to give a loan of Rs. 250. Mr. Siriwardene's evidence is to the effect that as the accused was deaf he received a telephone message from Mr. Ranasinha for the accused on October 16 and that Mr. Ranasinha said in the course of his conversation that the loan would be ready. As soon as he was arrested by the Police the accused told the Inspector that "the money was received as a loan".

It was argued by Crown Counsel that even if the sum of Rs. 250 was taken as a loan, yet the accused would be guilty of an offence under section 158 of the Penal Code, if the loan was asked for and obtained as a reward for the accused showing some favour to Ranasinha in the exercise of his official functions. That, no doubt, is a sound proposition of law. But it does not follow that a man could be charged for accepting "a gratification of cash Rs. 250" for doing a certain official act and could be convicted on that charge in spite of the evidence for Crown, for obtaining a loan of Rs. 250 for doing a different official act.

I am unable to hold that the Crown has proved beyond reasonable doubt the charge preferred against the accused.

No doubt, the accused has acted most improperly in trying to raise a loan from a person who came to him on official business. He may be liable to be dealt with departmentally for it. Such misconduct, however, does not amount to a criminal offence.

I set aside the conviction and acquit the accused.

*Appeal allowed.*

---