Present : Jayewardene A.J.

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DYSON *v.* KANAGAMMAH.

377—P. C. Anuradhapura, 67,728.

False information to public servant—Statement in answer to question—Meaning of term "information"—Proctor appearing for complainant after acting as Magistrate in case—Irregularity—Penal Code, s. 180.

A statement in order to form the basis of a charge under section 180 of the Penal Code, viz., of giving false information to a public servant, must be voluntarily made.

The term "information" denotes the communication of any intelligence or knowledge of facts whether it is or it is not in the nature of an accusation, but it does not mean the suggestion of a possible clue to the discovery of a fact unknown.

Where a proctor has initiated criminal proceedings as acting Magistrate and framed a charge and called upon the accused to plead, it is improper for him to appear for the complainant.

APPEAL from a conviction by the Police Magistrate of Anuradhapura.

Gnanapragasam (with *H. K. P. de Silva*), for appellant.

Crossette Thambiah, C.C., for respondent.

June 9, 1930. JAYEWARDENE A.J.—

In this case the accused, a woman named Kanagammah, was charged with giving false information to a Sub-Inspector of Police against Mr. Panditanayake, Superintendent of Minor Roads, under section 180 of the Penal Code, and convicted and sentenced to pay a fine of Rs. 50.

On the morning of November 18 three persons were found to have been poisoned at the Madawachchia Resthouse. They were the resthouse-keeper and his wife and a servant, Murugesu. The latter was found dead and the resthouse-keeper and his wife were removed to hospital in an unconscious state. Sub-Inspector Khan went to Madawachchi on the 18th, but no information was forthcoming. He asked for assistance from the Criminal Investigation Department of the Police, and Sergeant Krisnan was sent to help him in the investigation. The Sub-Inspector learnt from Sergeant Krisnan that the accused, who lived opposite to the resthouse, knew something about the matter, and sent for the accused on November 29. He examined her and recorded her statement, which was to the effect that she saw Mr. Panditanayake on the morning of November 18 driving his car towards Anuradhapura from the direction of Jaffna with two men inside the car.

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It has been argued that the statement of the woman was not voluntarily made, but that it was forced out of her by the police officer and that it was made unwillingly in a state of fear and that she had merely answered questions put to her.

The first requisite in a prosecution under section 180 is the giving of false information. The meaning of the expression "give information" is to volunteer information, not to make statements in answer to questions put by the public officer (*R. v. Nyaaung Bo* [1]). It was there remarked that it would be importing into this section a meaning which was not contemplated by the Legislature to say that this section covers such statements. It was held by this Court in *Sub-Inspector v. Babbi*[2] that section 180 only applied to information voluntarily given by a public servant. It does not apply to cases where the information is disclosed in the course of the examination of a person by a police officer or other public servant, especially where the person examined is bound by law to "answer truly" all questions put to him.

In *Thampu v. Nagan*[3] de Sampayo J. held that giving information under section 180 implies volunteering a statement to a public servant, and does not cover a case where answers are given to questions put by some authority at the happening of some event. He set aside the conviction on the ground that the accused did not come forward and volunteer any information but answered questions put to him in the course of the inquiry by the headman. In *Jamaldeen v. Caruppen*[4] Drieberg J. found it difficult to hold that in no circumstances could statements made under section 122, in answer to questions form the basis of a charge under section 180, when there is express provision (section 122 (3) proviso) that such statements could be given in evidence in a charge under that section.

Jayewardene J. was however of opinion in *Sub-Inspector v. Babbi* (*supra*) that the proviso to section 122 would not render a person who discloses information or an accusation which is proved to be false liable to be dealt with under section 180. He held that the statements could not be used as the basis of a charge under section 180, although they may be used for collateral purposes, and that the proviso in question could not be construed as in any way amending section 180 and enlarging its scope. In his commentary of this section Dr. Gour states that the word "information" does not include a statement made by the accused for the purposes of his defence nor answers to questions put by a police officer under section 161 (corresponding to our section 122 of the Code of Criminal Procedure) (*Dr. Gour, p. 989, 4th ed.*), but otherwise it includes any

[1] *(1905) 2 Cr. L. J. (Indian 474) in Gour 990.*
[2] *(1923) 25 N. L. R. 117, at p. 126.*
[3] *(1923) 25 N. L. R. 69.*
[4] *(1928) 28 N. L. R. 458.*

information whether given on request or otherwise. The test, to my mind, seems to be whether the accused voluntarily gave any information. According to Ratanlal (*Law of Crimes, 4th ed., p. 227*) false answers to questions put by a police officer in the course of investigation of a cognizable offence do not fall under this section. The accused says that when she first mentioned what she saw to her husband, he asked her to keep quiet, but later she talked about it to one Sabapathi. Sergeant Krisnan discovered that she knew something and informed the Sub-Inspector, who sent the Weedi-Aratchi to fetch her. She says that Weedi-Aratchi took her to the Inspector, threatening to tie her up and take her forcibly before the Inspector and out of fear she went up with him. She told the Inspector she was not willing to make a statement and the Inspector assured her of her safety. She says that she was examined by the Police Magistrate and she told him that she could not perfectly identify the man (Mr. Panditanayake). Sergeant Krisnan says that he told the Inspector that the Magistrate had disbelieved the woman. The accused is a poor, ignorant Tamil woman. Her whole statement has not been recorded. The Inspector admits that she told him she did not want to go to Court as it was inconvenient to her, but that he did not record this statement. That part of her statement though unrecorded is very material in a prosecution of this nature as showing her unwillingness to make any statement. The whole statement as it has been recorded by the Inspector is such that I am inclined to hold that it was made merely in reply to questions and after she was assured of her safety. She has been warned by her husband to say nothing. She told the Government Agent that she abused one Supprāmaniam for dragging her into this and also scolded Sabapathipillai for giving her name to the police. The Government Agent says that she appeared indignant that her name had been disclosed to the police. It may be that her statement to the Police Inspector was made through sheer fear after the threats held out to her by the Weedi-Aratchi. When taken before the Government Agent she perhaps felt that she was bound to repeat the same statements to escape any possible danger. It is difficult to understand the mentality of women of this class, but fear operates strongly on their minds. I cannot resist the conclusion after a careful scrutiny of the evidence that the statements made to the Inspector were not voluntary statements.

The statement complained of is that on the morning in question the accused saw Panditanayake driving his car towards Anuradhapura. There was no direct accusation. It may have afforded some clue which if further investigated and followed up may have formed a link in a chain of other direct or circumstantial evidence. By itself it is of no probative value. The term " information " denotes the communication of any intelligence or knowledge of facts whether

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it is or is not in the nature of an accusation, but it does not mean the suggestion of a possible clue to the discovery of a fact unknown (*Dr. Gour, p. 989*). In that view the accused has given no information against Mr. Panditanayake which could be used to his detriment. The case of *Inspector v. Batcho*[1] was decided on the same principle.

Then again it is for the prosecution to prove that the accused when she made the statement did not believe that she saw Mr. Panditanayake. His *alibi* may be well proved but yet the accused may have thought that she saw him. In *R. v. Menikrala*[2] Burnside C.J. observed the *alibi* set up induced the belief that the accused could not have seen the complainant and yet it is consistent with the *alibi* that the accused honestly believed what he says he saw."

It must clearly and beyond reasonable doubt be proved that the accused knew of the falsity of the information he gave (*Kitchell v. Peeries*[3]). It is admitted that the accused bore no illwill towards Mr. Panditanayake and she had no motive for implicating him. Mr. Panditanayake stated that he had ample evidence that the Kachcheri Mudaliyar instigated the woman to incriminate him, but not a single witness was called to prove this serious allegation. The Magistrate holds that the natural and probable inference is that the accused made the statement at the instigation of the enemies of Mr. Panditanayake. In the absence of any evidence it would not be safe to make or give effect to such an inference. The enemies were at Anuradhapura. It is difficult to think that they influenced the witnesses at Madawachchi or were responsible for the rumours there connecting the name of Panditanayake with the murder. The poisoning remains a mystery, and the servant, Andris, who has been charged with murder, still is in concealment. Neither the resthouse-keeper nor his wife has been examined in this case. Whether a motor car came to the resthouse or not on this morning or even at night has not been proved. If a car did pass the accused's house, it is possible that the accused mistook the driver for Mr. Panditanayake. It is not necessary or safe to infer that his enemies set up this woman to make a false statement, nor does it follow, in these days of fast travelling, if Mr. Panditanayake started from Kurunegala in the early hours of the morning that he could not have been at all the places he mentioned and also at Madawachchiya as stated by the accused. They are all within reach in a fast travelling car within three hours.

It was contended that the Magistrate who initiated the proceedings appeared for the complainant at the trial and conducted the prosecution, and that this was unfair to the accused. It has been

[1] *(1914) 6 Bal. Notes 16.*

[2] *(1889) 9 S. C. C. 10.*

[3] *(1889) 9 S. C. C. 53.*

held that a proctor who has appeared or advised one of the parties at any stage should not also be the judge. Bertram C.J. held that the administration of justice should be free from even the suggestion of suspicion (*Dingiri Mahatmaya v. Mudiyanse*[1]). In *C. R. Colombo, 40,396, S. C. N. Feb. 17, 1930*, where an advocate who appeared for one of the parties sat as judge later and made certain orders, Dalton J. thought it was a very grave irregularity which vitiated the proceedings and followed the case of *King v. Sussex Justices (ex parte M'Carthy*[2]), where Lord Hewart C.J. observed that " it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. "

In the present case Mr. Krisnaratne, who is the Crown Proctor and was acting as Police Magistrate, ordered summons to issue on February 5 and examined Mr. Dyson, the Government Agent, and ordered summons to reissue on February 11. The accused appeared before him on February 15, and he framed a charge against her and recorded her plea, and further examined Mr. Dyson and fixed the case for trial on March 6. When the case came to trial after a postponement he appeared for the prosecution. In the local case cited the counsel acted later as judge, but here the positions have been reversed and the judge has appeared as counsel.

In the absence of authority it is difficult to lay down any general rule, but it appears to me that where, as here, a Magistrate has initiated criminal proceedings and framed a charge and called upon the accused to plead, it would be most disconcerting to the accused to find the same person appearing for the complainant and pressing for a conviction, and he may reasonably suspect and fear that justice may not be done. The trial Judge may have required some information from the Magistrate who had issued summons and examined an important witness or this Court may have required such information. But as Lord Hewart C.J. observed his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His two-fold position was a manifest contradiction. If it were necessary I would have quashed the conviction and proceedings and ordered a trial *de novo* on this ground.

However, for the reasons I have stated I do not think this conviction can be sustained. I therefore set aside the conviction and acquit the accused.

Acquitted.

[1] *(1922) 24 N. L. R. 377.*

[2] *(1924) 1 K. B. 2 6.*