Present : Wood Renton J.

June 13, 1911

THE KING *v.* AMADORU *et al.*

78 *and* 79—*D. C.* (*Crim.*), *Tangalla*, 721.

Criminal Procedure Code, s. 440—Evidence found to be false on the balance of conflicting evidence—False evidence disclosing serious criminal charge—Summary punishment.

Semble, there is nothing in section 440 of the Criminal Procedure Code which prevents a Court from adopting the summary method provided by that section for punishing a witness for giving false evidence, even in cases where the false evidence charged disclosed a serious criminal offence, or where the Judge arrived at his conclusion that perjury had been committed on the balance of conflicting evidence.

All that section 440 requires is that the accused persons should have given evidence in a judicial proceeding, which, in the opinion of the Court before which that proceeding is held, is false.

THE facts appear from the judgment.

Samarawickreme, for the accused, appellants.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

June 13, 1911. WOOD RENTON J.—

In this case there are two appellants, of whom the first was the complainant and the second a witness, in the prosecution of a Station House Officer in the District Court of Tangalla on charges of hurt under section 314 and extortion under section 373 of the Penal Code. The learned District Judge heard the evidence of the complainant, of the witness-appellant and of another witness. He then came to the conclusion that the charges against the Station House Officer were false, and acquitted him at once, giving his reasons for doing so. Thereafter he proceeded to charge the two appellants with perjury under section 440 of the Criminal Procedure Code, and sentenced each of them to pay a fine of Rs. 50, or in default to undergo two months' rigorous imprisonment. The present appeals are brought against these convictions, and several points of interest have been argued in support of them. I will deal first with the point that Mr. Samarawickreme, the appellants' counsel, argued last. His contention was that there was nothing on the face of the record here which shows that the statements, alleged by the District Judge to amount

June 13, 1911

WOOD RENTON J.

The King v. Amadoru

to perjury, were false in fact. He took each part of these statements clause by clause, and said that as regards each clause there was no inherent improbability in what the complainant in the one case and the witness in the other had said. I do not think that this is the right way to approach section 440 of the Criminal Procedure Code. It must be noted that all that the section itself requires is that the accused persons should have given evidence in a judicial proceeding, which, in the opinion of the Court before which that proceeding is held, is false. There is no doubt but that, in the opinion of the learned District Judge, the whole incriminating evidence against the Station House Officer given by both appellants was false. He has said so expressly in his judgment, and has emphasized his disbelief in the story by a perhaps unnecessarily reiterated insistence on its falsehood. That being so, I have to ask myself in appeal whether there is anything on the face of the record to show that the Judge's disbelief of these two witnesses in the story that they gave as to the circumstances preceding their arrest is against the weight of the evidence. I am clearly of opinion that there is not, and when I turn to the evidence given by the complainant at the close of the trial, when he was recalled, I can see sufficient grounds for what the District Judge has said as to the unreliability of his story. The point made on behalf of the appellants on the facts must fail. I need only say further that neither of the witnesses when called upon to show cause against his conviction, and confronted, as the learned District Judge most properly confronted them, with those parts of the evidence which he specifically alleged to be untrue, either said or suggested that he did not understand what he was being charged with. It was contended by Mr. Samarawickreme, in the second place, that even if the Judge's view of the facts was correct, it amounts to a holding that there was practically a conspiracy on the part of the appellants with a view to getting the Station House Officer into trouble on a criminal charge. It was argued by Mr. Samarawickreme that in a case of so serious a character the summary powers conferred on courts of trial by section 440 of the Criminal Procedure Code ought not to be exercised and there is no doubt that there are many decisions of this Court which lend support to that argument. I have always myself, even when following them, thought them unfortunate, for their practical result is to reduce the salutary provisions of section 440 of the Criminal Procedure Code to a dead letter in a great number of cases in which summary punishment for perjury would be most effective. At the same time we must now consider these decisions in the light of the judgment of the Privy Council in the case of *Chang Hang Kui v. Piggott.*[1] That case was decided on a section in an Ordinance of Hong Kong (Ordinance No. 3 of 1873, section 31), which is substantially identical with section 440 of the Criminal Procedure

[1] *(1909) Appeal Cases 312.*

Code. There had been a trial before the Chief Justice on an issue framed by the Supreme Court in a bankruptcy case to determine whether a certain person was at the date of the bankruptcy petition a partner of the indebted firm. At the close of the case the learned Judge directed his attention to eight Chinamen who had given evidence ; stated simply that " they had been guilty of the most flagrant conspiracy " to defraud the alleged partner ; and without framing any charges against them, or giving them any opportunity to address him in their defence, sentenced each of them to three months' imprisonment without hard labour. The Privy Council gave special leave to appeal, and set aside the convictions on the ground that as the Ordinance in question did not dispense with the necessity at common law of giving the appellants an opportunity before sentence of explaining or correcting misapprehensions of their statements, it was essential that that opportunity should have been accorded to them. But the Privy Council never suggested that the finding by the Judge that the eight appellants had been " guilty of a most flagrant conspiracy " constituted any reason why he should not exercise his summary powers of punishment for perjury, and, in addition to that, expressly held that the Ordinance did not contemplate the accusation, being formulated in a series of specific allegations of perjury, and that, even in the brief sentence which I have already quoted in substance from the Chief Justice's judgment, the gist of the charge had been made sufficiently clear. It appears to me that we shall have to take serious account of that decision of the Privy Council, a decision based upon an enactment substantially identical with section 440 of the Criminal Procedure Code, when we are asked in future to say that the fact that the false evidence charge disclosed a serious criminal offence, or that the Judge arrived at his conclusion that perjury had been committed on the balance of conflicting evidence, constitutes any ground for the abandonment by any court of trial in the Island of its right to punish perjury as contempt on the spot under section 440 of the Criminal Procedure Code. In view of the case of *Chang Hang Kui v. Piggott*,[1] I am not prepared to accede to Mr. Samarawickreme's second point in support of these appeals. I have though it right to say a few words as to the decision of the Privy Council in the Hong Kong case, partly because it has not been cited in argument from the Bar, and partly because it gives me another opportunity of insisting, on the authority of the Privy Council itself, on the paramount importance of courts of first instance seeing that no man is convicted under such statutory provisions as those contained in section 440 of our Criminal Procedure Code till he has had some opportunity of defending himself.

I dismiss the appeals.

Appeals dismissed.

[1] (*1909*) *Appeal Cases 312.*