

1945

Present: Keuneman S.P.J. and Rose J.

CHRISTIAN, Appellant, and THE KING, Respondent.

66—*D.C. (Criminal) Negombo, 4,387.*

Penal Code—Falsification of accounts—Alteration of entries in register of which accused was in almost sole charge—No explanation by accused—Presumption of guilt—Penal Code, s. 467.

The accused was indicted, under section 467 of the Penal Code, for falsifying accounts in a register of which he was in charge, except for two days, as the sole clerk of his employer. It was not seriously challenged by the defence that certain entries had been altered and the main question was whether the alterations were made by the accused:—

Hold, that the court was entitled to hold that in the absence of explanation by the accused the only reasonable inference was that the accused had made the alterations alleged.

A PPEAL against a conviction by the District Judge of Negombo.

H. V. Perera, K.C. (with him *N. Kumarasingham, A. Rajasingham* and *B. G. S. David*), for the accused, appellant.

M. F. S. Pulle, C.C., for the Crown, respondent—

Cur. adv. vult.

September 4, 1945. ROSE J.—

This is an appeal from a judgment of the District Court of Negombo convicting the appellant on three counts of charges contra section 467 of the Penal Code.

The appellant at the material times was employed as the Clerk—in fact it was shown that he was the sole Clerk—of the Medical Officer of Health, Negombo, and amongst his other duties he was in charge of the store containing the various drugs to be issued to urban clinics, and also of the Register of Consumable Stores which was produced as an exhibit in the case and in which were entered the details and quantities of the various drugs received by and issued out from the Medical Officer of Health's Stores, Negombo.

The charges relate to certain entries concerning quinine bisulphate appearing at page 20 of the Register. At the foot of that page appear 15 entries purporting to show that between the dates of December 9, 1941, and March 9, 1942, inclusive, 1,280 drams of quinine were issued to the various urban clinics. The Crown suggest, which is not seriously challenged by the defence and is indeed apparent from an inspection of the entries themselves, that beneath the entries as now appearing were other and lower figures amounting in all to no more than 234 drams. For the purposes of the present case the Crown have limited themselves to three of these entries; first, that of January 26, 1942, in which the figure "26" is alleged to have been altered to "128"; secondly, that of February 9, 1942, in which the figure "26" is alleged to have been altered to "128"; and thirdly, that of February 16, 1942, in which the figure "13" is alleged to have been altered to "78"; the inference of course from these altered entries being that in the three instances 334 drams of quinine were issued to the urban clinics, whereas in fact, only 63 drams were issued.

The appellant relies on two main submissions: first, that it was not proved that the alterations were made by him, and secondly, and in the alternative, that there was no proof of intention to defraud.

As to the first matter it is important to consider the question of the handwriting in which certain figures in the Register were made. The entries relating to quinine bisulphate with which we are concerned appear at pages 20, 78 and 79. The Medical Officer of Health, Negombo, stated in evidence that the entries on pages 78 and 79 are in the handwriting of the appellant. He further stated in examination-in-chief that the alterations were also in the handwriting of the appellant but he subsequently qualified that by saying that he was not prepared to swear to that fact. It is to be noted that between the beginning of December, 1941, and the end of July, 1942, the appellant was the sole clerk in charge of the Store and of the Register, except on two days when he was on leave, February 2, 1942, and July 4, 1942, and this point naturally has a bearing on the reasonable inferences to be drawn from the entries in the Register on the three pages mentioned.

Now, a matter which clearly is of some relevance is whether there was in fact, any shortage of quinine in the Store. Counsel for the appellant suggests that there was not or at any rate that there was no proof that there was, but Mr. Pulle has drawn our attention to certain evidence which would seem to indicate the contrary. Exhibit P 11 is a requisition for ten pounds of quinine from the Civil Medical Stores, Colombo, and signed by the Medical Officer of Health, Negombo. This requisition was dated October 21, 1941, and related to the half-year ending March 31, 1942. The receipt of the ten pounds of quinine is recorded at page 20 of the Register under date October 22, 1941. It is to be noted that on March 17, 1942, the Medical Officer of Health, Negombo, signed a further requisition for another ten pounds which in fact was reduced by the issuing authority to three pounds. The significant matter is that under column 6 of the requisition which refers to the balance remaining at the date of the requisition there is a "Nil" entry; whereas as Mr. Pulle pointed out if regard is taken to the original figures of the issue, that is 234 drams, there would in fact have been a substantial balance.

It appears that there was some misapprehension at the Medical Officer of Health's office at Negombo as to the number of drams to a pound; but as Mr. Pulle stated it would seem that on the basis of the calculation which appears to have been adopted at Negombo at the material times 1280 drams, which was the total of the altered amounts of issue, would be equivalent to ten pounds; from which we are invited to draw the inference that the person who made these alterations intended the entries on page 20 to tally with the "Nil" entry in the requisition of March 17, 1942. It is true that both the requisitions to which I have referred were signed—as indeed they should have been under the regulations—by the Medical Officer of Health himself and not by the appellant. It appears from the evidence, however, that it was part of the duty of the appellant to prepare these requisitions for signature. Mr. Pulle contends that the reasonable inference is that it was the appellant who filled up the body of the form and that he was responsible for the "Nil" entry. Mr. Perera contends that that is an unfair inference and that it may well

be that the Medical Officer of Health himself made the " Nil " entry. Be that as it may and whichever of the two made the " Nil " entry, the fact remains that in view of his position in the office the appellant, at the least, must have seen this requisition and must have been aware of its contents; and that, therefore, on March 17, 1942, he would have been in a position had he wished—assuming the entry to have been made by mistake, an assumption, perhaps, unduly favourable to the defence—to have made the necessary alterations on page 20 to tally with the mistaken entry.

Further, H. B. Perera who was clerk to the Medical Officer of Health, Negombo, at a later date stated in answer to the learned Judge that at the time he took over in October, 1944, the stock in the books—which means, of course, the stock as stated in the altered figures in the books—tallied with the stock-in-hand. If that is correct, and on the record it remains unchallenged, it follows that there must have been a shortage of 1046 drams representing the difference between 1280 and 234 drams. And that, of course, is the quantity which would seem to have been at the disposal of the appellant who at the material time was in sole charge of the store, once the Register had been manipulated so as to support the nil return in the Requisition of March 17, 1942.

Counsel for the appellant urges that it is at least a reasonable inference that the person who prepared pages 78 and 79 did so at the same time as he made the alterations at the foot of page 20 and that, therefore, no inference is to be drawn from the dates on which the entries on those pages purported to be made. That is, of course, a possible inference but we agree with Crown Counsel that there must be considered to be a presumption that the entries purporting to have been made between March 19, 1942, and March 1, 1943, were duly made at the dates stated in the Register, and that in the absence of an explanation by the defence that is a presumption upon which the Court could reasonably act.

It is important in this case to remember that the appellant himself, who was eminently in a position to speak to the matters in question did not give any evidence in rebuttal of the charge and therefore it would seem that he cannot complain of the Court drawing the inference that the list of entries beginning March 19, 1942, were in fact made on the dates stated. And it would seem to follow from that, having regard to the fact that the appellant except on those two occasions to which we have referred, was in sole charge of this Register, that when he filled in pages 78 and 79 he must have been aware of and in his calculations have had regard to the altered figures disclosed at the bottom of page 20.

It is to be noted that the totals 1,124, 712 and 390 appearing on the right hand column of page 20 represent the amounts of the altered figures and would appear, although there is no specific evidence on this point, to be in the same handwriting as the figures on pages 78 and 79. Further, although this perhaps is a minor point, apart from the fifteen altered entries at the foot of page 20, the highest issue of quinine on any given date was 65 drams; whereas fourteen of these entries relate to quantities either of 78 drams or of 128, a fact which one would have thought would have attracted the notice of the appellant, had he himself not been concerned with those alterations.

The question then is whether the learned Judge was entitled to hold that, in the absence of explanation by the appellant, the only reasonable inference was that the appellant had made the alterations alleged. It is true that at the trial the prosecution laid emphasis upon a different aspect of the matter but the Judge himself appears to have appreciated the correct issues, as is indicated not only by certain questions which he himself asked the witnesses but also by passages in the judgment. In our opinion for the reasons which we have mentioned he was so entitled and the question then arises as to whether there was sufficient proof of intention to defraud.

It seems to us that having regard to the fact that there was a shortage of 1,046 drams of quinine, which shortage was bound to be discovered in the absence of some manipulation of the books, the only reasonable inference to draw is that the appellant made these alterations in the Register in order to cover up this shortage and that, therefore, he must be held to have done so with the intention to defraud.

No argument was addressed to us on the question of the sentences with which we see no reason to interfere.

For these reasons the appeal is dismissed and the conviction and sentences confirmed.

KEUNEMAN S.P.J.—I agree.

Appeal dismissed.
