

1945

Present: Wijeyewardene J.

SIVANATHAN, Appellant, and INSPECTOR OF POLICE,
SLAVE ISLAND, Respondent.

1,027—M. C. Colombo, 6,186.

Evidence—Of unsavoury nature—No ground for rejection where it is necessary.

Indecency of evidence is no objection to its being received where it is necessary to the decision of a case.

A PPEAL against a conviction by the Magistrate of Colombo.

Accused-appellant in person.

E. L. W. de Zoysa, C.C., for the Attorney-General.

Cur. adv. vult.

September 25, 1945. WIJEWARDENE J.—

The accused was convicted on a charge of cheating one Ramabadaran in respect of a sum of Rs. 490 and sentenced to one year's rigorous imprisonment and two year's Police supervision. The accused has a bad record. He was sentenced to receive a number of cuts on four occasions after 1940 and was sent to the Maggona Reformatory for two years in 1943. These facts do not, of course, relieve a Court from the duty of examining the evidence in a case against the accused and ascertaining whether the particular charge preferred against him in that case is proved.

In view of the somewhat peculiar features of this case, I have read certain extracts from the Police Information Book in the possession of the Crown Counsel and an account book referred to in the evidence of Subarayar, a witness for the prosecution.

The accused, a young Tamil lad, gives his age as sixteen years. The Magistrate thinks that he is older. That may be so. His appearance, however, induced Ramabadaran to put his age even below 16 years. I find that in his complaint to the Police Ramabadaran described the accused as "a small boy aged thirteen years. . . . dressed in shorts and shirt . . . and fair".

The chief witness for the prosecution is Ramabadaran, a partner in a business called Vimto House at Slave Island. He is a young man of twenty-two years. He said that on June 21 the accused who was not known to him came to him at about 10.30 a.m. and offered to supply empty bottles. He agreed to buy ten gross at Rs. 49 per gross and advanced to him Rs. 490. The accused left with him as "security" two notices P1 and P2 sent by the Controller, Post Office Savings Bank, stating that two sums of money have been placed to the credit of the accused in that Bank. Ramabadaran added that the accused wanted a car to go to a place in Grandpass where the bottles were said to be kept, and he engaged a hiring car and the accused left in that car. Subarayar, the cashier, who gave his age as twenty-eight years said that he witnessed the payment of Rs. 490 and made an entry in his book. This book was not shown to the Police or produced before the Magistrate. I called for the book and examined it. The relevant entry in the book has been altered. The last two figures 9, 0, of 490 have been written clearly over some earlier figures like 5, 5. Moreover, all the three figures 4, 9, 0 appear to have been written in dark ink unlike the other entries. The entry itself does not refer to the accused though his name and address were available to Subarayar through P1 and P2. Iyappen, the driver of the car, said that the accused got down from the car at Grandpass and entered a "depot" at 12.30 p.m. Iyappen waited for the accused

till 3.30 p.m. and, as the accused did not come back from the depot he returned to Vimto House and reported the disappearance of the accused to Ramabadaran who made a complaint that day at the Slave Island Police Station only at 7.30 p.m. Subarayar and Iyappen made their statements to the Police on the day after the incident.

The accused gave evidence that he went that morning to Vimto House and was drinking some Vimto when Ramabadaran came up to him and tried to enter into a conversation with him. The accused stated "Ramabadaran had his hand over my trousers and asked me whether I could work there. I declined. He wanted me to wait there for a few hours and then go away. I did not take any money. (Shown P1 and P2.) I had them in my hand and left them on the table. I never undertook to produce any bottles. There was no talk of bottles that day . . . I had them (P1 and P2) in my trouser pocket but I took them into my hand before I sat down as I was afraid they would get crushed in my pocket . . ."

It is somewhat significant that while the accused was on remand awaiting his trial Ramabadaran and Appaswamy his Manager visited the accused in jail.

In the course of his judgment the Magistrate says "I would add that the accused was trying to suggest that Ramabadaran wanted him for some immoral purpose but his Proctor stopped him short when he wanted to launch out on this topic. I do not believe this ugly suggestion of the accused for one moment". It is, at times, the unpleasant duty of a lawyer to lead evidence of an unsavoury character and no lawyer should desist from performing that duty when the interests of justice require it. As has been remarked by an eminent Judge "Indecency of evidence is no objection to its being received where it is *necessary* to the decision of a civil or criminal right". Though the Proctor "stopped" the accused in this case from giving a complete account of the events that day at Vimto House, there is fortunately evidence—direct and circumstantial—sufficient to enable a Court of Appeal to test the truth of the charge against the accused.

Though a young man of twenty-two, Ramabadaran has been doing business for four or five years. It is difficult to believe that a man who has had such business experience in a place like Slave Island would advance a substantial sum of money to a stranger whom he regarded as "a small boy aged thirteen years". Commercial business of this nature is not usually transacted with small boys of thirteen years. Why was such a large payment made in cash instead of by cheque? Is it not usual to take a receipt when such an advance was made? What was the security Ramabadaran had for the payment of Rs. 490? What was the value of the notices P1 and P2 as securities? Why was there a delay in giving information to the Police when the receipts P1 and P2 gave the name and address of the accused? These are some of the questions which have to be answered before reaching a decision against the accused. Having no satisfactory answers to these questions I am unable to reject "the ugly suggestion of the accused" with the same confidence as the Magistrate.

Ramabadaran may have lost a sum of money that day and the accused may, in some way, be connected with that loss. It may even be that Ramabadaran happened to leave some money within reach of the accused when the accused was with him that morning and the accused may have availed himself of that opportunity to steal the money when Ramabadaran's attention was directed to some other matter. But the accused is charged with cheating and that charge must be established.

After careful and anxious consideration of the evidence I hold that the prosecution has not proved that the accused obtained Rs. 490 by dishonestly inducing Ramabadaran to believe that he could supply empty bottles. I would, therefore, acquit the accused.

Appeal allowed.
