

LIYANAGE
v.
OFFICER-IN-CHARGE, CHILAW POLICE STATION

COURT OF APPEAL.
DR. GUNAWARDENA, J.
CA APPEAL NO. 1/89
MC CHILAW NO. 92865
OCTOBER 10TH, 1994.

Criminal Procedure Code – Section 449 – Conviction for giving false evidence in a judicial proceeding.

The accused was a witness for the prosecution. There was a discrepancy between the evidence given by the accused and that of his wife. The accused was convicted for giving false evidence in a judicial proceeding.

Held:

That the provisions of Section 449 of the Criminal Procedure Code are not intended to apply to a case where a conflict arises between the testimony of two witnesses.

Per Gunawardena, J., "In the instant case too the conflict of testimony is between the two witnesses, viz. the husband and wife, therefore the learned Magistrate could not have acted under Section 449 of the Criminal Procedure Code, as it would not amount to giving false evidence under the provisions of that Section."

Case referred to:

Ahamath v. Silva (1920) 22 NLR 444

APPEAL from conviction by the Magistrate, Chilaw.

L. V. P. Wettasinghe for accused-Appellant
P. Mahindraratne S.C. for the AG.

Cur adv vult.

October 10th, 1994.

DR. GUNAWARDENA, J.

The Accused-Appellant was a witness for the prosecution, in a case where some other accused were charged for an offence under the emergency regulations. There was a discrepancy between the

evidence given by the accused-appellant and that of his wife. The discrepancy was that the Accused-Appellant had stated in his evidence that he returned home after a hunt along with the 3rd, 4th and 5th accused and also brought his gun with him. The evidence of the wife was that the Accused-Appellant came back without the gun and that the said 3 accused came back after about 30 minutes, with the gun. The Magistrate has called upon the Accused-Appellant to show cause as to why he should not be punished for giving false evidence, at the said trial. Although the learned Magistrate has noted in the record that he had explained the charge to the accused-appellant, the record does not indicate that a specific charge was framed against him.

The learned Counsel for the petitioner submitted that, the evidence does not show that the accused had given false evidence, but is a mere variation of the sequence of events. He further pointed out that, the evidence of the wife was not quite specific about the return of the gun.

More importantly, the conviction of the Accused-Appellant by the learned Magistrate appears to be fundamentally erroneous. In this instance, the learned Magistrate seems to have acted under Section 449 of the Criminal Procedure Code, in convicting the Accused-Appellant, for giving false evidence in a judicial proceeding. In the case of *Ahamath v. Silva* ⁽¹⁾ dealing with the provisions of Section 440 of the old Criminal Procedure Code, which are similar to the present Section 449, it has been pointed out that, "The provisions of the Section are not intended to apply to a case where a conflict arises between the testimony of two witnesses." In the instant case too the conflict of testimony is between the two witnesses, viz. the husband and wife, therefore the learned Magistrate could not have acted under Section 449 of the Criminal Procedure Code, as it would not amount to giving false evidence under the provisions of that Section.

Therefore, the conviction and sentence of the Accused-Appellant is hereby set aside and Accused-Appellant is acquitted.

Appeal allowed.

Accused-appellant acquitted.