

Present : **Tennekoon C.J., Sirimane J. and Vythialingam J.**

G. A. J. RAPHAEL, Appellant *and* **THE STATE**, Respondent

S. C. 15/74—D. C. Colombo B/179

Bribery—accused charged on two counts—evidence of the complainant on the first count not accepted owing to absence of corroboration—can such evidence be relied on for the purpose of count two?

Where the accused was charged under section 19 of the Bribery Act on two counts the District Judge acquitted the accused on the first charge, because there was nothing to corroborate the complainant's evidence and because it would be dangerous to convict on his sole uncorroborated testimony.

Held : That the accused should also be acquitted on count two because, where an accused is tried on two connected but different charges in the same proceedings, a conviction on one count cannot be based on evidence which has by implication been rejected by an order of acquittal on the other count.

A PPEAL from a judgment of the District Court, Colombo.

E. R. S. R. Coomaraswamy with *Daya Perera* and *T. Joganathan* for the accused-appellant.

T. Wickremasinghe, State Counsel, for the State.

July 2nd, 1975. TENNEKOON, C.J.—

The accused-appellant in this case was charged on two Counts which were as follows :—

- “ 1. That on or about the 21st day of August, 1973, at Akkaraipattu, you being a public servant, to wit: Medical Officer, Akkaraipattu Hospital, did accept a gratification of a sum of Rs. 25 from A. Meera Lebbe as an inducement or a reward for your performing an official act, to wit: giving treatment to and attending on Mohamed Lebbe Marian Bee Bee, a patient admitted to the Akkaraipattu Hospital and that you are thereby guilty of an offence punishable under Section 19 of the Bribery Act.
2. That on or about the 3rd day of September, 1973 at Akkaraipattu and in the course of the same transaction you being a public servant as aforesaid did accept a gratification of a sum of Rs. 25 from the said A. Meera Lebbe as an inducement or a reward for your performing the aforesaid official act, and that you are thereby guilty of an offence punishable under Section 19 of the Bribery Act.”

The statement of facts which accompanies the Indictment states that the complainant, one Meera Lebbe, a son-in-law of a patient who had been admitted to the Akkaraipattu hospital had

been asked by the accused for a sum of Rs. 25, if he was to keep the patient in hospital and for better treatment to be given. The complainant said that one Raffaideen was present at this time. Then again this statement proceeds to say that the complainant, Meera Lebbe had met the accused in the hospital and that the accused had demanded a further sum of Rs. 25 and stated that if such amount is given the patient will recover soon. The statement of facts alleges that one Aliyar was present when this demand was made. Both these witnesses were put down in the list of witnesses, attached to the indictment. But neither of them was called. The learned District Judge acquitted the accused on the first charge, because there was nothing to corroborate the complainant's (Meera Lebbe's) evidence and in doing so he said that it would be dangerous to convict on his sole uncorroborated testimony.

Regarding the second charge, the accused had admitted that he accepted the sum of Rs. 25 on the day in question in the sight and hearing of witness Thirunavakarasu, who was one of the "trap" officers of the Bribery Department. His position was that he had informed the complainant that the patient should be given a drug known by the name "Chyramol" which was a drug not available in the Akkaraipattu hospital and was probably available outside at Kalmunai or Batticaloa; this medicine the accused had told the complainant was necessary because of the serious nature of the injuries on the head of the patient which had been caused by a blow with an axe. Although the injury had been sutured and healed, it had left a certain amount of tenderness under the skin. There were also certain contusions though not of a serious nature on other parts of the body. This drug, the accused stated, was the best drug to be used for contusions, and this evidence was supported by the prosecution witness Dr. Singanayagam who himself testified that "Chyramol" was the best drug for the treatment of contusions and for the kind of contusions that may exist under a serious external injury. The accused's position was that the complainant had requested him to obtain this drug for the patient and the Rs. 25 was given to him for that purpose.

There is no evidence coming from any of the prosecution witnesses as to the purpose for which this money was given to this accused. There is of course the uncorroborated evidence of the complainant that the accused had on an earlier occasion asked for this money for the attendance on the patient. This witness is one in respect of whom the learned District Judge has already said that it would be unsafe to convict on his uncorroborated evidence. In the case of *Nalliah v. Herat*, 54 N. L. R. 473, where Gratiaen J. held relying on the authority of the Privy Council case, *Sambasivam vs. Public Prosecutor*.

Malaya (1950 A. C. 458, that where an accused is tried on two connected but different charges in the same proceedings, a conviction on one Count *cannot be based on evidence which has by implication been rejected by an order of acquittal on the other Count*. This case is undistinguishable from the case before us. We think therefore that in respect of the second charge the prosecution has failed to prove that the sum of Rs. 25 was accepted by the accused as an inducement or a reward for performing an official act. The appeal therefore succeeds ; we set aside the conviction and sentence in respect of the 2nd Count and acquit the accused.

SIRIMANE, J.—I agree.

VYTHIALINGAM, J.—I agree.

Appeal allowed.

