

1946

Present : Jayetilleke J.

DASSANAYAKE, Appellant, and EXCISE INSPECTOR,
HORANA, Respondent.

13,567— M. C., Panadura, 37,703.

False evidence—Conflict of testimony—Summary punishment—Criminal Procedure Code, s. 440.

The provisions of section 440 of the Criminal Procedure Code are not intended to apply to a case where there is a conflict of testimony between two witnesses.

A PPEAL from an order fining a witness for perjury under section 440 of the Criminal Procedure Code.

N. E. Weerasooria, K.C. (with him *S. R. Wijayatilake*), for the accused, appellant.

T. K. Curtis, C.C., for the Attorney-General.

January 23, 1946. JAYETILEKE J.—

In this case one Charles was charged under section 40 (a) of the Excise Ordinance (Cap. 42) with having failed to give notice to the proper authorities that one Seneris was unlawfully tapping for toddy two coconut trees standing on a land belonging to him. The Excise Inspector who entered the prosecution stated that Charles had not given information about the tapping to any authority. The appellant, who is the Headman of the village in which the tapping took place, stated that Charles had given information to him about the tapping and that he told the Inspector several times about it. The Magistrate convicted Charles on the evidence of the Excise Inspector and called upon the appellant to show cause why he should not be dealt under section 440 of the Criminal Procedure Code for giving false evidence. The appellant stated—

“ I have made a mistake. I beg of the Court’s pardon ”.

The Magistrate treated this statement as an unqualified admission of guilt and fined the appellant Rs. 50. I think the Magistrate has erred in treating the appellant’s statement as an unqualified admission of guilt. But quite apart from that it seems to me that the conviction cannot stand. There is an entry in the appellant’s diary under date December 13, 1944, which reads as follows :—

“ This day at about 12 A.M. Charles complained that of the trees leased out by him to M. D. M. Gunasekera two trees are being tapped by Dassanayake Seneris without a licence ”

The entry supports the evidence which the appellant gave at the trial that Charles gave him information about the tapping. The Excise Inspector

has not stated affirmatively that the appellant did not tell him what Charles had conveyed to him, but his evidence seems to suggest that he was not aware of the fact. It may well be that he was mistaken and that if he had been reminded of the occasions on which the appellant gave him the information he may have remembered it. Mr. Weerasooria invited my attention to two decisions of this court, *Ahamath v. Silva*¹ and *Mohamadu v. Porlentina*², where it has been held that the provisions of section 440 are not intended to apply to a case where a conflict arises between the testimony of two witnesses. These decisions seem to me to apply to this case. I would set aside the conviction and acquit the accused.

Set aside.

¹ 22 N. L. R. p. 444.

² 7 Law Recorder 120.