

BALTHAZAR v. BABA APPU.

*P. C., Matara, 29,415.*

1897.

September 8  
and 9.

*Giving false evidence—Procedure before conviction under Ordinance No. 9 of 1895, s. 12—Inconsistent statements.*

Before a witness is summarily punished by a Police Magistrate for giving false evidence under section 12 of Ordinance No. 9 of 1895, the reason why the Magistrate holds his evidence to be false must be stated to him, and he should be asked to show, if possible, by explanation, that his evidence is not false.

The Ordinance was not intended to punish a witness as for contempt in a summary trial because his evidence, though quite consistent at the trial, differs materially from what he said in another judicial proceeding.

THIS was an appeal from an order of the Magistrate, made under the Oaths Ordinance, section 12, imposing a fine of Rs. 50 on the appellant for giving false evidence in a judicial proceeding.

*Tirunavukarasu*, for appellant.

9th September, 1897. WITHERS, J.—

The 12th section of the Oaths Ordinance of 1895 requires that reasons should be recorded when a fine is imposed for giving false evidence. Indeed, the Magistrate has not expressly found what was the false statement which the witness made, and which the witness knew or believed to be false. He was charged with making certain false statements about one Baba Appu, of whom he deposed as follows :—

1867.

September 8  
and 9.

WITHERS, J.

"I cannot say whether Baba Appu was seated in my boutique at the time the notice was handed to me \* \* \* there was a large crowd \* \* \* I cannot say if Baba Appu was there. I have no recollection of having seen him that day."

The Magistrate charged him with falsehood in making the two last statements which I have underlined. Now, in the case of *Andries v. Juanis* (reported in 2 N. L. R. 74), the Chief Justice expressed the opinion that this summary procedure should only be used in cases where it is clear on the face of the proceedings that witnesses have been guilty of wilfully giving false evidence, not in cases where there is a conflict of testimony. It is quite impossible to say that the falsity of the appellant's evidence is transparent in this case. Of course it may be a wilful lie when he says that he has no recollection of seeing Baba Appu there (*i.e.*, in his boutique) that day, but it is not a transparent one, having regard to the rest of the evidence in this proceeding, which is all consistent.

It happens, however, that some two months before in a judicial proceeding in which the same counterfeit note, as the one in this case, was the subject of inquiry (though the person charged with uttering it was different), this witness was asked about the presence of Baba Appu at the place where and time when the counterfeit note was presented, and he answered, "Baba Appu was there at the time," but shortly afterwards he qualified that statement when further examined in the former proceeding by saying, "I cannot say whether Baba Appu was there when accused handed me the note." He could not be certain, he added, because of the great crowd of people at the time when this torn counterfeit note was offered in payment.

As the first inquiry was the earlier one it is natural to suppose that the witness would better remember who were present and what occurred at a certain time and place, and if the witness was then speaking the truth Baba Appu was "there," but even then the witness was not certain whether Baba Appu (now the accused) was there at the time when the former accused offered the counterfeit note to the witness. Now, all that he says is that he cannot recollect whether Baba Appu was there or not. It is easy to assert that the witness is lying when he says so, but very difficult to prove it. What if it was a careless utterance of his when he said at the previous inquiry Baba Appu was there? It is his present statement that must be the falsehood for which he is fined, and it requires some courage to convict a person of a wilful lie when he says he cannot recollect whether a thing happened or not. Is it necessarily more than a cautious attitude and a wish

not to commit himself to a positive statement ? For it must be remembered that Baba Appu is now charged in connection with the same notes. What was then said of Baba Appu did not concern him. What is said of him now is of grave importance, and may seriously incriminate him. The witness, indeed, should not lightly answer any question damaging to the accused. But after all, what the appellant complains of, and has a right to complain of, is this :—

The Magistrate did not say to me :—“ On the former occasion in “ the course of inquiry into the charge against Hendrick about “ this note you deposed that Baba Appu was there, *i.e.*, at your “ boutique, about the time the note was tendered. Now you say “ you cannot recollect whether Baba Appu was there or not. I am “ convinced the statement you now make is a lie ; unless you can “ explain it or reconcile it with your former statement I shall be “ obliged to punish you.”

It is clear that this explanation should have been asked for, and the Magistrate should have stated why the explanation (if so) was unsatisfactory, and why he believed the statement impeached to be a deliberate lie. The Ordinance, I feel sure, was not intended to punish a witness as for contempt in a summary trial, because his evidence, though quite consistent at the trial, differs materially from what he said in another judicial proceeding. That class of cases should be referred to the Attorney-General.

1897.  
*September 8*  
*and 9.*  
—  
WITHERS, J.

