

1947

Present : Windham J.

PONNUDURAI, Appellant, and ANAKODDAI POLICE,
Respondent.

S. C. 1,241—M. C. Jaffna, 7,363.

Penal Code, s. 180—Giving false information—Knowledge or belief of falsity—Necessary element.

In a prosecution under section 180 of the Penal Code for giving false information to a public servant it is a necessary element for a conviction that the accused himself should have known or believed his statement to be false.

A. G. A., Mullaitivu v. Selvadurai, 41 N. L. R. 463 followed.

APPPEAL from a judgment of the Magistrate, Jaffna.

H. W. Thambiah, with *S. Sharvananda*, for the accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

December 8, 1947. WINDHAM J.—

This is an appeal against the conviction of the accused upon a charge under section 180 of the Penal Code, namely, giving false information to a Police Officer, knowing it to be false. The statement said to have been a false one was a complaint by the accused to the Police against one Nagarajah, that the latter had threatened to stab him with a clasp knife. The relevant words of the complaint were as follows :—“ At this time Mylvaganam’s son Nagarajah who was behind me, took a clasp knife and threatened to stab me ”. Upon this complaint Nagarajah was charged and in the course of giving evidence in that case the present accused stated as follows :—“ This accused came up and pushed me. I did not see the knife ”. It is contended for the prosecution in the present case that this statement to the Police was known by the accused to be false, in that it can only reasonably be construed as a statement by this accused that he had actually seen Nagarajah threatening to stab him with a clasp knife and it must therefore have been known to be false when it was made, since later he denied having seen Nagarajah with a knife. I do not think this interpretation must necessarily be placed on the former statement to the Police. In that former statement the accused does not say that he saw Nagarajah threatening to stab him. He merely stated that Nagarajah had threatened to stab him. This may well have been a statement based on what other persons present at the time of the assault had told this accused. It is undisputed that other persons were present at the time. The words, “ who was behind me ” would seem to support this interpretation. It may well be that what this accused said in his complaint was not what he himself had seen, but merely what he had been told by others had occurred. But that does not render him liable under section 180. Under that section the prosecution must prove beyond reasonable doubt that the statement made by the accused was known or believed by him to be false. The accused may well have believed his statement to be true, although he himself had not seen Nagarajah threatening to stab him, and at the trial of the present case by the learned Magistrate, one Ponnusamy did testify that he had been present at the time of the assault, and he had seen Nagarajah going to stab this accused with a clasp knife. It is true that Ponnusamy was not called as a witness for the prosecution of Nagarajah, but his name was mentioned by the accused in his statement to the Police as having been one of the persons present at the assault. All these circumstances are consistent with the accused having believed what he stated to the Police, namely, that Nagarajah had tried to stab him with a clasp knife,

to be true. The prosecution accordingly failed to prove a necessary element for a conviction under section 180, namely, that the accused himself had known or believed his statement to be false. *Vide A. G. A., Mullaitivu v. Selvadurai*¹. The appeal is accordingly allowed, and the accused acquitted and discharged.

Appeal allowed.

