

Present : Dalton J.

1925.

POLICE SERGEANT, DEMATAGODA v. ARUMA.

719—P. C. Negombo, 52,771.

*False evidence—Summary trial—Uncorroborated testimony—Criminal Procedure Code, s. 440.*

A person cannot be convicted summarily of giving false evidence under section 440 of the Criminal Procedure Code, on uncorroborated testimony.

**A** PPEAL from a conviction for perjury under section 440 of the Criminal Procedure Code. The facts appear from the judgment.

*Ameresekere*, for witness-appellant.

December 21, 1925. DALTON J.—

The appellant, Ranohothipedige Davitha, has been convicted under the provisions of section 440 of the Criminal Procedure Code for perjury. He was a witness for the prosecution in a case of theft in the Negombo Police Court, and at the close of the proceedings he was called upon to show cause why he should not be punished for giving false evidence.

It appears that before the appellant was called evidence was given by one Sardia, Police Vidane. The defence in the theft case was based upon the suggestion that the complainant's wife was of a bad character. After Sardia had given evidence Davitha was called and then swore that complainant went with him to the Police Vidane and complained to him about the elopement of his (complainant's) wife with another man. Thereupon the Magistrate immediately re-called the Police Vidane, who had been asked nothing about this alleged particular complaint before, and he denied that any such complaint was ever made to him in Davitha's presence. After the Police Vidane had given this evidence, other evidence in the theft case was led, which is not, however, material to the charge against appellant.

The first ground of appeal is that evidence was called after Davitha had given the evidence complained of specially to disprove his statement. The authorities relied upon by appellant, however, deal with cases where evidence has been called after the closing of the case to prove that a witness has perjured himself. They lay down that it is necessary that the falsity of a witness's evidence should appear from what has taken place in the course of the trial, and not

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from something that has taken place subsequently (*Achchi Kannu v. Ago Appu*<sup>1</sup> and *Mariampullai v. Mariapullai*<sup>2</sup>). As the Magistrate points out in view of the defence in the theft case, it was necessary for him to know whether or not any complaint had been made to the Police Vidane respecting the complainant's wife, and it was for this purpose that he re-called the Police Vidane. It is clear therefore that if he chose to believe the Police Vidane on this point and to disbelieve Davitha the falsity of Davitha's evidence appeared from evidence given in the course of the trial.

It is equally clear, however, that there was a conflict of testimony on this point between Davitha and the Police Vidane. I have been referred to a decision of this Court where it has been held that the provisions of section 440 were not intended to apply to a case where a conflict arises between the testimony of two witnesses (*Ahamath v. Silva*<sup>3</sup>). In an earlier decision also De Sampayo J., whilst not going so far on the question of the intention of section 440, holds that it is not safe or desirable to bring in the machinery of section 440, so far as it deals with summary procedure. When the conflict is between the complainant on the one side and the witnesses on the other. Applying this authority (*Sanitary Inspector v. Themis Fernando*)<sup>4</sup> which commends itself to me to the case before me, it seems to me neither desirable nor safe to make use of the summary powers given by section 440, when the conflict as here is between two witnesses, even assuming for the moment that no corroboration of the Police Vidane's evidence of Davitha's false evidence is necessary.

In *Rex v. Sirimana*,<sup>5</sup> however, it has recently been held by this Court that an accused person should not be convicted of perjury on uncorroborated evidence. In that case a trial was held and the proceedings were not summary. The offence charged was laid under section 190 of the Penal Code. Whether however the proceedings be summary or otherwise the offence charged is still "perjury" or "giving false evidence," as defined in section 188 of the Code, and therefore this decision is applicable. Apart from this it might well be argued that if corroboration is necessary in a formal trial, it is all the more necessary in the interest of the accused when use is made of summary powers as here. There was no corroboration of the evidence of the Police Vidane as to the false evidence of Davitha. I understand that the point had not been raised in Ceylon before (*Rex v. Sirimana (supra)*), but the question appears to have been fully argued in that case. On two grounds of appeal, therefore, the appeal must be upheld.

The appeal is allowed, and the conviction quashed.

*Set aside.*

<sup>1</sup> 5 N. L. R. 87.

<sup>2</sup> 6 Weerakoon's Reports, 32.

<sup>3</sup> 22 N. L. R. 444.

<sup>4</sup> 2 Cr. A. R. 55.

<sup>5</sup> 7 C. L. Rec. 7.