

1920.

Present : Schneider A.J.

AHAMATH v. SILVA.

730—P. C. Balapitiya, 48,178.

Criminal Procedure Code, s. 440—Conflict of testimony between two witnesses—False evidence.

The appellant in his evidence said that (1) he did not sell rubber to the accused; and (2) that he did not state to the Inspector that he had sold rubber to the accused.

To contradict these statements the Magistrate called the Inspector, who stated that the witness did tell him that he had sold rubber to the accused.

Held, that the Magistrate should not have proceeded under section 440 of the Criminal Procedure Code under the circumstances.

“The provisions of the section are not intended to apply to a case where a conflict arises between the testimony of two witnesses.”

THE facts appear from the judgment.

F. de Zoysa, for the appellant.

October 11, 1920. SCHNEIDER A.J.—

This is an appeal by a witness who has been convicted under section 440, and sentenced to pay a fine of Rs. 50. He has been convicted in respect of two statements: First, that he did not sell rubber to the accused; and secondly, that he did not state to the Police Inspector that he had sold rubber to the accused. The witness' own evidence was that he had not sold rubber to the accused, and that he made no statement to the Inspector that he had sold rubber. To contradict these statements, after the witness had given evidence, the Magistrate called the Inspector, who stated that the witness did tell him that he had sold rubber to the accused. Upon this material the Magistrate convicted the accused. I do not think the conviction should stand, because it has been pointed in a number of cases that section 440 should not be utilized in the manner in which it has been done by the Magistrate in this case. It has been pointed out that the provisions of that section were not intended to apply to a case where a conflict arises between the testimony of two witnesses. The principle which should guide Courts in resorting to the provisions of section 440 is to be found in the following cases: *Achchi Kannu v. Ago Appu*; ¹ *Mariampillai Loonappen v. Mariapillai*; ² *Bandara v. Ukkuwa*; ³ *Sanitary Inspector v. Fernando*.⁴ I, therefore, set aside the conviction, and acquit the accused.

Set aside.

¹ (1901) 5 N. L. R. 87.

² (1911) 6 S. C. R. (Weera.) 32.

³ (1914) 4 Bal. Notes of Cases 18.

⁴ (1914) 2 Cr. A. R. 55.