

1947

*Present : Wijeyewardene S.P.J. and Dias J.*THE KING *v.* HARAMANIS *et al.*S. C. 89-91—D. C. (*Crim.*) Panadure, 80.

Motive—Criminal charge—Duty of prosecution—When absence of motive creates reasonable doubt.

As a matter of law the prosecution is not bound to assign or prove a motive as to why a criminal act was done. Where however the facts are not clear, the absence of an intelligible motive may have the effect of creating a reasonable doubt in favour of the accused.

APPPEALS against three convictions from the District Court. Panadure.

No appearance for the first accused-appellant.

A. C. Gunaratne (with him S. Saravanamuttu), for the second and third accused, appellants.

J. A. P. Cherubim, C.C., for the Attorney-General.

Cur. adv. vult.

July 11, 1947. DIAS J.—

Six persons were charged on the indictment which contained six counts. The first and second counts charged all the accused with being members of an unlawful assembly (section 140) the common object of which was to cause hurt, and with the offence of rioting (section 144). All the accused have been acquitted of these two charges, the learned District Judge holding that there was no unlawful assembly. The third count charged the first, second, and third accused, who are the appellants, with jointly committing mischief (section 409) by damaging property in the house of the witness B. Puncha. The three appellants have been convicted under this count. The fourth count charged the first accused alone with committing mischief by fire (section 419) by setting fire to the house of the witness R. Rapiya. He has been convicted of this offence. The fifth and sixth counts charged the second accused alone with causing simple hurt (section 314) to the witness L. B. Lily and to one R. Jintha. He has been found guilty under both these counts.

The first accused was sentenced to undergo three months' rigorous imprisonment under count 3 and two years' rigorous imprisonment under count 4. The second accused was sentenced under counts 3, 5, and 6 to undergo three months' rigorous imprisonment on each count, and the third accused under count 3 to undergo three months' rigorous imprisonment. The sentences imposed on the first and second accused were to run consecutively. It will be seen that the third accused has no right of appeal on the facts.

That a serious clash took place between the three appellants, who belong to the goigama community, and certain people of the bathagama-duraya village of Pelpitigoda on the Sinhalese New Year Day, April 14, 1946, is beyond question. The first and second accused were seriously stabbed, certain of the village women received injuries, the pots and pans

inside the house of Puncha were smashed and his house damaged, and the house of the witness Rapiya was set on fire. There is also evidence that a pregnant woman, Sitti, who was in labour was assaulted.

Owing to the conflicting nature of the evidence it is difficult to obtain a clear picture of what happened, the motive actuating the parties, the manner in which the transaction began, and the order of the events. It is also clear that the police themselves were uncertain as to who were the aggressors, because, besides charging these accused, they filed a counter-case charging the prosecution witness Jasaya and his father Gunneriya with stabbing the first and second accused. That case is pending.

It is for the prosecution to establish the charges against the appellants beyond reasonable doubt. The case for the prosecution suffers from the further infirmity that the learned District Judge has not accepted the evidence of the prosecution witnesses in regard to the three accused who have been acquitted. He has further held that the witnesses have "embellished" their story. It is also to be noted that the prosecution witnesses cannot, or pretend they cannot, explain how the injuries on the first and second accused were caused. On the other hand, the defence is unable to explain how the injuries on the women were caused, or how the pots and pans in Puncha's house were damaged or how Rapiya's house caught fire. As Abrahams C.J. observed in *Rex v. Eliatamby*¹ "When it appears that there is a mixture of truth and falsehood on both sides, it has to be remembered that the burden of proof is on the prosecution, and that the defence has to prove nothing beyond what is necessary to instil a reasonable doubt in the mind of the Court".

The question of motive is shrouded in uncertainty. The scene of the alleged offence is a duraya village containing 100 to 150 houses of persons of the same community who are closely related to one another. It is unlikely that a band of six goigama men, even if fortified with drink, would attack three duraya households in the manner alleged by the prosecution, unless there was some intelligible motive for so doing. Puncha candidly admits that he is unaware of any previous illfeeling between the accused and the people of this village. The witness, Lily stated that the reason why she asked her husband Guneriyia and son Jasaya to hide was because the accused "had already assaulted some people in our village before that". I doubt whether this evidence was strictly admissible, but even so her evidence is extremely vague on this point. First accused, who was an estate watcher, stated that he had charged Duliya's and Rapiya's relatives for theft of rubber and there was a countercharge against him. This was two months previous to this incident. Then there is the suggestion that the second accused had been "helping" one Hawadiya in a maintenance case instituted against the latter by a woman called Weiya, the daughter of Lily and Guneriyia and the sister of Jasaya. Second accused's explanation is that he had merely lent some money to Hawadiya and that the loan had been repaid. If Jasaya and Guneriyia erroneously believed that the second accused was helping Hawadiya in the maintenance case, that would be a motive for them to quarrel with the second accused.

¹ (1937) 39 N. L. R. at p. 58.

As a matter of law, the prosecution is neither bound to assign nor prove a motive as to why a criminal act was done. As a matter of fact, however, if the evidence is clear the question of motive is immaterial. If the facts are not clear, the presence of an intelligible motive may help the Court to ascertain and decide that which is not clear. But when the facts themselves are not clear, and there is also the absence of an intelligible motive, these combined factors may have the effect of creating reasonable doubts in favour of the accused—see *Rex v. Appuhamy*.¹

According to the prosecution the transaction falls into four phases : (1) Puncha and his wife Gintha when returning from Ratmalgoda say they met the accused who were drunk saying "Let us go and destroy the duraya village". If that evidence is true, it throws light on what took place subsequently ; but the learned District Judge has not definitely held that he accepts that evidence. He merely records it as part of the story of the prosecution, but does not definitely hold that this incident happened. (2) The three appellants thereafter chased Malsonda into Sitti's house, and the first accused assaulted her with a stick causing her prematurely to give birth to a child. It is curious that the police have based no charge in regard to this incident, nor was Sitti called as a witness. Her name is not on the back of the indictment. (3) Then the accused went to Puncha's house and, after assaulting Lily, they entered the house and broke the pots and pans, damaged the house and stole some valuables. Lily says she saw the first accused take something wrapped in rags and put it in his waist. Nothing apparently was found in his waist when first accused was subsequently arrested at the scene. After that they pelted stones at Puncha's house. (4) Then first accused said "Come let us set fire to Rapiya's house" and the first accused proceed to do so and prevented the people from putting out the fire or salvaging the property in the house. It will be seen that the prosecution does not account for the severe injuries received by the first and second accused. They were subsequently found injured at the scene.

On the other hand, the three accused bring themselves on the scene, but their story is diametrically opposed to that of the prosecution. They do not explain how the women were injured, or how Puncha's house was damaged or how Rapiya's house was set on fire. The second accused says that on the day in question he was passing through this village when Guneriya questioned him as to why he (second accused) was helping Hawadiya (the brother of Rapiya) in the maintenance case? The denial of the second accused that he did so led to an altercation. Then Jasaya who was standing by pushed him by the neck. Thereafter Guneriya stabbed the second accused. When the second accused tried to defend himself Jasaya also stabbed him. First accused says he was in a near by boutique when he saw the altercation between second accused and Jasaya. He intervened and was stabbed by Guneriya. He denied that he set fire to the house of Rapiya. The third accused, who is the brother of the second accused, says that he was gambling in the house of Rapiya when he heard that his brother was injured. He, therefore, came to the scene. He found the first and second accused injured and

¹ (1945) 46 N. L. R. at p. 132.

despatched them to the hospital. It is curious that under those circumstances, the third accused was not to be found by the authorities when search was made for him.

It is obvious that both sides have departed from the truth; but the burden of proof is on the prosecution to establish the guilt of the appellants.

Was the first accused injured before or after Rapiya's house was set on fire? This question is important for two reasons. In the first place, would it be possible for the first accused after receiving the stab to set fire to the house, chase Rapiya away and prevent people from extinguishing the fire? In the second place, the suggestion for the defence is that these durayas, after stabbing the first and second accused, and fearing that the injured men might die and a charge of murder brought against them, fabricated a false defence by injuring some women, damaging Pancha's house and setting fire to Rapiya's house.

The first accused had an incised wound on the right and outer side of the chest, 3" below the nipple, $\frac{1}{2}$ " long and $\frac{3}{4}$ " deep, caused by a sharp cutting weapon which kept him in hospital for eleven days. The doctor did not deny the possibility that the injury could be caused by somebody holding up the skin and inserting a knife through—but who was the person who did that, and what opportunity had anybody to do so at the scene under the eyes of the duraya crowd which must have collected? If this suggestion is correct, then some friendly hand stabbed both the first and second accused. The doctor was not asked whether it was possible for the first accused with that injury to go all the way to Rapiya's house and set fire to the thatch. If the evidence of Rapiya and Malsonda is true, at the time the house was set fire to, the first accused was uninjured. According to Rapiya the first accused chased him, and actually prevented people from extinguishing the fire. I doubt if he could have done that if he had a wound of this nature in his chest. I find it difficult, however, to believe that the injuries on the first and second accused were inflicted by themselves or by some friend of theirs in broad daylight in the midst of a crowd of hostile duraya people who would have seen what was done.

It is no doubt unfortunate that by reason of the untrustworthiness of the direct evidence the truth cannot be ascertained, but this does not absolve the prosecution from establishing the charges by evidence which proves the guilt of the accused beyond reasonable doubt. The failure to call Sitti and the injuries received by the first and second accused are unexplained. The motive for the acts of the appellants is nebulous. Having tested the evidence both extrinsically as well as intrinsically, the nett impression created in my mind is that it is safer that this conviction should not be allowed to stand—see *Don Edwin v. Inspector of Police, Matara*¹, and *Martin Fernando v. Inspector of Police, Minuwangoda*².

I therefore quash the convictions of the first and second accused and acquit them. Acting in revision I quash the conviction of the third accused, and acquit him also.

WIJEYWARDENE S.P.J.—I agree.

Appeals allowed.

¹ (1945) 46 N. L. R. 281.

² (1945) 46 N. L. R. 210