1914.

Present: Wood Renton C.J.

BANDA *v.* SADA *et al.*

892—P. C. Kurunegala, 19,232.

False evidence—Summary proceeding under s. 440, Criminal Procedure Code—Trial of several witnesses en masse*—May all cases of "false evidence" be dealt with under s. 440 ?*

The Legislature has left the Courts free as a matter of law to deal under section 440 of the Criminal Procedure Code with any form of "false evidence" within the meaning of section 188 of the Penal Code; but the Supreme Court has the right to inquire whether this statutory power can be safely exercised in any particular case.

The fact that several witnesses speak unanimously to an alleged circumstance is no reason why they should not be summarily punished, if the Magistrate is satisfied on reasonable grounds that their evidence on the point was false.

It is not irregular to try several witnesses *en masse* under section 440 of the Criminal Procedure Code.

THE facts are set out in the judgment.

G. Koch, for the appellant.

October 27, 1914. WOOD RENTON C.J.—

The complainant-appellant, the Gan-arachchi of Doratiyawa, charged a man Sada and his sister Dingiri in the Police Court of Kurunegala with having obstructed him in the execution of his duty by attempting to cut him with a cooper's axe. He gave direct evidence as to the threatened use of the axe, and four of his witnesses supported his story on this point. The learned Police Magistrate disbelieved them all, acquitted the accused, called on the complainant and his witnesses to show cause why they should not be summarily punished under section 440 of the Criminal Procedure Code, and after having heard what they had to say, sentenced each of them

to pay a fine of Rs. 50, or, in default of payment, to undergo two months' rigorous imprisonment. The complainant appeals. The points in his favour were clearly and fairly argued by Mr. Gladwin Koch. They are, in my opinion, all covered, either directly or by necessary implication, by the authority of the decision of the Privy Council in *Chang Hang Kiu v. Piggott.*[1] It was contended here on behalf of the complainant (i.) that he and other witnesses should not have been tried *en masse*, but that proceedings should have been taken against each of them separately, as required by section 178 of the Criminal Procedure Code; and (ii.) that as they gave direct evidence of the attempted use of the axe by the accused, and there was nothing to show that that evidence was false, the case was not one in which the summary power conferred on the Courts by section 440 of the Criminal Procedure Code could have been, or, in any case, should have been, exercised.

The summary proceedings in *Chang Hang Kiu v. Piggott* [1] arose out of the trial of an issue in bankruptcy as to whether one Wong Ka Chuen was, at the date of the petition, a partner in the indebted firm. The plaintiff called eight witnesses to prove that he was. The Chief Justice disbelieved them, and, in the close of the case, charged them with having "been guilty of the most flagrant conspiracy to defraud the alleged partner Wong Ka Chuen," and sentenced them to three months' imprisonment on the spot. The Privy Council set the convictions aside because the witnesses had not been accorded an opportunity, before they were sentenced, of urging anything that they might wish to say in their defence. But Lord Collins, who delivered the judgment, expressly held that legislation of this character "contemplated summary proceedings on the spot, not involving a statement or trial of specially formulated issues," and that the language used by the Chief Justice was quite sufficiently specific to make the appellants aware of the pith of the charge against them. This ruling directly disposes of the first point urged in support of the appeal, and Mr. Koch abandoned it in argument. In my opinion, it disposes of the second point also by necessary implication. The issue on which, in *Chang Hang Kiu v. Piggott*, [1] the false evidence was given was the sole issue in the case. Yet there is no hint in the proceedings in the Privy Council that that circumstance in any way prevented the Chief Justice from summarily punishing the witnesses for perjury, if he was so clearly satisfied of their guilt that he thought it unnecessary to direct a formal prosecution. In the present case the learned Police Magistrate charged the complainant and his witnesses with having given false evidence in regard to the central point in their story, viz., the threatened use of the axe by the accused. The fact that they spoke unanimously to that alleged circumstance is no reason why they should not be summarily punished, if the Police Magistrate

[1] (*1909*) *A. C. 312.*

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was clearly satisfied on reasonable grounds that their evidence on the point was false. The unanimous testimony of the eight witnesses in *Chang Hang Kiu v. Piggott* in favour of the partnership of Wong Ka Chuen was not held by the Privy Council to constitute any ground for their immunity from summary punishment. The view taken by the learned Police Magistrate of the evidence of the complainant and his friends in the present case is corroborated by their shifty and wholly unreliable attempts to explain the injuries on the accused. The appeal must be dismissed.

The true interpretation of the scope of section 440 of the Criminal Procedure Code appears to be this. The Legislature has left the Courts quite free as a matter of law to deal under that section with any form of "false evidence" within the meaning of section 188 of the Penal Code, and if we attempt to fetter that discretion by rigid general rules as to the class of cases in which it may or may not be exercised, we shall be acting rather in a legislative than in a judicial capacity, and running the risk of paralysing the operation of a statutory power, the maintenance of which in full working order is essential to the administration of justice in this country. But there is ancient and sound authority for the proposition that "all things that are lawful are not expedient," and we have every right to consider ourselves, in the exercise of our original jurisdiction, and in the exercise of our appellate jurisdiction, to inquire whether this statutory power can be safely exercise in any particular case that has come before us.

Appeal dismissed.

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