

**A** **SAMISONI NARAYAU**

v.

**REGINAM**

**B** [SUPREME COURT, 1964 (Hammett P.J.), 26th June, 31st July]

Appellate Jurisdiction

*Criminal law—evidence—false information to police—proof of charge by evidence of admission by accused of falsity of statement charged—Penal Code (Cap. 8) s.132.*

**C** *Criminal law—practice and procedure—amendment of charge—no plea taken to amended charge—proviso to s.325(1) Criminal Procedure Code applied—Criminal Procedure Code (Cap. 9) ss.204(1), 325(1).*

*Criminal law—practice and procedure—election by accused whether to give evidence—to be made by accused personally—Criminal Procedure Code (Cap. 9) s.201.*

**D** The appellant was convicted of giving false information to a public servant contrary to section 132 of the Penal Code. He had made two statements to the police in the second of which he admitted that the contents of the first statement, which was the subject of the charge, were untrue. During the hearing of the case for the prosecution a minor amendment was made to the charge on the application of the prosecution and without objection by counsel for the defence, but the appellant was not called upon to plead to the amended charge as required by section 204(1) of the Criminal Procedure Code.

**E** *Held:* 1. The appellant's second statement to the police was itself an admission and in the absence of any other evidence it was open to the magistrate to find as a fact that the first statement was false.

**F** *Lekh Ram v. Reginam* (Cr. Ap. No. 41 of 1964—unreported), distinguished.

2. The omission to call upon the appellant to plead to the amended charge was not an irregularity fatal to the conviction; it occasioned no miscarriage of justice and the proviso to section 325(1) of the Criminal Procedure Code, would be applied.

**G** *Per Curiam:* It is mandatory that the election to be made by an accused person under section 201 of the Criminal Procedure Code, whether or not to give evidence or to call witnesses in his defence, be made by the accused personally and an election by counsel is not sufficient.

**H** Appeal against conviction by a Magistrate's Court.

R. I. Kapadia for the appellant.

G. N. Mishra for the Crown.

HAMMETT P.J.: [31st July, 1964]—

A

The Appellant was convicted by the Magistrate's Court sitting at Ba of the offence of giving false information to public servant contrary to Section 132 of the Penal Code.

The evidence for the prosecution in the Court below showed that on 11th December, 1963, during the course of an investigation by the Police the Appellant told P.C. R.D. Mishra, inter alia, "My uncle Natiti gave £1 note and ordered me to go to Jau Karan and bring a bottle of liquor. I gave him personally in his hand the one pound note which sardar gave me. I only saw Jau Karan who gave me the liquor".

B

On 12th December, 1963, he made a second statement to the police admitting that what he had told P.C. Mishra the previous day was not true.

C

At the close of the case for the prosecution, Counsel for the Appellant submitted that there was nothing to show whether the Appellant's first statement or his second statement were true and that the falsity of the first statement had not been proved. He submitted that the Appellant had no case to answer. The learned trial Magistrate ruled there was a case to answer. Counsel for the defence did not call any evidence and relied on his submission. The Appellant was convicted and now appeals against that conviction on the following grounds:

D

1. That the decision is unreasonable and cannot be supported having regard to the evidence.
2. That the learned Magistrate erred in law in ruling that there was a case to answer.
3. That the learned Magistrate erred in law and in fact in holding that your petitioner's first statement to the police was false and the second statement was true when there was no evidence as to the falsity or otherwise of either statement.
4. That the learned Magistrate erred in law in failing to comply with the proviso to section 204(1) of the Criminal Procedure Code in that he failed to call upon your petitioner to plead to the altered charge.

E

F

G

It is the contention of the Appellant that on the strength of the decision of my learned brother Knox-Mawer, Ag. P.J. in *Lekh Ram v. Reginam* (Criminal Appeal No. 41 of 1964), it is not enough for the prosecution merely to prove that the Appellant made two conflicting statements because that does not of itself prove the falsity of either statement.

H

The facts in this case were, however, quite different from those in *Lekh Ram's* case. This is not a case of an accused merely making

two different conflicting statements. Here, in his second statement to the Police, he not only admitted but positively asserted that the part of his statement referred to in the charge was, in fact, untrue. The Appellant's second statement is itself an admission and as such prima facie evidence of the falsity of his first statement. In the absence of any other evidence it was open to the learned trial Magistrate to find, as fact, on the evidence before him, that the Appellant's first statement was false. The first, second and third grounds of appeal must, therefore, fail.

A

B The fourth ground of appeal arises out of the amendment of the charge during the course of the case for the prosecution. This amendment which was of a somewhat technical and minor character, was sought by the prosecution and Counsel for the defence said he had no objection thereto and the charge was amended accordingly.

C Under the proviso to Section 204(1) of the Criminal Procedure Code, the Court should have called on the accused to plead to the amended charge. This the learned trial Magistrate failed, however, to do and the trial proceeded on the basis of the amended charge without any further plea being taken. It is now submitted that this was an irregularity which was fatal to the conviction.

D In the particular circumstances of this case I am of the opinion that this omission by the Court below was not an irregularity fatal to the conviction. It did not prejudice the Appellant in any way and no objection was taken by the Appellant's Counsel at the time. It certainly did not occasion a miscarriage of justice and I apply the proviso to Section 325(1) of the Criminal Procedure Code.

E I observe that the record appears to indicate that after the Court gave its ruling that the accused did have a case to answer, the decision of Counsel that the defence would not call any evidence was accepted and the provisions of Section 201 of the Criminal Procedure Code were not complied with. This point is not raised in the grounds of appeal, however, and it may well be, therefore, that in fact the terms of this section were complied with but no note was made of it at the time. It is mandatory that the accused himself must make the election of whether or not to give evidence or to call witnesses in his defence and the election of Counsel alone is not sufficient. A note that this has been done should be made at the time of the record.

F

The appeal is dismissed.

*Appeal dismissed.*