A

ABDUL HAMID

v.

REGINAM

B

[SUPREME COURT, 1970 (Moti Tikaram P.J.), 14th November, 1969, 30th January, 1970]

Appellate Jurisdiction

Criminal law—evidence and proof—false declaration—requirement of Penal Code s. 116 *that no conviction solely on evidence of one witness as to falsity— more witnesses than one not necessarily required—one witness and something more—Penal Code* (*Cap.* 11) ss. 113(1) (*b*), 116—*Arms and Ammunition Ordinance* (*Cap.* 164) s. 6. C

Criminal law—corroboration—false declaration contrary to Penal Code (*Cap.* 11) s. 113(1) (*b*)—*no conviction solely on evidence of one witness as to falsity—meaning of " solely "—Penal Code* s. 116.

Interpretation—criminal law—Penal Code (*Cap.* 11) s. 116—*meaning of " solely on the evidence of one witness "*. D

The appellant was convicted on a charge of making a false declaration in an application, required under section 6 of the Arms and Ammunition Ordinance, for the renewal of a licence to possess, carry or use arms, contrary to section 113(1) (*b*) of the Penal Code. The allegedly false statement in the application was that on the date thereof, the 31st January, 1969, the appellant possessed the arm in question, namely Air Rifle No. 59707. The prosecution relied upon evidence by a detective corporal that the appellant, when interviewed at his place of work, had orally admitted that the rifle had been stolen in August, 1968, and a statement in writing made by the appellant at the police station to the same effect and admitting that he did not possess the air rifle when he made the declaration. E

Held: 1. By virtue of section 116 of the Penal Code a person is not liable to be convicted of an offence against section 113(1) (*b*) of the Code solely upon the evidence of one witness as to the falsity of any statement alleged to be false. F

2. Section 116 does not necessarily require the falsity to be proved by two or more witnesses, but there must be at least one witness and something else in addition.

3. The contents of the written statement made in the police station provided the " something else " in addition to the evidence of the detective constable. G

Jeffery v. Johnson [1952] 2 Q.B. 8; [1952] 1 All E.R. 450, applied.

Other cases referred to:

R. v. Threlfall (1914) 10 Cr. App. R. 112; 111 L.T. 168.

Lekh Ram v. Reginam Cr. App. No. 41/1964 (C.A.)—unreported.

Appeal against a conviction in the Magistrate's Court.

S. M. Koya for the appellant. H

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [30th January, 1970]

The appellant was charged before the Magistrate's Court of the 1st Class, Lautoka, with two counts—namely, first count, failing to report the loss of an arm, and second count, making false declaration on an application for renewal of licence to possess, use or carry arms and ammunition contrary to Section 113(1) (*b*) of the Penal Code, Cap. 11.

The particulars of offence of the second count were as follows:—

> *ABDUL HAMID* s/o Abdul Salam, on the 31st day of January, 1969 at Lautoka in the Western Division, on an application for renewal licence to possess, carry or use arms and ammunition which he was required to make under Section 6 of the Arms and Ammunition Ordinance, Cap. 164 knowingly and wilfully made otherwise than on oath, a statement false in material particulars, namely the said Abdul Hamid s/o Abdul Salam possessed *DIANA* Air Rifle No. 59707 on 31st January, 1969, the date of application.

The appellant had pleaded not guilty to both the charges. He was found not guilty on the first count and was acquitted. On the second count he was found guilty, convicted and fined $40. This appeal is against conviction only in respect of the second count. The grounds of appeal read as follows:—

> (*a*) THAT the Learned Trial Magistrate erred in law in convicting your Petitioner without corroborative evidence.
>
> (*b*) THAT the Learned Trial Magistrate erred in law in not directing his mind to the fact that having regard to the conflicting written and oral statements made by your Petitioner to the Police there was no evidence in law to show which of the statements was false.
>
> (*c*) THAT the Learned Trial Magistrate erred in law in admitting in evidence the oral and written statements made by your Petitioner to Corporal Ugrasen relating to the alleged offence and erred in acting thereon.

The facts of this case are briefly as follows:—

On the 31st of January, 1969 the appellant went along to the Lautoka Police Station and there filled an application in a Statutory form asking for renewal of his licence to possess, carry or use arms and ammunition in respect of his Air Rifle No. 59707. In paragraph 7 of the application (Exhibit A) he gave details of arm " possessed at date of application ". When completing this application in the presence of prosecution witness Sgt. Shiu Nath, he also told the Sergeant that his gun was at his house. In paragraph 9 of this application the appellant made and signed the following declaration—

> " I hereby apply for renewal of licence in respect of arm(s)/ammunition detailed above, and I declare the statements made by me are complete and true in all respects ".

On the 6th of February, 1969 prosecution witness Constable No. 214 Hari Shankar searched the appellant's mother's house but failed to find any gun there. The appellant was approached on the 12th of January about the missing gun and he made a written statement (Exhibit B) to Constable Hari Shankar wherein he stated that before he went to the police station to apply for renewal of the licence he had checked his firearm at his mother's place and found it where he normally kept the gun. In the course of this statement he also said—

> " On Friday, 7/2/69 in the evening I came to my mother's house and checked the firearm and found it stolen ".

On the 26th February, 1969, Detective Corporal Ugrasen questioned the appellant at his place of work about the missing gun when the appellant told him orally that it was stolen in August the previous year. According to Dectective Corporal Ugrasen's evidence the appellant admitted making a false declaration on 31.1.69. At the request of this police officer the appellant went down to the police station and made a statement which has been tendered as Exhibit C. This statement is a clear admission of the fact that he was aware that the gun was missing since August, 1968 and that at the time when he made the declaration he did not possess the gun in question. He says that he was afraid and did not report the matter to the police. The concluding part of his statement reads as follows:—

> " . . . . on the 31.1.69 I made application for renewal of my licence. I was afraid and made false declaration, that all the statements of the application were true. I thought that when I will be issued with new licence then I will report about my lost (arms) rifle."

At the Trial the appellant did not deny making this statement but contended that he was threatened and induced into making this statement which he signed. A trial within a trial was held and the learned trial Magistrate found that the statement was a voluntary one and was not obtained as a result of any threat or inducement.

The learned Counsel for the appellant, Mr. S. M. Koya has argued that Section 116 of the Penal Code applies to the charge on which the appellant was convicted. This section reads as follows:—

> " A person shall not be liable to be convicted of any offence against any of the seven preceding sections of this Code or of any offence declared by any other Ordinance to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false."

The learned Counsel for the Crown has submitted that this section has no application to the facts of the present case on the basis that the conviction is founded not on the evidence of one prosecution witness but on an admission of falsity by the appellant. In my view the charge under Section 113(1) (*b*) of the Penal Code, Cap. 11 is covered by Section 116, as Section 113 is within " the seven preceding sections of this Code ". This was not a conviction founded on a plea of guilty. Indeed the truth of the confession as to the making of a false statement is disputed by implication although nowhere does the appellant say that the statement is untrue or that he never made the statement. In the trial within trial he however contended that he was threatened to tell the truth. As I have held that Section 116 does apply to the charge preferred against the appellant the first question which therefore arises is whether there was corroboration of the nature contemplated by Section 116. Both learned Counsel agree that this section does not necessarily require two or more witnesses as to falsity as is clear from the words of Avory J. where he was considering an English provision similar to Section 116 in the case of *James Threlfall*, (1914) 10 Cr. App. R. 112, at 114—

> " The meaning is this: it used sometimes to be said that there must be two witnesses; this was a delusion; the evidence of one witness and a confession may be enough, and the section has been drafted so as to make this clear. One witness can prove that the person charged swore to certain statements, but more than the evidence of one witness is required to prove that the statements were false."

In this case it was held by the Court of Criminal Appeal that on an indictment for perjury or subornation of perjury a jury is entitled to treat a document consistent with the guilt of an accused as corroboration of the evidence against him. Referring to the explanation of the English section given by Avory J., the Lord the Chief Justice stated as follows in the concluding part of the judgment:

> " . . . . .and amounts only to this, that there can be no conviction on the evidence of one witness alone; there must be one witness and something else in addition; there was something else here, and so the appeal fails".

The " something else " was a letter written on behalf of the appellant Threlfall.

The Defence contention in this case is that there was no corroboration of Ugrasen's evidence as to falsity. Although the learned counsel for the Crown has conceded that if Section 116 is applicable to the charge against the appellant there was in fact no corroboration and the appeal must be allowed, I cannot, with respect, agree with his view. In my view the learned trial Magistrate having decided to accept the written confession of the appellant as voluntary, the contents of that document provided corroboration of Ugrasen's evidence as to the admission of making a false statement by the appellant. I am fortified in my view by the decision of the Court of Appeal in *Jeffery v. Johnson* [1952] 1 All E.R. 450. Although neither counsel referred to this case and so I have not had the benefit of hearing their arguments, I am satisfied that the ratio of the decision in Jeffery's case is applicable to the facts of the appeal before me. This was a bastardy case which required the mother's evidence to be corroborated in a material particular. The Court of Appeal held that the complainant was a competent witness to prove that the letter was in the handwriting of the respondent, and, if her evidence were accepted, the statements contained in it to the effect that the respondent would pay maintenance after the birth of the child became corroboration in a material particular, of her evidence that the respondent was the father of the child.

In my view the conviction in the case before me, was not founded " solely upon the evidence of one witness as to the falsity of any statement alleged to be false ". There was something else in addition to the evidence of Ugrasen and that something else was the contents of the confession signed by the appellant. I therefore hold that the first ground of appeal must fail.

As regards the second ground of appeal, whilst it is true that the appellant made two conflicting statements, it is equally true that the matter is not left in the air. The second written statement which supports the evidence of Ugrasen that the appellant made an oral admission to him as to falsity disposes of any question of conflict. This is not a case where the court is presented with two conflicting statements and then left to decide without any further evidence which is false and which is not. Furthermore there is the evidence of Hari Shankar which although in no way corroborative of the evidence of Ugrasen, nevertheless does strengthen the prosecution's case. Unlike the position in *Lekh Ram's* case, (Fiji Court of Appeal Criminal Appeal No. 41 of 1964) where the appellant had made contradictory statements, one to the Police and one on oath to a Court, the Supreme Court in its appellate jurisdiction held—

> " In my view the prosecution cannot possibly be held to have established the falsity of the statement which is the subject matter of the charge when, circumstantially, the inferences all point the other way ".

But in this case there is evidence, apart from the confession, pointing in the direction of falsity rather than the " other way ". I am of the view that the learned trial Magistrate was, on the evidence before him, entitled to conclude that the

prosecution had established that the statement made by the appellant in the statutory declaration that he possessed a gun, was false. Having decided that the confession was voluntary the trial Court obviously decided, with justification that the contents were also true. It is worthy of note that apart from the evidence that the appellant gave in the trial within trial the only evidence before the trial Court was the prosecution evidence, the appellant having decided not to give evidence or call any witness. It is significant that in his written confession the appellant gave his reason for not disclosing the truth in his application. I therefore hold that the appellant cannot succeed on the second ground of appeal either.

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As to the third ground of appeal the learned Defence Counsel merely referred to it without making any submissions or quoting any authorities. I see no reason why this Court which did not enjoy the advantages enjoyed by the trial Court of hearing and seeing witnesses should upset the learned trial Magistrate's ruling that the oral and written statements made by the appellant to Detective Corporal Ugrasen were voluntary.

C

Appeal dismissed.