Privy Council Appeal No. **9** *of* **1963**

Sungarapulle Thambiah – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH OCTOBER 1965

Present at the Hearing

LORD REID

LORD MORRIS OF BORTH-Y-GEST

LORD HODSON

LORD PEARCE

LORD WILBERFORCE

(*Delivered by* LORD PEARCE)

The appellant was convicted of abetting another man in fraudulently using as genuine a cheque which had been forged by the alteration of the payee's name. He appeals on two grounds, first that evidence was improperly admitted, and secondly that in any event there was no sufficient evidence to support the conviction.

Five men were indicted on ten counts. The first count charged a conspiracy by all the accused to make fraudulent use of forged cheques as genuine. The other counts charged particular matters against particular persons with regard to two forged cheques. The first accused who uttered the cheques was convicted on counts in respect of each cheque of fraudulently using it as genuine. The fourth accused was convicted of forging the second cheque. The appellant was convicted of abetting the first accused on counts in respect of each cheque. The other accused persons were acquitted.

On appeal the Supreme Court of Ceylon set aside the conviction of the appellant in respect of the first cheque and affirmed that in respect of the second cheque without giving reasons. Their Lordships are therefore only concerned with the conviction on the count relating to the second cheque. The first cheque was uttered to a shop in Colombo and the second to a bank. The evidence with regard to the presence of the appellant in the shop and a remark there made by him when the first cheque was uttered did not suffice to involve him in its uttering. That evidence has no bearing on the uttering of the second cheque.

The cheque in question was drawn for the sum of 21,740 rupees on the Central Bank of Ceylon. It was stolen in the post on some date after October 9th 1958. The name of the original payee was erased by the fourth accused who substituted a name assumed by the first accused. On October 14th the first accused presented the forged cheque for payment into an account which he had recently opened under his assumed name with the Wellawatta branch of the Bank of Ceylon. The case against the appellant rests only on the facts concerning the opening and maintenance of that bank account and on the inferences which are to be drawn from those facts.

The learned trial judge (who tried the case without a jury) in his reasons for verdict gave a very full analysis of the evidence. The substance of that part which relates to the bank account was as follows:—

The first accused was known by the appellant to be Ralahamy, a baker; but the appellant set about opening a bank account for him under a different name and calling. The appellant therefore obtained from the Pettah branch of the Bank of Ceylon a form for opening an account and filled in the name of the proposed customer as Gunadasa, a building contractor. Since the form had to be supported by the certificate of some person who had known the proposed customer for two years the appellant had enlisted the help of his brother-in-law, a civil servant. The appellant then filled in an untrue certificate for his brother-in-law to sign. On the 22nd September he took the first accused (posing as Gunadasa) and his brother-in-law to the bank. There was some trouble over the fact that the first accused signed inaccurately and made an erasure. So the appellant filled in another untrue form and certificate for signature by the first accused and the brother-in-law respectively. The bank however wanted to authenticate the brother-in-law's signature and nothing was concluded on that day. It may be that the parties became apprehensive that this attempt would miscarry, and it appears to have been abandoned.

On the next day (the 23rd September) the appellant asked an old friend who had an account at the Wellawatta branch of the Bank of Ceylon to give him help in opening an account at that branch for a friend of his whom he described as a building contractor of the name of Piyadasa. Again, this building contractor was but the first accused by another false name. The appellant's friend was compliant, and at the direction of the appellant signed an untrue certificate that he had known the proposed customer for two years. He went to the bank with the appellant and the first accused (posing as Piyadasa). There the appellant produced 1,000 rupees to open the account. The first accused then signed five or six blank cheques (in his assumed name of Piyadasa) in the manager's presence. The appellant kept these cheques; and both then and thereafter he kept the cheque book. Later the appellant filled in the blank signed cheques in his own handwriting and used them for his own purposes. On two occasions on 30th September and on 6th October the appellant paid into the account 500 rupees and 150 rupees respectively in the name of Piyadasa (but the paying-in slip was in the writing of the appellant) in order to balance the cheques which he had drawn out. The last transaction was on October 6th. There is no evidence of the first accused himself making any use of the account up to October 14th. On that date however the first accused (as Piyadasa) presented the forged cheque for payment into the account. It was suspected. A bank official examined it under ultra violet rays and discovered the forgery. He sent out to summon " Piyadasa " to his office; but " Piyadasa " had vanished from the premises.

In addition to the above matters, there was evidence that some time previously the appellant had made enquiries about opening an account at another bank (the National and Grindlay's Bank), and there was found in the possession of the fourth accused, the forger, a typed letter vouching a Mr. Piyadasa for the purpose of opening an account at that bank. This letter was signed " H. B. Mendis " but Mr. Mendis who was a customer of the bank had not in fact signed it. The appellant admitted to the police that he had signed this document, and he admitted also writing several signatures " H. B. Mendis " on two pieces of paper that were found in his possession when he was arrested. These admissions were given in evidence.

At the time of the trial there was some authority which appeared to justify the reception of these admissions. But the case of *The Queen v. Murugan Ramasamy* ([1964] 3. W.L.R. 632) has subsequently shown that these admissions should have been excluded. The objection at the trial was based on the ground that the admissions were confessions made to a police officer and as such inadmissible under the Evidence Act section 25(1); but the Court held that they were not confessions. Before their Lordships the only point taken with regard to the admissions was that on the authority of the above case they were inadmissible by virtue of section 122 of the Criminal Procedure Code as being a " statement made by any person to a police officer or an inquirer in the course of any investigation " under Chapter XII of the Code.

Undoubtedly this submission is correct. Mr. Littman attempted to save the admissibility of the evidence by a suggestion that the statements appear

on the evidence to have been made, not during the actual interrogation or in answer to any question, but as information volunteered to the police officer while they were climbing the stairs to his office. The appellant was however in custody at the time, and he was interrogated both before and after they climbed the stairs. Mr. Littman's suggestion thus really amounts to a contention that the statement was made between two investigations, a proposition which their Lordships cannot accept. To hold that information volunteered at any time between the beginning and end of the investigation may be excluded from the protection of section 122 would in practise defeat the purpose of the section and encourage the mischief against which it is clearly aimed. Nor do the words of the section justify such an interpretation. The protection endures " during the course of the investigation " that is to say from the time when the investigation starts to the time when it ends, and a report is made under section 131. Their Lordships accept the view expressed by Howard C. J. in *The King v. Haramanisa* (45 N.L.R. 532 at 537). " The investigation made by a police officer or inquirer under this chapter covers a wide field and is not limited merely to the examination of persons by the putting of questions. The investigation includes the search for incriminating evidence and the examination of the *locus in quo* and the locality in the vicinity of the scene of the crime. A statement made by any person to a police officer who was so engaged would, in our opinion, be made in the course of any investigation."

Thus the evidence was wrongly admitted. Had this case been tried by a jury, its effect on their minds and the degree to which, if at all, it might have affected their verdict would be a matter of speculation. But here their Lordships have the learned judge's careful reasons to guide them in estimating its effect. It is clear that he did not regard it as being of any importance. In his long judgment he makes no mention of the fact that the appellant admitted having written the signature on the type-written letter to the bank which was found in the forger's possession. The admission that the appellant wrote the signatures found in his own possession is mentioned casually as a matter of little or no account. It would seem that the learned judge, who heard and disbelieved the appellant's evidence, preferred his own findings and inferences based on the evidence of truthful witnesses to anything that might fall from the lips of the appellant. The facts proved by other witnesses show conclusively the appellant's intention to open by fraudulent means an account for the first accused under a false name and description, an intention which in due course he achieved. The admission of an earlier inchoate step towards that end adds nothing. Thus the evidence erroneously admitted had no effect upon the verdict and there is no justification for disturbing that verdict by reason of its admission.

There remains the question whether the learned judge was entitled to find in the facts relating to the bank account sufficient evidence that the appellant had abetted the first accused in his fraudulent use of the forged cheque.

He referred to " the various attempts made by the second accused " (the appellant) " to open an account in a bank in the name of the first accused to enable cheques like P2 " (the cheque in question) " to be credited to his account ". Was he justified in inferring that the purpose of the account was to enable cheques like the one in question, that is to say cheques which had a forged payee's name on them, to be paid into it? And if so, was there sufficient particularity about the intention to enable the Court to find the appellant guilty of abetting the fraudulent use of a forged cheque which did not exist at the time when the appellant committed the only acts which were proved against him?

The intention of the appellant falls to be decided on a consideration of all the possible inferences which might reasonably be drawn from his acts. Clearly his persistent, fraudulent, and successful efforts to open an account for the first accused under a false name and description might have been intended, as the learned judge found, to provide a vehicle for realising the proceeds of forged cheques. Such an intention would be consistent with and would explain all the actions of the appellant. What other competing explanations can be found? The explanation put forward by the appellant himself was that he

merely did it to oblige. He had been asked by a friend to oblige a friend of his who wanted to open an account. He met this friend's friend, by name Piyadasa, for the first time a day or so before the visit to the bank. This explanation did not attract the learned judge, and it does not attract their Lordships. If one amends this explanation so as to bring it a little nearer to truth, and substitutes the hypothesis that merely to oblige someone whom he had met as Ralahamy, a baker, he took these serious fraudulent steps to open an account for him under a false name and description it is equally improbable. Mr. Gratiaen was unable to suggest any explanation. There is in fact no rational competing hypothesis consistent with the facts which does not presuppose some profitable fraud as the object to which the appellant's efforts were directed. If therefore one must reasonably assume some profitable fraud as the object, the most reasonable hypothesis is that which the learned judge assumed, namely that the account was intended to be used for paying in forged cheques as it was in fact used. The only other possible profitable fraud would seem to be the use of invalid cheques drawn on the account; but since the appellant kept the signed cheques and cheque book and made no such use of them, it would be unreasonable to assume that any such object was intended. In their Lordship's view the inference drawn by the learned judge was justified since there was no other hypothesis which would fit the facts.

The fact that the cheque did not as yet exist, when the account was opened, does not preclude the appellant's actions in opening and maintaining it from constituting an abetting of the fraudulent presentation of the cheque when it had come into existence and been altered by forgery. One man may abet another by helping to set the stage even before the victim has been found. If a man helps another in preparation for crimes of a certain nature with the intention that the other shall commit crimes of that nature he may abet those crimes when they come to be committed. Moreover in the present case at the time when the cheque was fraudulently presented the account still owed not only its origin but also its maintained existence to the appellant.

Nice problems may arise when preparations abetting one kind of crime are followed by the execution of a crime of another kind or when the abetting preparations are merely for some criminal but indefinite purpose. The only two cases on abetting to which their Lordships were referred do not help. In *R. v. Bullock* ([1955] 1 W.L.R. 1 explaining *R. v. Lomas* 9 Cr. App. R.220) a person who hired cars which were used in two burglaries was held guilty as an accessory. But the point there in issue was how far there had been any sufficient direction to the jury on the facts of that case. The case contains little guidance on the question how much particularity of intention must be shown in proving the charge of abetting. This is a matter which must clearly be affected by the extent and degree of the abetter's activities and their proximity to the actual crime.

In the present case however the only reasonable inference seems to be that which the learned judge drew, namely that the appellant's actions in opening and maintaining the account showed an intention that it should be used as a vehicle for presenting forged cheques such as the one which was in fact presented. That intention was implemented when the cheque came to be presented. The appellant then became guilty of abetting its presentation. In their Lordships' opinion therefore there was sufficient evidence to justify the verdict.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed.

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In the Privy Council

SUNGARAPULLE THAMBIAH

v.

THE QUEEN

DELIVERED BY

LORD PEARCE

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