A

BABU RAM

v.

REGINAM

[SUPREME COURT, 1966 (Knox-Mawer P.J.), 13th, 31st January]

B

Appellate Jurisdiction

Criminal law—attempted subornation of perjury—payment made to person to induce false statement to police and in anticipated criminal proceedings—Penal Code (Cap. 8) ss.112(2), 132.

C *Criminal law—accomplice—attempted subornation of perjury—person in relation to whom charge laid accepting payment from accused and thereupon making false statement to police—failure by magistrate to treat such person as accomplice—Penal Code (Cap. 8) ss.112(2), 132.*

The appellant was convicted in the Magistrate's Court of subornation of perjury contrary to section 112(2) of the Penal Code. The prosecution case was that the appellant had assaulted Nur D Begam and her daughter and that subsequently the appellant paid Nur Begam £30 in order that she should falsely exculpate him by blaming someone else. This she would have to do in a statement to the police and in court proceedings anticipated by the appellant.

Held: If the facts as alleged were sustainable they would constitute an attempted subornation of perjury on the part of the E appellant, but the evidence disclosed that Nur Begam had taken the £30 from the appellant and duly made the false statement which she authorised solicitors to forward to the police. She was therefore an accomplice of the appellant and it was clear from the trial magistrate's judgment that he had not treated her as such or given himself the necessary warning on that basis. In the circumstances of the F case that was an incurable defect and the appeal must succeed.

Davies v. Director of Public Prosecutions [1954] A.C. 378; [1954] 1 All E.R. 507, applied.

Appeal against conviction by Magistrate's Court.

J. R. Reddy and *S. Prasad* for the appellant.

G *G. N. Mishra* for the respondent.

The facts sufficiently appear from the judgment.

KNOX-MAWER P.J.: [31st January 1966]—

The appellant was convicted before the Magistrate's Court of the First Class Nadroga of attempted subornation of perjury contrary H to section 112(2) of the Penal Code and sentenced to 18 months' imprisonment.

This Court is obliged to quash the conviction for the reason set out below. At the same time it should, I think, be stated that the Court was not persuaded by the argument of learned counsel for the appellant advanced upon grounds of appeal (a), (b), (c) and (g). Those grounds of appeal read as follows:— A

"(a) That the conviction is wrong in law in that at the time of the alleged attempt to suborn Nur Begam to commit perjury she was not sworn witness in a judicial proceeding nor was there in existence any judicial proceeding in the matter.

(b) That the learned trial Magistrate erred in law when he said that "it seems to this Court that an attempt to suborn a person in contemplated judicial proceedings, which will certainly be conducted on the basis on a sworn testimony, to give an account which is untrue would amount to the commission of the offence charged even though no judicial proceedings took place". B

(c) That having held that there was no proof that there was a criminal case in which your Petitioner was charged on the facts which are the subject of these proceedings, the learned trial Magistrate ought to have acquitted your Petitioner. C

(g) That in any event the learned trial Magistrate erred in law in not holding that an unsuccessful effort to procure perjury is not an attempt to commit subornation of perjury but at common law it was merely an incitement to perjury. D

The preliminary point which arises in this connection concerns the particulars of charge. These read as follows:—

"BABU RAM alias BANSI son of Nandlal, between the 14th and 15th days of February, 1965 at Sigatoka in the Western Division, attempted to suborn Nur Begam daughter of Mahoboob Khan to commit perjury in judicial proceeding." E

In my opinion the words "in judicial proceeding" are superfluous. They should be deleted and the words "contrary to Section 106(1) of the Penal Code" should be substituted therefor. This is not, however, a material defect in the charge.

Turning to the general argument advanced upon grounds (a), (b), (c) and (g), the prosecution case was that the appellant had assaulted Nur Begam and her daughter, and that subsequently the appellant paid Nur Begam £30 in order that she should falsely exculpate him in respect of this offence by blaming someone else. This she had to do: (a) In a statement which was submitted to the Police Inspector investigating the case, and (b) In the Court proceedings which the appellant was anticipating. I have no doubt that had this prosecution case been sustainable it would constitute an attempted subornation of perjury on the part of the appellant as charged. The charge, it must be emphasized, is not subornation of perjury but *attempted* subornation. The statement in Stephen (9th Ed.) page 147— F G

"Subornation of perjury is procuring a person to commit a perjury, which he actually commits in consequence of such procurement." H

relates only to the common law offence of subornation of perjury and not to this statutory offence of attempted subornation. An attempt must of course be something more than a mere preparation for the commission of the offence, as the case which the prosecution A sought to establish would certainly have been (see *Archbold* (35th Ed.), paragraph 4104).

The reason why this conviction must be quashed is set out in the 5th ground of appeal, ground (e), wherein the appellant complains that the learned trial Magistrate was wrong in law in not treating Nur Begam as an accomplice. The evidence disclosed that B Nur Begam took the £30 from the appellant and duly made the false statement which she authorised Messrs. Koya & Company to forward to the Police Inspector at Sigatoka. Nur Begam also stated in evidence that not only had she agreed to tell lies in return for the £30, but that had the Police not made further inquiries she would have been "quite happy" to stick to her false statement. It seems apparent therefore that she abetted the commission of the offence C by the appellant. Following *Davies v. Director of Public Prosecutions* [1954] A.C. 378 at page 400 per Lord Simonds L.C., Nur Begam was "*participes criminis* in respect of the actual crime charged". Accordingly she should have been treated as an accomplice.

It is clear from the 4th paragraph of the judgment of the learned trial Magistrate that he did not treat Nur Begam as an accomplice, D and the absence of the necessary warning in this particular case is thus an incurable defect (see *Archbold* (35th Ed.) para. 1293). For this reason the appeal has succeeded.

It may be added that Nur Begam is equally an accomplice in respect of the lesser offence of giving false information to a public officer contrary to Section 132 of the Penal Code, and so it is not E possible for this Court to substitute a conviction for this lesser offence.

Appeal allowed, conviction and sentence quashed.

Appeal allowed; conviction quashed.