

## R. v. SIAMEJA.

## A CRIMINAL REVIEW CASE OF 1937.

*Perjury—doubt as to nature of plea in answer to charge—desirability of entering plea “ Not Guilty ” in such circumstances—proof that witness has made two contradictory statements both of which cannot be true, insufficient.*

It sometimes happens that an accused person (particularly an uneducated native) does not fully understand the nature of the offence with which he is charged; or he may, without intending to admit the charge, make some reply which suggests guilt. Whenever it is in any way doubtful whether the answer of the accused person amounts to a full and clear admission of guilt, a plea of “ Not Guilty ” should be entered when a full investigation of the charge is secured.

On a charge of perjury it is not sufficient for the prosecution to prove that the accused person when giving evidence as a witness made two contradictory statements both of which cannot be true; the prosecution must prove that one of the two statements was relevant to the proceedings and that it was false and false to the knowledge of the accused.

**Francis, J.:** Where there is room for misunderstanding or uncertainty of mind (frequently found among unintelligent natives) it is a good principle for courts to enter a plea of “ not guilty ” and thus secure a full investigation of the charge in accordance with the law.

In this case the accused has pleaded guilty to a charge of perjury. The gravamen of his offence would appear to be that he said one thing in examination-in-chief and something entirely the reverse in cross-examination and when called upon to explain inculpated a district messenger. But it does not seem to me that the prosecution was able or prepared to prove which statement was false. A conviction founded on the argument that as both the statements cannot be true, the accused is guilty of perjury, is not well founded in law.

In perjury there must be proof by two or more witnesses of the falsity of the statement. Moreover it must be material to the question at issue, and it should be shown affirmatively that the accused knew that the statement charged was false.

Despite the plea I do not like this conviction and it must be quashed.

This order, however, leaves the prosecution to proceed against the accused *de novo*, if considered expedient.

Should this procedure be followed the Magistrate should try the case irrespective of plea. I should require the record to be submitted; and the trial magistrate is at the same time informed that any sentence like that herein imposed is much too severe.

