

JARRIE v. REGINAM

SUPREME COURT (Bairamian, C.J.): September 3rd, 1957
(Mag. App. No. 18/57)

[1] **Criminal Law—personation—voting in false name—attempt to vote made as soon as name given to polling assistant—arrival at stage where ballot papers issued unnecessary:** A person applies for a ballot paper in terms of reg. 29(1) of the House of Representatives (Elections) Regulations, 1957, and thus attempts to vote in terms of reg. 71, as soon as he gives his name to a polling assistant and if that name is not his own he is guilty of personation; the organization of the polling station, which may mean that the accused did not reach the stage where ballot papers were issued, is immaterial (page 19, lines 23–27; page 20, lines 3–12).

[2] **Elections—personation—attempt to vote made as soon as name given to polling assistant—arrival at stage where ballot papers issued unnecessary.** See [1] above.

The appellant was charged in a magistrate's court with attempting to vote in the name of some other person, contrary to reg. 71 of the House of Representatives (Elections) Regulations, 1957.

The practice at the polling station where the offence was allegedly committed was for each voter to go to table No. 1 and give his name; if the name was registered he was given a piece of paper and proceeded to table No. 2 where his thumbprint was taken and ballot papers given him. The appellant twice approached table No. 1 and stated that her name was Marie Seisay; this name did not appear on the register and the appellant was not allowed to proceed to table No. 2. Later she returned and stated that her name was Fatmattah Jarrie; the presiding officer recognised her and ordered her arrest. The trial magistrate regarded her conduct as an attempt to vote and the appellant was convicted.

On appeal, counsel for the appellant contended that since the appellant had not approached table No. 2 where the ballot papers were issued she could not be said to have applied for a ballot paper in terms of reg. 29(1) of the Regulations.

Legislation construed:

House of Representatives (Elections) Regulations, 1957 (P.N. No. 38 of 1957), reg. 25(2):

The relevant terms of this regulation are set out at page 19, lines 29–38.

reg. 29(1): The relevant terms of this regulation are set out at page 19, lines 12-22.

reg. 71: The relevant terms of this regulation are set out at page 18, lines 13-17.

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S.C.B. Macaulay for the appellant;
N.E. Browne-Marke, Crown Counsel, for the Crown.

BAIRAMIAN, C.J.:

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Put shortly, the charge against the appellant was that she knowingly attempted to vote in the name of some other person, contrary to reg. 71 of the House of Representatives (Elections) Regulations, 1957, which provides that:

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"Any person who at an election held under these Regulations knowingly votes or attempts to vote in the name of some other person, whether that name be that of a person living or dead or of a fictitious person . . . shall be guilty of the offence of personation. . . ."

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The learned magistrate was satisfied that the appellant went into the polling station and gave her name as Marie Seisay to a polling assistant, but her purpose to vote was frustrated; he regarded her conduct as an attempt to vote.

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The practice at the polling station was for a voter to go to an assistant at table No. 1 and give his name; if he was registered he would get a piece of paper and take it to table No. 2 where the master register (as it is described) was, and there his name and address and number would be called out and his name crossed out; another person at table No. 2 would give him voting papers and take his thumb print; and then the voter would take his place in the queue of voters.

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When the appellant went to table No. 1 her name could not be found in the register; she told the presiding officer that she was Marie Seisay of 16 Percival Street. From the cross-examination of Winifred C. Coker, the presiding officer, it appears that she checked the master register and told the appellant that the name she gave of Marie Seisay was not there. The appellant went to the polling station a second time in the morning, again calling herself Marie Seisay, and was told by the presiding officer that her name was not in the register. She returned in the afternoon claiming that her name was Fatmattah Jarrie; the presiding officer told her she had come twice in the morning calling herself Marie Seisay and ordered her arrest.

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There was a half-hearted attempt on the part of learned counsel

for the appellant at an argument on the facts of the case. I do not propose to examine the evidence further. I have read it and would have to come to the same conclusion as the learned magistrate. The more interesting part of the argument is this: whether by presenting herself as Marie Seisay the appellant was guilty of attempting to vote in another name. 5

The argument for her is that a person cannot be guilty of an attempt to vote until he asks for a ballot paper; that it is only when he gets to table No. 2 that he can be challenged and until he gets there there can be no attempt to vote. Light is shed on this question by reg. 29(1), which provides that: 10

“If at the time a person applies for a ballot paper or ballot papers, or after he has so applied and before he has left the polling station, a polling agent declares to the Presiding Officer that he has reasonable cause to believe that the applicant has committed the offence of personation and undertakes to substantiate the charge in a court of law or if the Presiding Officer himself has reasonable cause to believe that an applicant for a ballot paper has committed the offence of personation, the Presiding Officer may order a constable to arrest such person and the order of the Presiding Officer shall be sufficient authority for the constable so to do.” 15 20

Plainly a person may be guilty of personation at the time he applies for a ballot paper, and that would be by reason of his representing himself as another person; from which it follows that if he does that, he is attempting to vote in the name of some other person within the meaning of reg. 71. 25

Here it will be useful to quote reg. 25(2):

“Every elector desiring to record his vote shall present himself to a Polling Assistant at the polling station at which he is entitled to vote, and the Polling Assistant, after satisfying himself— 30

- (i) that the name of such elector appears in the copy of the House of Representatives Register, or part thereof, provided for that polling station; and 35
 - (ii) that he has not already voted;
- shall deliver to him as many ballot papers as there are vacancies in the electoral district.”

If there is only one table and only one copy of the register, and the ballot papers are handed out there, a person wishing to vote comes to it and gives his name and address and is given or refused 40

a ballot paper. When he gives his name, he is thereby in fact applying for a ballot paper; and if he gives some other person's name he is guilty of personation. The point I wish to stress is that by giving his name to a polling assistant at the polling station a person is thereby applying for a ballot paper in point of fact; and if he gives some other person's name he is guilty of personation.

Mr. Macaulay, in his adroit argument, has tried to benefit from the split in the procedure arising from the having of two tables; but what he cannot get over is the common sense of the matter—that a person coming into a polling station and giving his name and address to a polling assistant is in fact thereby applying for a ballot paper.

The appeal from the decision of the trial magistrate is dismissed and his order must stand; the appellant must now be committed to prison to serve her sentence.

Appeal dismissed.

ATTORNEY-GENERAL v. HOLDEN

SUPREME COURT (Bairamian, C.J.): September 3rd, 1957
(Mag. App. No. 19/57)

[1] Criminal Law—assault—assault in removing disorderly person from polling station—offender should be asked to behave properly—use of force after refusal not assault: The effect of para. (1) of s.31 of the House of Representatives (Elections) Regulations, 1957 is to impose a duty upon a presiding officer to keep order in the polling station and para. (2) provides the means of carrying out that duty; the offender should first be asked to behave properly and if he refuses force may, if necessary, be used to remove him without constituting an assault (page 23, lines 16–19; page 23, lines 31–36).

[2] Criminal Law—assault—definition—offer or attempt to apply force in hostile manner—actual application of force is battery: An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without the consent of the person assaulted, and in an angry, rude, revengeful or violent manner, the assault becomes a battery, however slight the force may be (page 21, lines 33–39).

[3] Elections—polling stations—duty of presiding officer to keep order—offender should be asked to behave properly before other measures taken—use of force after refusal not assault: See [1] above.