

JOVECI JOSEFA *v.* THE POLICE

[Appellate Jurisdiction (Hyne, C.J.) April 17, 1953]

S. 342 (1) of *Criminal Procedure Code*—grounds of appeal—appeal against sentence.

The accused was convicted of the offence of fraudulent conversion contrary to section 300 (c) (1) by the 1st Class Magistrate's Court at Ba and was sentenced to 18 months' imprisonment with hard labour.

The Magistrate remarked that in fixing sentence he would take into account the fact that the accused had attempted to cast the blame on an innocent man.

HELD.—This factor should not have been taken into consideration by the Magistrate.

(*R. v. Quinn* 23, Cr. App. R. 196 approved.)

Observations made on drafting appeals.

Cases referred to:—

R. v. Fielding 26 Cr. App. R. 211.

R. v. Quinn 23 Cr. App. R. 196.

P. Rice for the appellant.

B. A. Doyle, Q.C., Attorney-General, for the respondent.

HYNE, C.J.—Learned Counsel for the petitioner, no doubt with the desire to assist the Court, set out at considerable length what in effect is argument in support of the grounds of appeal.

It would be helpful, however, if on future occasions the provisions of section 342 (1) of the *Criminal Procedure Code* be strictly complied with. The section in question reads:—

“Every petition shall contain in a concise form the grounds upon which it is alleged that the Magistrate from whose decision the appeal is lodged has erred.”

The following observations are based on comments by *Du Parcq J.* in *Rex v. Fielding* 26 Cr. App. R. p. 211. Particulars must be given in the grounds of appeal. If misdirection is complained of it must be stated whether the alleged misdirection is one of law or of fact, and its nature must also be stated. If omission is complained of it must be stated what is alleged to have been omitted. The prosecution is entitled to know precisely what case they have to meet, and it should not be necessary for the Court to go through the record to find out what may be the subject of complaint.

I feel sure that Counsel will have regard to these observations when next preparing an appeal to this Court from a decision of a Magistrate.

It is the duty of the appellant to show that the Magistrate came to a wrong conclusion. I am satisfied that full consideration was given to the evidence both for and against the appellant, and the Magistrate chose to believe the prosecution's story. Unless the appellant can show the verdict was unreasonable and could not be supported having regard to the evidence, then this Court will not interfere. He has not done so, and I am quite satisfied that there was evidence on which the magistrate could convict, and the conviction is therefore affirmed.

As to sentence the learned Magistrate said as follows:—

“ In fixing your sentence I shall take into account that you have attempted to cast the blame for this offence on a man whom I think is innocent.”

To take into account the fact that, in the Magistrate's opinion, the appellant attempted to cast the blame on an innocent man is, I think, quite wrong. The accused person is charged with a specific offence and it is for this offence, and this offence only, that he should be punished. There is no actual direct authority on the point, but I think that the case of *Rex v. John James Quinn* 23 Cr. App. R. p. 196, to which learned Counsel for the defence referred, may be taken as a guide. In this case the Court of Appeal laid down “ that a sentence of greater severity than the sentence appropriate to a particular offence ought not to be imposed merely because a prisoner has, in the opinion of the trial Judge, committed perjury in the witness box.”

Reference was made, in the record, to a previous conviction, but there is nothing on the record to show of what the accused was previously convicted.

Inasmuch, therefore, as the learned Magistrate, in sentencing the accused, took into consideration something in addition to the offence for which he was charged, I think that the sentence should be reduced. In view of the fact that the particulars of the previous conviction are not set out, I am unable to consider that conviction in assessing sentence.

Sentence of 18 months' imprisonment with hard labour quashed.

Sentence of 9 months' imprisonment with hard labour substituted therefor.