IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 63 of 1958

Between:

VENKAT SAMY — Appellant

AND

REGINA — Respondent

Appeal to the Supreme Court—ground of appeal " that the verdict, or judgment, is against the weight of evidence "—whether a proper ground of appeal—requirements with similar ground of appeal to Fiji Court of Appeal.

Held.—(1) That a ground of appeal " that the verdict, or judgment, is against the weight of evidence " is unsatisfactory.

(2) The ground should state " that the judgment is unreasonable or cannot be supported having regard to the evidence ".

(3) An appellant who stated his ground as in (1) above would still have to satisfy the Supreme Court in its appellate jurisdiction, as to the form of ground shown in (2) above.

Appeal allowed.

Cases cited:—

Kamchan Singh v. The Police, 4 F.L.R., 69: *Samuel Aladesuru and Others v. The Queen* (1955) 3 W.L.R., 515.

K. P. Mishra for the appellant.

Justin Lewis, Solicitor-General, for the respondent.

LOWE, C.J., [13th November, 1958]—

The appellant in this case was charged with larceny contrary to section 288 (1) of the Penal Code and in the particulars of offence it was stated that he stole many articles including " 195 timbers ". The grounds of appeal included one which merely stated " conviction is against the weight of evidence generally " and another ground " that the learned magistrate erred in holding that the evidence of Eloni Ratere sufficiently identified the timber to be the same as described by Ram Bhej." There is no doubt that the timber was not sufficiently identified; in fact it does not appear to have been identified at all, for although there was reference to certain pieces of timber there was nothing approximating the description of the timber set out in the particulars of the offence, which particulars were, in themselves, insufficient to enable the accused to know what timber was referred to.

The learned Solicitor-General was unable to support the conviction and I agree with him. For that main reason I allowed the appeal, quashed the conviction and set aside the sentence. One point of interest was raised by the Solicitor-General and that is that the first ground of appeal, to which I have referred, was unsatisfactory and not in fact a proper ground of appeal upon which the appellant was entitled to rely. It appears to be a general practice for Counsel to insert a ground of appeal " that the verdict, or judgment, is against the weight of evidence " and such a practice should not be continued as it might prove to be extremely prejudicial to the person who has been convicted. In *Kamchan Singh v. The Police*, 4 F.L.R. 69, the then learned Chief Justice said;

> " The appellant does not set out in his first ground of appeal all that is required. It is not sufficient merely to allege that the verdict is against the weight of evidence. In order to succeed the appellant must show that the verdict is unreasonable or cannot be supported having regard to the evidence."

The learned Solicitor-General referred also to the case of *Samuel Aladesuru and Others v. the Queen* (1955), 3 W.L.R., 515. This was an appeal, from a decision of the West African Court of Appeal, to the Judicial Committee of the Privy Council. It was held that a ground of appeal " that judgment against the weight of evidence " was an inaccurate phrase and it was necessary that there should be strict compliance with the statutory language applicable, namely, " that the verdict is unreasonable or cannot be supported having regard to the evidence ". That case, however, has no application to this Colony. The judgment of the Privy Council was dictated by the words of section 11 of the West African Court of Appeal Ordinance (Laws of Nigeria 1948, see Cap. 229) which are as follows:

> " The Court of Appeal on any such appeal (from the Supreme Court) against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence."

There is no relevant parallel provision in the Criminal Procedure Code except that contained in section 319 to which I will refer later. Section 325 (1) sets out the powers of the Supreme Court on appeal as follows:

> " At the hearing of an appeal the Supreme Court shall hear the appellant or his advocate, if he appears, and the respondent or his advocate, if he appears, and the Supreme Court may thereupon confirm, reverse or vary the decision of the Magistrate's Court, or may remit the matter with the opinion of the Supreme Court thereon to the Magistrate's Court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power that the Magistrate's Court might have exercised."

It is of interest to note that the Court of Appeal Ordinance contains, in section 18 (1), a provision such as that in the Nigerian Ordinance.

The relevant provisions in the Criminal Procedure Code in this Colony are extremely wide but, with respect, I agree with the dicta of the then learned Chief Justice in the case of *Kamchan Singh v. The Police*, where, incidentally, the respondent should have been cited as " Regina " and not " the Police " which is entirely incorrect.

Although there is nothing in the Criminal Procedure Code which might tend to dictate or which expressly dictates the terms of any ground of appeal the very words " that the verdict, or judgment, is against the weight of evidence " do not satisfactorily show a ground of appeal. It is hardly necessary to say that a verdict is, or should in all cases be, reached upon a consideration of the value to be placed upon the evidence heard by the court, it is never reached by giving credence to otherwise incredible evidence which might have been given at greater length than that of the opposite party to the proceedings. I mention that merely to stress the absurdity which could arise by a strict interpretation of the words " weight of evidence ". In *Kamchan Singh's* case the learned Chief Justice did not say that a ground of appeal which alleged that the verdict was against the weight of evidence amounted to a nullity. He said that " in order to succeed " the appellant

must show that the verdict is unreasonable or cannot be supported having regard to the evidence, and there can be little doubt that he meant " show on appeal ". Insofar as this Colony is concerned the ground mentioned is extremely unsatisfactory but I cannot say that I would be prepared to reject it as a ground of appeal as, in my opinion, it is intended to mean that " the verdict, or judgment, is against the value which should have been attached to the evidence " and for that reason is unreasonable.

It would be wrong to reject the ground of appeal in its original form. To do so might be unjust and as the law does not restrict the terms or in any way lay down the grounds upon which an appeal might be lodged there could be no justification in law for refusing to hear an appeal which relied on only such a ground. This Court, in considering a petition of appeal against sentence only or one in which the appellant claims that the decision is unreasonable or cannot be supported having regard to the evidence, can reject the appeal summarily if satisfied that the appeal has been lodged without any sufficient ground of complaint. That is provided for in section 319 only in connexion with summary rejections of certain appeals. The position might be different if the ground of appeal was set out in the unsatisfactory form complained of.

I would add, however, that where Counsel are engaged or where prison authorities prepare a petition of appeal for an appellant it should always be stated, if such is a genuine ground of complaint, that the verdict, or judgment, is unreasonable or that it cannot be supported having regard to the evidence and should not state " that the verdict, or judgment, is against the weight of evidence ".