

## CHANDRA WATI

A

v.

## REGINAM

[COURT OF APPEAL, 1962 (Hammett P., Marsack J.A., Trainor J.A.),  
6th February, 13th April]

B

## Criminal Jurisdiction

*Criminal law—summing up—ground of appeal—isolated passage should not be taken out of context.*

*Criminal law—confession—weight—to be tested in relation to the other proved circumstances.*

C

*Criminal law—evidence—weight of confession—to be tested against other proved circumstances.*

*Appeal—criminal appeal—ground of appeal—isolated passage of summing up taken out of context.*

Where a summing up contains a clear direction that the onus of proving guilt beyond reasonable doubt rests upon the prosecution throughout, an isolated passage therefrom ought not to be taken out of context to form the basis of a ground of appeal.

D

The truth of a confession, voluntarily made, and the weight to be attached to it, may be tested and assessed by comparison of the contents thereof with the other proved circumstances.

Case referred to: *R. v. Sykes* (1913) 8 Cr. App. R. 233.

E

Appeal against a conviction of murder by the Supreme Court.

*S. A. Jan* for the appellant.

*K. C. Gajadhar* for the respondent.

Judgment of the Court: [13th April 1962]—

F

This is an appeal against the decision of the Supreme Court of Fiji whereby the appellant was convicted of the murder of her infant child Shusheela on 27th April, 1961. The appellant being under the age of 18 years, was ordered to be detained under the provisions of Section 25 of the Penal Code.

The facts are not disputed and were as follows:—

G

The appellant, an unmarried girl aged 17 had at the material time, been living with one Ganesh and his wife Almelu and family as their adopted daughter. She gave birth to an illegitimate child named Shusheela in April, 1960.

On the morning of 27th April, 1961 she was in the house with Almelu and her infant Shusheela. No one else was present. The child was put on the front verandah of the house to sleep whilst

H

A these two women were doing housework. At about 9.00 a.m. the appellant went to her baby and called out "My daughter is finished". Almelu came to the scene and saw that there was blood on the child. Almelu picked the child up and called the neighbours. They came to the scene and a doctor was called. Dr. Mehta arrived at the house at about 9.30 a.m. and found the child dead. He observed the blood and considered it to be a matter for the Police who were summoned and arrived at about 10.30 a.m.

B In the course of the Police investigations the appellant told A.S.P. Walli Mohammed that she wanted to see him alone. She did so and told him that she had killed the child. She said the child's father was one Narayan Nair and she killed it because someone was falsely saying that Ganesh was its father and "she felt bad". She then told the Deputy Superintendent of Police, Mr. Rector, that she had killed the child. She was cautioned and repeated what she had said and later at 3.10 p.m. after being formally charged with the murder of her child and after again being cautioned, she again said she had killed her child.

C There are 10 grounds of appeal three of which do not appear to have any substance and were abandoned by Counsel for the Appellant at the hearing. The remaining grounds of appeal taken together complain of these matters.

D Firstly: That the learned trial Judge misdirected the Assessors on the onus of proof when he told them "nothing in this world can be proved with certainty".

Secondly: That the appellant's confessions should not have been admitted in evidence and even if admitted in evidence were insufficient to support the conviction.

E On the first ground it may be noted that the precise words attributed to the learned trial Judge were not in fact used by him. On the question of the onus of proof he directed the Assessors in the following terms:—

F "As you have already been told, the onus of proof in a criminal case rests on the prosecution throughout. You should only express the opinion that the guilt of an accused person has been proved if you are satisfied that that has been shown beyond reasonable doubt. It is never a question of the prosecution adducing evidence which merely raises a cloud of suspicion against an accused. It is not for the accused to establish his innocence. The duty always rests upon the prosecution of proving the offence charged, beyond all reasonable doubt. Of course one cannot be absolutely certain of anything in this world. It is not necessary to go into remote and fanciful possibilities just because nothing is certain in this world. The doubt must be a reasonable one, not a mere fanciful one.

G In our opinion this direction, taken as a whole, put the matter fairly and properly before the Assessors. We would emphasise that the actual words used by a Judge concerning the onus of proof in a summing up are not themselves important. What is essential is that it be made abundantly clear that the onus of proof rests on the

H

prosecution throughout to prove the guilt of the accused beyond reasonable doubt. This is what the learned trial Judge did in this case and we deprecate the quoting of an isolated extract of a summing up taken right out of its context to support this ground of appeal which in our view is entirely lacking in merit.

A

On the issue of the confessions we have considered all that has been said in criticism of them and have carefully studied the record of the proceedings in which they appear.

The appellant made no less than four statements in which she admitted she had killed her child. The first, not under caution was to A.S.P. Walli Mohammed at the scene shortly after the Police arrived to investigate the crime. He took her to Superintendent Rector to whom she again admitted having killed her child. She was cautioned and again repeated her admissions. Finally, after she had been formally charged with the murder of her child and again formally cautioned she said:

B

"I am telling you that I killed my baby. Everybody says that you are keeping Ganesh, and its Ganesh's baby. It is a lie. It is not Ganesh's baby. Polaia says its Ganesh's baby. Polaia chased away baby Shushila's father. That is all."

C

In the case of *Rex v. Sykes* 8 Cr. App. R. 233 Ridley J. said at page 236:—

D

"I think the Commissioner put it correctly; he said: 'A man may be convicted on his own confession alone; there is no law against it. The law is that if a man makes a free and voluntary confession which is direct and positive, and is properly proved, a jury may, if they think fit, convict him of any crime upon it. But seldom, if ever, the necessity arises, because confessions can always be tested and examined, first by the police, and then by you and us in Court, and the first question you ask when you are examining the confession of a man is, is there anything outside it to show it was true? Is it corroborated? Are the statements made in it of fact so far as we can test them true? Was the prisoner a man who had the opportunity of committing the murder? Is his confession possible? Is it consistent with other facts which have been ascertained and which have been, as in this case, proved before us?'"

E

F

In this present case the appellant herself admitted that she said when she saw blood on her child, and before she took a good look at it, "My daughter is finished". She was quite unable to explain why she uttered this particular expression which appears to indicate that she knew the child was dead without any need further to examine it. This would only be so if she had prior knowledge of the extent of the child's wounds, which she however denied.

G

Again, when asked by the Police to identify the knife she used in killing her child she picked out one from a number of other knives on a table and explained the absence of blood upon it by saying she had washed it in a drum of water and also showed this drum to the Police.

H

A Further, from the short time available from when the child was last known to be alive to when she was found dead and the relative position and proximity of the appellant to the scene, it is difficult to conceive how anyone else could have come to the scene and killed the child without the appellant being aware of this fact. If she was so aware, we feel it beyond the limits of credulity that she would not at once denounce the killer of her own child.

B In our opinion the appellant's confessions were properly admitted in evidence as her own voluntary statements after full and careful enquiry by the learned trial Judge. Having been properly admitted in evidence, they were found to be consistent with the remaining evidence in the case which was not logically consistent with any other hypothesis save the guilt of the appellant. We are, therefore, unable to say that the learned trial Judge erred either in accepting the appellant's confessions as the truth of the matter or in acting upon them.

C For these reasons the appeal is dismissed.

*Appeal dismissed.*