

JOSEFA NASORA

v.

REGINAM

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.), 17th July, 2nd August]
Appellate Jurisdiction

Criminal law—onus of proof—accused electing to remain silent—
misdirection—Penal Code (Cap. 8) s. 335 (a).

The appellant was charged with obtaining goods by false pretences and, at the close of the prosecution case, elected not to give evidence or make a statement. In convicting him, the Magistrate referred to his silence and said that since he had not taken the opportunity to deny or explain what had been said by the prosecution witnesses the court was left only with the evidence of those witnesses and therefore accepted that evidence as the truth.

Held.—That the Magistrate had, by using those words, apparently misdirected himself on the onus of proof.

Appeal against conviction.

Ramrakha for the appellant.

Gajadhar for the Crown.

KNOX-MAWER Ag. P.J. [2nd August, 1963]—

The appellant was charged before the Magistrate's Court of the First Class, Nadroga, with obtaining goods by false pretences contrary to section 335 (a). The particulars of the offence were as follows:

" Particulars of Offence

Joseva Nasora on the 29th day of April, 1963, at Sigatoka town in the western division with intent to defraud obtained from Prabhu Dass Kurji son of Kurji 10 lb. rice, 3 lb. dalda, 10 lb. sugar and $\frac{1}{4}$ lb. bushell tea of the total value of £1 8s. 9d. by falsely pretending that he, the said Joseva Nasora had been sent by Shyam Jiawan son of Latchman to the said Prabhu Dass Kurji son of Kurji for the said goods and that he the said Joseva Nasora was then authorised by the said Shyam Jiawan son of Latchman to receive the said goods on behalf of the said Shyam Jiawan son of Latchman."

P.W. 1 Shyam Jiawan and P.W. 2 Prabhu Dass Kurji gave evidence in support of the prosecution case. The appellant elected to remain silent, whereupon the Court below proceeded to deliver a judgment convicting him as charged. The first paragraph of this judgment reads as follows:—

" Accused has had the opportunity to deny or explain what has been said by the prosecution witnesses. Since he has not taken the opportunity the Court is left only with the evidence of the prosecution witnesses and therefore accepts that evidence as the truth."

The Crown does not seek to support the conviction because from the wording of this first paragraph, viz, " since " the accused has elected to remain silent " therefore " the Court accepts the evidence of the prosecution witnesses as the truth, the lower Court has apparently misdirected itself upon the onus of proof.

The appeal has accordingly been allowed, and the conviction and sentence set aside.

Appeal allowed.

Solicitors for the appellant: *A. D. Patel and Co.*

Solicitor-General for the Crown.