A

ATTORNEY-GENERAL

v.

ASGAR ALI

[SUPREME COURT, 1965 (Knox-Mawer P.J.), 19th December 1964,
B 8th January 1965]

Appellate Jurisdiction

Criminal law—evidence—presumption—natural and probable consequence of act —Penal Code (Cap. 8) s.359(a).

C The respondent was charged in the Magistrate's Court upon two counts of criminal intimidation, the second of which charged him with threatening another person with intent to cause alarm to that person. The charge was based upon a letter dated the 1st November 1963, containing a threat to murder the complainant. The magistrate convicted the respondent on the first count but acquitted him on the second count. On appeal by the Crown against the acquittal on the
D second count —

Held : The respondent having been proved to be the author of the letter containing the threat to murder the only conclusion at which the court below could arrive was that his intention was to cause alarm to the person threatened. There was no evidence whatsoever to rebut the presumption that the respondent intended the natural
E and probable consequences of his act.

Chinnaiya v. Reginam (1962) 8 F.L.R. 204 distinguished.

Cases referred to : *Hassan Salum v. Republic* [1964] E.A. 126: *Wakeford v. Lincoln* (Bishop) (1921) 90 L.J.P.C.174: *R. v. Podmore* (1930) 46 T.L.R.365; 22 Cr. App.R.36: *R. v. Cummins* (Journal of Criminal Law (1942) Vol. VI p.188).

F

Cross appeal by Crown against acquittal on the second count; not reported as to appeal against conviction on the first count.

B. A. Palmer for the Crown.

Appellant in person.

G KNOX-MAWER P. J.: [8th January, 1965]—

Asgar Ali son of Sher Mohammed was charged before the Magistrate's Court of the First Class, Nadi, wih the following offences :—

"

FIRST COUNT

Statement of Offence

H *CRIMINAL INTIMIDATION :* Contrary to Section 359(a) of the Penal Code, Cap. 8.

Particulars of Offence

ASGAR ALI son of Sher Mohammed, on the 20th day of July, 1963, at Nadi in the Western Division, without lawful excuse threatened to murder another person, namely RAMAN NARAIN NAIR son of Raman Nair with intent to cause alarm to the said RAMAN NARAIN NAIR son of Raman Nair.

SECOND COUNT

Statement of Offence

CRIMINAL INTIMIDATION : Contrary to Section 359(a) of the Penal Code, Cap. 8.

Particulars of Offence

ASGAR ALI son of Sher Mohammed, on the 1st day of November, 1963, at Nadi in the Western Division without lawful excuse threatened another person, namely RAMAN NARAIN NAIR son of Raman Nair with intent to cause alarm to the said RAMAN NARAIN NAIR son of Raman Nair."

Upon the first count he was convicted and sentenced to 12 months' imprisonment. He has appealed against this conviction and sentence, (Criminal Appeal No. 117 of 1964). Upon the second count he was acquitted, and the Crown has appealed against this order of acquittal (Criminal Appeal No. 123 of 1964). These two appeals have been heard together. I shall deal firstly with Criminal Appeal No. 117 of 1964 in which Asgar Ali is the appellant.

The first two grounds of appeal read as follows :—

"(a) That the learned trial Magistrate erred in admitting in evidence the testimony of Sergeant PAUL FRANCIS CLARK of Sydney inasmuch as his comparison of the handwriting of the disputed documents (Exhibit "E" and Exhibit "F") with the alleged specimen documents was made by him in Sydney on hearsay evidence and that upon such evidence he based his expert opinion as to the authorship of Exhibit "E" and Exhibit "F" respectively.

(b) That the learned trial Magistrate erred in admitting in evidence the testimony of Sergeant PAUL FRANCIS CLARK of Sydney whose opinion as to the authorship of Exhibit "E" and Exhibit "F" was based on their comparison with alleged specimen documents which said documents were not strictly proved as genuine documents."

There is no substance in either of these two grounds of appeal. Clearly it was both proper, and indeed essential, for Sergeant Clark, the handwriting expert, to make, beforehand, a thorough examination of what were to become the handwriting exhibits at the trial, just as an analyst must make a similar examination of what are to become exhibits at, say, a murder trial. Nor is it correct that the "specimen document" of the appellant's handwriting — with which the handwriting of the threatening letters (Exhibits "E" and "F") and the letter to the Director of Crown Lands (Exhibit "J") were compared — were not "strictly proved as genuine documents." On the contrary, there was strict proof. Section 8 of the Criminal Procedure

Act 1865 was duly complied with. The "specimen documents" (Exhibits "G", "K" and "H") in particular were first proved to the satisfaction of the Court to be in the handwriting of the appellant Sergeant Clark then gave his expert evidence wherein he indicated the points of comparison between the handwriting of the appellant on the "specimen documents", on the one hand, and the handwriting of the disputed documents (Exhibits "E", "F" and "J"), on the other.

The third ground of appeal reads as follows :—

"(c) That the learned trial Magistrate erred in admitting in evidence and acting upon the testimony of Sub-Inspector Shasta Nand Maharaj and wrongly treated him as an Expert on Finger Prints".

Sub-Inspector Maharaj, O.C. Criminal Records Office, Suva, stated on oath that he had been engaged in the classification of finger prints for over seven years. He also explained that he had spent a short time in New Zealand attached to the Finger Prints Sections of the Auckland and Wellington Police. Upon these credentials the learned trial Magistrate concluded that the witness could properly be regarded as an expert upon finger prints. This was a decision on fact with which I am not persuaded that this Court should interfere.

The fourth ground of appeal reads as follows :—

"(d) That the learned trial Magistrate erred in allowing Sergeant PAUL FRANCIS CLARK and Detective Sub-Inspector SHASTA NAND MAHARAJ (who were called as expert witnesses by the prosecution) to give evidence on matters which were not within the proper province of expert witnesses as permitted by law. Consequently there has been substantial miscarriage of justice."

In respect of Sergeant Clark, learned Counsel for the appellant complains that this witness was permitted to "go beyond the proper limits" of a handwriting witness as defined by the High Court of Tanganyika in *Hassan Salum v. Republic* [1964] E.A. 126. I have studied this case and the two English cases to which reference was made by the Tanganyikan Court: *Wakeford v. Lincoln (Bishop)* (1921), 90 L.J.P.C. 174, and *R. v. Podmore* (1930) 46 T.L.R. 365; 22 Cr. App. R. 36, but can discover no validity in the point raised in this ground of appeal. It is true that when a handwriting expert has pointed out the similarities in the handwritings under consideration, it is for the Court alone to decide what weight to attach to such expert opinion. That is exactly what was done in the present case. Sergeant Clark pointed out that the two sets of writings (the disputed documents and the proven specimens of the appellant's handwriting) were so similar as to be indistinguishable, and hence the clear inference must follow that the same person must have written both. I can find nothing improper in an expert witness (Sergeant Clark) giving such an opinion, provided that the decision upon the issue is that of the court itself.

The objection taken in this ground of appeal to the evidence of Sub-Inspector Maharaj, the finger print expert, can be shortly disposed of. Learned Crown Counsel has referred me to a passage in

the summing up of Asquith J., in *R. v. Cummins* (Journal of Criminal Law, Volume VI, 1942, page 188). In that case, the accused was alleged to have inflicted injuries upon the deceased woman with a tin opener. Upon the tin opener was found the finger print of a little finger, and upon a mirror (found in the woman's handbag) there was a thumb print. As is indicated by the summing up, the finger print expert had said in evidence that beyond all question, these were the prints of the prisoner's little finger and thumb of the left hand. It was considered perfectly proper for the witness to give such evidence and I have no doubt that Sub-Inspector Maharaj's evidence, in a similar sense, was equally proper.

The fifth ground of appeal reads as follows :—

> "(e) That the learned trial Magistrate did not personally examine the relevant documents produced at the trial to ascertain for himself *FIRSTLY* whether Exhibits "E" and "F" were written by your Petitioner and
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> *SECONDLY* whether Exhibit "E" bore his palm print. In addition the learned trial Magistrate in effect adopted the opinions of Sergeant PAUL FRANCIS CLARK and Detective Sub-Inspector SHASTA NAND MAHARAJ on the question of the authorship Exhibits "E" and "F" in place of giving his own decision on this issue. Consequently there has been substantial miscarriage of justice."

Learned Crown Counsel has provided a complete answer to this point by reference to that portion of the judgment where the learned Magistrate has stated quite unequivocally :

> "On the evidence as a whole which was placed before the Court ... this Court ... is satisfied beyond reasonable doubt that the accused ... did write the letter dated 20th July, 1963." (Exhibit "E").

The documents to which this ground of appeal refers were part of that evidence. I am quite satisfied that, after giving careful consideration to the opinions of the experts, the learned Magistrate arrived at his own conclusions upon the authorship of Exhibits "E" and "F".

The final ground of appeal against conviction put forward by learned Counsel for the appellant is as follows :—

> "That if the learned Magistrate was not satisfied that there was an intent to cause alarm in respect of the second count then logically he could not have been satisfied that there was an intent to cause alarm in respect of the first count."

The issue raised in this final ground of appeal is the basis of the cross appeal by the Crown with which I shall deal below. In so far as I have concluded below that a conviction should have been recorded by the lower Court upon the second count, it follows that there is no substance in this ground of appeal.

The final ground of appeal is that the sentence imposed was manifestly excessive. In my view, the sentence imposed was in no way manifestly excessive. This was a serious case. Indeed, similar

offenders have, in the past, received more severe sentences than that imposed in the present case.

It follows that the appeal by the appellant against conviction and A sentence (in respect of the first count) is dismissed. I turn now to the cross appeal by the Crown against the order of acquittal on the second count.

The grounds of appeal set out in the Petition of the learned Attorney-General are as follows :—

B "(a) That inasmuch as the letter dated the 1st of November, 1963, contained, without lawful excuse, a threat to murder RAMAN NARAIN NAIR s/o Raman Nair, the learned trial Magistrate erred in fact in finding that the prosecution had not proved beyond reasonable doubt that the intent of the author of the said letter was to cause alarm to the said RAMAN NARAIN NAIR s/o Raman Nair.

C (b) That the order of acquittal is unreasonable and cannot be supported having regard to the evidence adduced by the prosecution."

I must uphold the Crown submissions in this regard. The Crown, having established beyond all reasonable doubt that Asgar Ali was the author of the letter dated 1st November, 1963 (Exhibit "F"), the D only conclusion at which the Court below could arrive, upon the facts of this case, was that his intention was to cause alarm to the person threatened therein. The presumption that an accused person intended the natural and probable consequences of his act is a rebuttable presumption, but here there was no rebutting evidence whatsoever. Thus, the only inference to be drawn from this threat to murder the said Raman Narain Nair was an intent to cause him alarm. The E judgment of this Court in *Chinnaiya v. Reginam* (1962) 8 F.L.R. 204, does not, with respect, justify the verdict of the learned trial Magistrate upon the second count. Section 359 (a) of the Penal Code contains no words such as "whereby alarm was caused", and in so far as the threat to murder contained in this second letter was unequivocal, the reaction of the person threatened therein was not, in this particular case, a relevant consideration. Accordingly, the F cross appeal by the Crown succeeds.

A verdict of guilty is substituted for the order of acquittal upon the second count, the appellant being convicted in respect thereof of Criminal Intimidation, contrary to section 359(a) of the Penal Code. For this offence he is sentenced to 12 months' imprisonment, such sentence to run concurrently with the sentence imposed on the first G count.

Cross appeal allowed.