Privy Council Appeal No. 93 of 1946

Emmanuel Joseph - - - - - - - - - *Appellant*

v.

The King - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF FIJI

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1947

Present at the Hearing :

LORD UTHWATT
LORD OAKSEY
SIR JOHN BEAUMONT.

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal against the purported conviction of the appellant by the Supreme Court of Fiji (Criminal Jurisdiction) on the 10th September, 1945, for the manslaughter on the 4th February, 1945, of a child named Ravindra, and against the sentence of five years' penal servitude thereupon passed upon the appellant.

At the conclusion of the arguments their Lordships announced that they would humbly advise His Majesty that the appeal should be allowed and the conviction and sentence quashed, and they now state their reasons.

The question of law which arises in this appeal is similar to that which arose in Appeal No. 94 of 1946 which was heard by their Lordships' Board immediately before this appeal, though the facts in this appeal are different.

The appellant, with two other men, was charged with the offence of murder under section 220 of the Penal Code of Fiji, and the trial took place before the learned Chief Justice of Fiji with the aid of five Assessors.

The material provisions of the Criminal Procedure Code are the following:—

> 156.—(1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:
>
> Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence.

157.—(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court in English, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced.

248. Every trial before the Supreme Court in which the accused or one of them or the person against whom the crime or offence has been committed or one of them is a native or of native descent, or of Asiatic origin or descent, shall be with the aid of assessors in lieu of a jury, unless the presiding judge for special reasons to be recorded in the minutes of the court thinks fit otherwise to order, and upon every such trial the decision of the presiding judge with the aid of such assessors on all matters arising thereupon which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon.

308.—(1) When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused person is convicted, the judge shall pass sentence on him according to law.

At the close of the evidence the learned Chief Justice charged the Assessors. The charge was a full and fair one, but there is no doubt that the learned Chief Justice treated the Assessors as a jury and left to them the decision upon all questions of fact. To illustrate this the conclusion of the summing up may be quoted:—

" I remind you that, as Mr. Prichard has truly said, the onus of proof in these criminal cases is upon the Crown, and you should consider the case of each one of these accused separately, and you should not convict any of them unless you are satisfied beyond reasonable doubt that the crime has been brought home to him. And you will remember, on the subject of murder, that if they are to be convicted of murder you must be satisfied, not only that they took part in the shooting, but also that at that time they had the intention to cause death or grevious bodily harm. If you are not satisfied of that, none of them should be found guilty of murder. But if, on the other hand, you are satisfied that they did go in a party in common agreement to shoot up the store, that they were quite reckless whether they killed anybody or not, but that they had not formed any intention to kill, then your verdict should be manslaughter."

Each of the Assessors expressed the opinion that the accused were guilty of manslaughter. They then returned a verdict " Guilty of manslaughter ".

The learned Chief Justice did not pronounce judgment as required by sections 156 and 157 of the Procedure Code, nor did he specify under which section of the Penal Code the accused were convicted. In passing sentence, however, he expressed the opinion that the accused had been very properly convicted of an outrageous offence.

In the result the appellant has been convicted by Assessors who had no power to try or convict him, and sentenced by a Judge who had not convicted him.

Mr. Gahan for the Crown has argued that in this case there has been no such substantial miscarriage of justice as would justify this Board, acting in accordance with the principles upon which the Board always acts in criminal cases, in advising His Majesty to interfere with the conviction. He points out that it is reasonably clear from the charge to the Assessors that the learned Chief Justice thought that the accused were not guilty of murder, but were guilty of manslaughter, and that, in passing sentence, he expressed his approval of the conviction. It is no doubt possible, and even probable, that if the learned Chief Justice had tried the case in accordance with the provisions of the Procedure Code he would have reached the conclusion which the Assessors reached, namely, that the accused were guilty of manslaughter. This, however, is matter of conjecture. The learned Chief Justice does not appear to have brought his own mind to bear on the question of the guilt or innocence of the accused. He left the appreciation of evidence to the Assessors, and accepted their conclusion as the verdict of a jury which bound him, instead of regarding it merely as an opinion which might help him in arriving at his own conclusion. The appellant was entitled to be tried by the Judge and he has not been so tried and, in the circumstances, the only course open to the Board was to advise His Majesty to allow the appeal and quash the conviction and sentence.

(59308) Wt. 8013—20 90 1/48 D.L. G. 338

In the Privy Council

EMMANUEL JOSEPH

v.

THE KING

DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1948