

RAMAUTAR v. GULAB KHAN.

[Appellate Jurisdiction (Corrie, C.J.) August 19, 1940.]

Respondent's application for costs in a criminal appeal—appeal to Supreme Court of Fiji compared with appeals in England—whether Respondent must appear in all cases to avoid quashing of conviction.

In an appeal against sentence by defendant the private prosecutor appeared and, upon dismissal of the appeal, applied for costs.

HELD.—The question of sentence is one with which the prosecutor need not concern himself unless he so desires.

Cases referred to :—

(1) *R. v. Purdey* [1864] 34 L.J.M.C. 4 ; 11 L.T. 309 ; 122 E.R. 1,069 ; 16 Dig. 467.

(2) *R. v. The Justices of Surrey* [1892] 2 Q.B. 719 ; 61 L.J.M.C. 200 ; 67 L.T. 266 ; 17 Cox C.C. 547 ; 2 Dig. 291.

APPLICATION FOR COSTS OF APPEAL against Sentence.

P. Rice, for the Appellant.

N. S. Chalmers, for the Respondent.

CORRIE, C.J.—The Respondent is applying for costs on the ground that if he had failed to appear, both the sentence and the conviction must have been quashed. In support of this contention he cites the judgments in *R. v. Purdey*, 34 L.J. 4 ; and *R. v. The Justices of Surrey* [1892] 2 Q.B. 719. The last cited case is peculiarly in point as in that case the appellant did not dispute the conviction, but asked only for a reduction of sentence. The respondent failed to appear, and the Justices in Quarter Sessions who heard the appeal, quashed not only the sentence but also the conviction. A rule for a writ of certiorari was discharged by the High Court, on the ground that there was an essential distinction between an appeal to Quarter Sessions and an appeal to the High Court. The matter is very clearly put by Cave J. at page 722 :—

“ In appeals to the High Court the evidence given in the Court below is always before the Court to which the appeal is brought. The appellant, therefore, is called upon to begin, and to show that the evidence does not justify the verdict which has been given or that the Court below has gone wrong in point of law. But in appeals to quarter sessions the evidence in the Court below is not before the quarter sessions. They have no right to convict upon the mere words of the judgment. It is the very thing appealed against. The respondent must begin and must prove the matters complained of. The Court must decide upon the evidence brought before them on the appeal. There is nothing except that evidence to show that any offence has been committed ”.

The procedure on an appeal to this Court resembles that on an appeal to the High Court in England and is quite distinct from the procedure on appeal to Quarter Sessions : and there was no obligation upon the prosecutor to appear before this Court to oppose the appeal. The only question raised was as to sentence, which is not a question with which the prosecutor need concern himself unless he so desires.

The appeal was not a frivolous one, and I do not think it is a case in which the Appellant should be ordered to be paid costs.