

A

ANANDAN

v.

REGINAM

B

[COURT OF APPEAL, 1967 (Gould V.P., Marsack J.A., Bodilly J.A.),
17th, 23rd February]

Criminal Jurisdiction

C

Criminal law—trial—witness—persons present at scene of crime not called by prosecution—notice of intention not to call them given to the defence—no prejudice.

D

Two persons who, among a number of others, were present at the scene of the stabbing incident which led to the trial of the appellant for murder, were not called by the prosecution as witnesses. The court was informed that the police had taken statements from the two persons in question during their investigations but had given notice to the defence that they did not intend to call them. Though the assessors drew attention to their absence at the close of the case, no objection was taken by counsel for the accused.

Held: It could not be said that the failure of the prosecution to call the two persons was in the circumstances prejudicial to the defence who could have called them if desired.

E

Appeal against a conviction of murder by the Supreme Court.

A. D. Patel for the appellant.

T. U. Tuivaga for the respondent.

Judgment of the Court (prepared by Bodilly J.A.): [23rd February, 1967]—

F

This is an appeal from the decision of Knox-Mawer J. sitting in first instance in the Supreme Court at Lautoka.

The appellant was charged with the murder at Lautoka on the 23rd April, 1966, of one Samuel Raju. He was convicted and sentenced to life imprisonment.

G

The facts of the case are briefly as follows.

Both the appellant and the deceased, Samuel Raju, together with the principal witnesses in the case, were all members of a social club, called the Lautoka Club. On the 26th March, 1966, being the President's Night at the Club, a quarrel took place between the secretary of the Club, Choy Gopal, who was a friend of the appellant, and Albert Raju, who was the brother of the deceased. This quarrel led later in the evening to a further quarrel between the appellant himself and Albert Raju during which Albert Raju slapped the appellant's face. Subsequently friends effected a settlement at least to the extent that the two men were persuaded to shake hands.

H

On the evening of the 23rd April, 1966, the appellant, the deceased, Albert Raju, Choy Gopal, Rasul Khan and Narayan Gopi (not called as a witness at the trial) and a number of other persons were all at the Club, including John Raj Gopal, the barman who was brother-in-law of the deceased. The appellant was drinking at the bar by himself. Somewhere about 8 to 8.30 p.m. an argument developed between Albert Raju and Shiu Narayan Gopi in which Rasul Khan (the 7th prosecution witness) took part. Finally Rasul Khan pushed Gopi down onto a bench. When this occurred Albert Raju intervened to separate the two men and the deceased, Albert Raju's brother, came up and took Albert Raju by the hand and endeavoured to pull him away from the quarrel. At this moment the appellant left his place at the bar and stabbed the deceased in the stomach with a knife and immediately afterwards stabbed Albert Raju also. As a result of the knife wound the deceased died at 2.20 a.m. the following morning. Albert Raju recovered.

Counsel for the appellant has done the best he can in difficult circumstances. He has drawn our attention to the close relationship between the principal witnesses, Albert Raju and John Raj Gopal and the deceased, and has stressed the fact that of all the witnesses present at the time only John Raj Gopal says that he saw the actual blow struck. He has urged therefore that it must follow that if there is any doubt as to the credibility of that witness the case for the prosecution collapses. In support of this argument he has drawn our attention to the fact that John Raj Gopal was the brother-in-law of the deceased and, notwithstanding the obviously serious nature of the incident, made no attempt to report the matter to the Police at all. Instead he directed the Assistant Barman to wipe up the blood. The incident in fact did not come to the notice of the police until 11.41 p.m. that night when news of it was picked up by chance from gossip in the town. Taking the close relationship of this witness to the deceased and his strange conduct in failing to report the incident to the Police, Counsel for the appellant urges us to treat his evidence with the greatest caution. It is true that the witness attributed his failure to report the incident to a rule of the Club to the effect that incidents occurring on the Club premises must be first reported to the Club Secretary and not directly to the Police, but that, says Counsel, in the circumstances of a case such as this, is no satisfactory explanation, and he would have us reject his evidence as unreliable.

Counsel for the appellant has also drawn our attention to a number of discrepancies in the evidence of the other principal witnesses whose evidence, although they did not actually see the blow struck, tends to support the evidence of John Raj Gopal, the Barman.

We have carefully considered the whole of the evidence adduced before the trial Court, and we find that the evidence of the Barman, John Raj Gopal, by no means stands alone. He is strongly supported by the evidence of the 8th, 9th, 10th and 13th prosecution witnesses, who, although none of them actually saw the stabbing, testify as to the immediately surrounding circumstances to which John Raj Gopal also testifies. Their evidence, subject to certain minor discrepancies in detail which we do not think either surprising or significant in a case of this kind, is closely in line with that of the principal witness, Gopal. The considerations as to relationship and the delay in reporting the incident to the Police were all fully apparent during the trial in the Court below. From our perusal of the record we are satisfied that there was ample evidence upon which the assessors and the learned trial Judge could find as they did.

A Counsel for the appellant referred to one other matter, namely the failure of the prosecution to call two witnesses whom it might be expected could give cogent evidence, namely Shiu Narayan Gopi, who was personally involved in the inception of the quarrel which ended so tragically, and the assistant barman who was directed by Gopal to clean up the blood. Indeed, at the close of the case, the assessors drew attention to the absence of these two witnesses. We are assured by Crown Counsel that although the Police had taken statements from these witnesses during the investigation of the case, notice had been given to the defence that the Police did not intend to call them. The appellant was represented by counsel at the trial and even after the assessors themselves mentioned the matter, no objection was taken regarding the absence of these witnesses. We can only conclude that Counsel on both sides were content with the situation, presumably because it was clear from the statements that neither witness had any relevant evidence to give. We cannot find that the failure of the prosecution to call these two witnesses in the circumstances can in any way be construed as prejudicial to the defence who themselves could have called them had they wished to do so.

In the result we find that there is no substance in this appeal and it is therefore dismissed.

Appeal dismissed.