A

MASLAMANI AND OTHERS

v.

B

REGINAM

[SUPREME COURT, 1970 (Moti Tikaram P.J.), 9th, 30th January]

Appellate Jurisdiction

C *Criminal law—defence—principle that defence case must be put to jury—application in Magistrate's Court.*

The principle that a judge in summing up is bound to put the defendant's case to the jury applies with greater force to a magistrate, who is both judge and jury. In the instant case the trial magistrate's approach had not been, as was submitted on appeal, " I disbelieve the defence because I believe the prosecution," and he had not offended against the principle above stated.

D Cases referred to:
Lockhart-Smith v. United Republic [1965] E.A. 216.
R. v. Marriot (1924) 18 Cr. App. R. 74.

Appeal against convictions and sentences in the Magistrates' Court.

S. M. Koya for the 1st, 2nd and 3rd appellants.
K. C. Ramrakha for the 4th, 5th and 6th appellants.
E *D. I. Jones* for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [30th January, 1970]—

All six appellants were charged with the offence of malicious damage before the First Class Magistrate sitting at Rakiraki. The prosecution's allegation was that on the night of 22nd December, 1968 the appellants had wilfully showered a F battery of stones on the house of Ram Prasad thus damaging it. All six accused had denied the offence and each claimed he had an alibi. The Trial Magistrate found each of the six men guilty and he convicted them as charged. The first appellant was sentenced to twelve months imprisonment and the remaining five were each sentenced to eight months imprisonment.

All six have now appealed against conviction and in the alternative against G sentence. At the hearing of this appeal no submissions were made by either counsel on the question of sentence, the matter being left entirely to this Court.

As to conviction Mr. Koya argued the following grounds of appeal:—

(i) *THAT* the Learned Trial Magistrate misdirected himself on a fundamental question of law in that he considered the case against your Petitioners on the basis of collective responsibility and failed to consider the case H against each of your Petitioners separately and independently of the other. Consequently there has been a substantial miscarriage of justice.

(ii) *THAT* the Learned Trial Magistrate erred in law in holding that your Petitioners defence was false in a collective manner. In addition his judgment is incurably wrong when he held as follows:—

" Having considered all this evidence and having seen and heard Ram Prasad his son Amichand and his daughter Savitri Wati give evidence I am satisfied that they were truthful witnesses and that their testimony is true. I am satisfied beyond reasonable doubt that Ram Prasad and Amichand recognized between them the 6 accused now before the Court as being among those persons who damaged their houses as alleged. Considered in conjunction with Mohan Singh's evidence which corroborates them as to 4 of the accused, I am satisfied beyond reasonable doubt that Ram Prasad and Amichand properly identified the 6 accused between them.

I therefore find that the Prosecution has proved beyond reasonable doubt that the accused's alibis are false and that the 6 accused did wilfully and maliciously damage Ram Prasad's two houses causing damage to the extent of $300 as alleged in the charge and I find them guilty and convict them as charged."

(iii) *THAT* the verdict is unreasonable and cannot be supported having regard to the evidence.

As regards the first ground it is a well established principle that where two or more persons are tried jointly it is the duty of the Court to consider the case against each accused separately. I have examined the contents of the trial Magistrate's judgment in the light of submissions made before this Court. I am satisfied that, in fact, he did consider the case against each accused separately and this becomes clear when one looks at the judgment as a whole. For instance, on the question of identification, he has specifically enumerated the accused persons who had been identified by particular witnesses whom he also names in his judgment. Separate consideration of case against each accused does not necessarily mean that a trial Magistrate may not refer to more than one accused in one sentence or paragraph. I am unable to find any substance in this ground of appeal which must fail.

I now turn to the second ground of appeal. The learned Counsel for the appellants relied heavily on the decision of the *High Court of Tanzania in W.J. Lockhart-Smith v. United Republic* [1965] E.A. 216. This was an appeal from the decision of a District Magistrate's Court whereby the appellant was convicted of three counts of contempt of Court. The trial Magistrate found that the words spoken by and the conduct of the accused was discourteous and disrespectful to the Court and amounted to contempt of Court and in the final paragraph stated— " in the instant case, I believe the evidence of the Prosecution witnesses. I find corroboration in their testimonies. I also find that the accused uttered the words alleged and perpetrated the conduct alleged. I therefore reject the accused's statement . . . "

One of the grounds of appeal was that the trial Magistrate had misdirected himself by failing to consider the appellant's defence. It was further contended that for the trial Magistrate to reject the appellant's evidence because he believed that of the witnesses for the Prosecution was a misdirection that vitiated the whole judgment. The appellate court in setting aside the convictions stated, *inter alia*, as follows:—

" I agree with the Counsel for the appellant that the learned Magistrate's words ' I therefore reject the accused's submissions ' in that context can mean only that this was the Court's approach to the problem before it—this reasoning (i.e. I disbelieve the defence because I believe the prosecution) is incurably wrong and no convictions based on it can be sustained. It has repeatedly been laid down by this Court that such an approach is bad in law.

A Speaking generally,—for there are exceptional cases, not here relevant, in which the principle does not apply—it is not for the accused to establish his innocence. It is for the Prosecution to prove its case beyond reasonable doubt. It cannot do this unless the evidence given by or on behalf of the accused is put into the balance and weighed against that adduced by the Prosecution. The question is whether anything the accused had said or which had been said on his behalf introduces that reasonable doubt which entitles him to his acquittal ".

B It is clear that the trial Magistrate quite apart from his failure to deal with the defence raised and quite apart from adopting a fallacious line of reasoning had also misdirected himself on the state of the Prosecution evidence. As pointed out by the Appellate Court, far from providing corroboration it is clear that one of the Prosecution's witnesses had given evidence materially supporting, though in part only, the defence contentions as to what had happened in Court and I C cannot help thinking that the Appellate Court was to an appreciable degree influenced in its decision by this misdirection on the part of the trial Magistrate. This is not to suggest or imply that the principles which the High Court applied were not sound. On the contrary an English authority which the High Court cited and relied upon strongly in its judgment can be profitably repeated here. It was the pronouncement of the Court of Criminal Appeal in *R. v. Frederick Marriott* (1924) 18 Cr. App. R. 74, namely that—

D " a judge in summing up is bound to put the defendant's case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury."

The principle contained in the above pronouncement is applicable to a Magistrate with greater force because he is both a judge and a jury.

However in the appeal before me there is no suggestion that the learned trial E Magistrate had treated conflicting evidence as corroborative. It must also be borne in mind that whilst the words and conduct of Lockhart-Smith were capable of different interpretations the actions of the accused persons in this appeal were not open to more than one interpretation once the evidence of the eye witnesses was believed and the defence alibi rejected. Furthermore the trial Magistrate did in my view take into consideration the defence case. The mere fact that he concluded his judgment in the manner he did does not mean that his approach F was, " I disbelieve the defence because I believe the Prosecution ". The learned Magistrate when assessing credibility states—" I have carefully considered the defence submissions as to what the defence suggest as unsatisfactory features in this case by reason of which their evidence and that of other Prosecution witnesses should be suspect. I have considered the evidence in the light of these submissions ". Earlier he had summed up the defence case and evidence in this way—" The six accused each gave evidence on oath and denied that they stoned G Ram Prasad's house as alleged. The first accused said he was at Prosecution witness Mohan Singh's house on that night but that Mohan Singh is telling lies about his going with three other accused or having the alleged conversation with Mohan Singh. The other five accused said that they were at their respective homes on this night and said that Ram Prasad and his sons were falsely implicating them because there have been dispute between them and Ram Prasad about land and cattle."

H He then deals with the question of identification in this way—" Ram Prasad said he recognised five of the six accused namely accused 1, 2, 3, 5 and 6. His son, Ami Chand, said he recognised 2nd, 3rd and 4th accused. All the accused lived in the neighbourhood of Ram Prasad and are well known to him and his son ".

He then goes on to consider the question of credibility of these witnesses and says—" Now the question is, are Ram Prasad and Ami Chand truthful or have they, as the defence suggests, concocted and fabricated their story against the accused because of the enmity between them and in order to revenge themselves . . ." A

The learned Trial Magistrate having considered the whole of the evidence in the light of the prosecution as well as the defence case and having rejected, justifiably in my view, the defence alibi could not on the evidence of eye-witnesses whom he believed come to any conclusion other than the one he arrived at. The second ground of appeal must therefore also fail. B

As to the third ground of appeal it will be convenient to deal with it when considering the submissions of Mr. K. C. Ramrakha who traversed the prosecution evidence generally with a view to showing weaknesses in the Crown's case. Both counsel referred to the delay in reporting the incident to the Police. The trial Magistrate dealt with this aspect of the case in his judgment and I see no reason why this Court should differ from his views. It was also argued that accused C persons made their alibi known at the first available opportunity and this fact should have stood in their favour. In my view the trial Magistrate had sound reasons for rejecting the alibi having placed the onus in the proper quarter namely the prosecution. Mr. Ramrakha further argued that the evidence of the Special Constable Beni Prasad was a vital and integral part of the Prosecution's case and since the Court found it necessary to disregard his evidence in its entirety the prosecution's case should have crumbled as it was the pillar on which it stood. D With respect I am unable to accept this line of reasoning. The trial Magistrate for reasons given by him in the judgment was perfectly justified in declining to place any reliance on this witness's evidence and this he did as much in defence interest as in the interest of justice generally. Having eliminated Beni Prasad's evidence from consideration he relied on the balance of the evidence to support his finding of guilt. Mr. Ramrakha also criticised the Trial Court's acceptance of Mohan Singh's evidence because no statement was taken from him until a little E more than two months had elapsed since the day of the incident. But the evidence before the Court makes it very clear that the Police were not able to contact this witness earlier although attempts had been made. Furthermore the trial Magistrate did not accept this witness's evidence without due scrutiny. He says that he scrutinised this witness's evidence with care because of the delay in giving his statement to the Police. This line of approach was perfectly proper. Having F done this and having taken the relevant factors into account he was in the best position to decide as to his credibility. There is no material before this Court which will entitle it to substitute its own opinion of credibility for that of the trial Magistrate. In my view the verdict cannot be characterised as unreasonable. Indeed there was ample evidence if believed, and it was believed, to support the convictions.

On the question of sentence I am of the view that they were neither wrong in G principle nor manifestly harsh and excessive. In the result therefore the appeal of each appellant is dismissed both as regards conviction and as regards sentence.

Appeals dismissed.