IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 13 of 1966

Between:

GOPAL KRISHNA GOUNDER
s/o Munawamy Gounder

Appellant

and

REGINAM

Respondent

K.C. Ramrakha for the Appellant

G. Mishra (Crown Counsel) for the Respondent

JUDGMENT

This is an appeal from four convictions of official corruption contrary to Section 95 (a) of the Penal Code.

At the time of the alleged offences the appellant was employed in the Public Service as an Assistant Leases Inspector in the Western Division and in respect of each conviction it was alleged that he corruptly received for himself a certain sum of money by promising to obtain a lease of a certain area of land for or on behalf of the person making the payment.

From these convictions an appeal has been brought on the following five grounds:-

" 1. The evidence of Bahdeo Singh, Ram Narain and Ram Raj was not credible and conflicted in material particulars with a statement given by each of them to the police, and therefore, in the circumstances, the learned trial Judge ought to have directed in law that such evidence was not worthy of credit, and ought to have rejected such evidence.

2. The verdict is unreasonable and cannot be supported having regard to the evidence as a whole.

3. The learned trial Judge erred in directing himself in law that the evidence of accomplices could be accepted in the circumstances of the case without corroboration.

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" 4. Alternatively, the learned trial Judge erred in law in accepting and acting on such evidence having regard to all the circumstances of the case.

5. Each of the complainants stated that he did not give the money to the defendant as a bribe, and therefore the learned trial Judge erred in law and in fact in stating that the money was in fact so given. "

The first ground relates only to two of the convictions, those in respect of payments made by Sahdeo Singh and Ram Narain, as the evidence in respect of the other two convictions did not contain any such conflict as is alleged in the ground. In his summing up, the learned trial Judge has directed the assessors as to this conflict of evidence in the following terms :-

" I must also warn you that it is dangerous to accept sworn evidence which is in conflict with statements previously made by the same witness; or, at least, that such evidence should be submitted to the closest scrutiny before acceptance. You have the statements in question exhibited here in Court. It is, however, still your duty, after full attention has been paid to this warning, to determine whether or not the evidence given before you in Court at the trial is worthy of credence and, if so, what weight should be attached to it. "

We can see no error in law in this direction, the question is purely one of credibility and a direction in law that the evidence was not worthy of credit (as suggested in the ground of appeal) would not have been a proper direction in the circumstances. Accordingly, this Court can see no reason for upholding this appeal on the first ground.

Turning next to grounds three and four, Counsel for the Appellant properly conceded that in both the summing up and in the judgment, the learned trial Judge gave proper directions on the question of the evidence of accomplices and this Court can find nothing to support the suggestion in these grounds that the Judge erred in law in dealing with this aspect.

Ground five has reference to the fact that none of the four persons who made these payments suggested or admitted that they had paid the money as a bribe; on the contrary,

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when pressed on this aspect, generally speaking their evidence was to the effect that they thought that the money was to be paid to Government and in some cases they said that they expected to obtain a receipt in due course. In fact in neither the summing up nor the judgment does the learned trial Judge say directly that the witnesses paid these sums of money as bribes. It is true that, in dealing with the question of credibility arising from the fact that the persons who made the payments might be accomplices, the Judge did express the view that these persons "seem to have shared in a common design to make these corrupt payments to the accused" and accordingly his direction was that these witnesses should be treated as accomplices. However, in his directions as to what must be established by the acceptable evidence to justify a verdict of guilty, he is clearly concerned only with the question whether the appellant corruptly received these sums of money by promising to obtain leases.

With one variation, the provisions under which this appellant was charged and convicted is identical in its terms with Section 91 (1) of the Penal Code of Tanganyika. The issue raised by the fifth ground of appeal was considered in relation to the latter section by the Court of Appeal of Eastern Africa in the case of Attorney General - v - Thoya Ali Kajembe (1958) E.A. 505. At page 511, the Court deals with this question in the following terms :-

> " Do the words "corruptly solicits, receives or obtains or agrees or attempts to receive or obtain" imply that there must be a corrupt motive in the giver as well as the receiver ? The word "corruptly" governs all these verbs; and it could be argued that "corruptly agrees" or "corruptly receives" or "corruptly obtains" implies some kind of mutually corrupt bargain in effecting which both receiver and giver would have a guilty mind. And, of course, this would be the usual case. But there are also the words "corruptly solicits" and "corruptly attempts to receive or obtain". Clearly a corrupt solicitation is an unilateral action implying no guilty mind on behalf of the person solicited until the solicitation is agreed to. Similarly an attempt need not necessarily imply any guilty mind in the other party.
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> In our view, sub-s. (1) means exactly what it says and "corruptly" means that the corrupt purpose or motive must be in the mind of the person who solicits, receives or obtains or agrees or attempts to receive or obtain, irrespective of

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" whether the other party to the conversation communication or transaction has a corrupt motive or not. The mind of the giver is relevant under sub-s. (2); it is not essential to prove a corrupt mind in the giver on a charge under sub-s. (1), though this will normally be one of the circumstances surrounding the offence. The ostensible object of the parties must, we think be one involving "corruption" on the part of the recipient in the narrow sense indicated above.

Section 1 of the Public Bodies Corrupt Practices Act, 1889, in England has a similar dichotomy to that in s. 91 of the Tanganyika Penal Code, that is to say that the offence of corruptly soliciting, receiving or agreeing to receive a gift or advantage is dealt with in sub-s. (1), and the offence of corruptly giving offering, etc., a gift or advantage is dealt with in sub-s. (2). So far as we can ascertain, there is no case in the books in which it has ever been held in a prosecution for corruptly receiving a gift under sub-s. (1) of s. 1 of that Act, a corrupt motive in the giver must be proved. "

It is to be noted that Section 95 of the Penal Code has in it the same dichotomy. Moreover, the only variation in the language used in Section 95 is that it is also an offence if the offender corruptly "asks for" money. Just what these additional words add that is not included in the word "solicits" it is not necessary on this occasion to consider, but it is clear that the addition of these words affords another instance to show that the word "corruptly" refers to the state of mind of the recipient.

Thus, although there might be evidence establishing that the donors had a corrupt intention in making the payments, there is no onus on the prosecution to establish this element and in fact the directions in the summing up and in the judgment make it quite clear that the question to be decided is whether the appellant corruptly received these payments. Consequently, this ground of appeal cannot succeed.

On the remaining ground (ground two) it was submitted that there was no complete proof of the offence because the evidence left the motive "in the air", as counsel expressed it. This referred to the conflicting nature of the evidence of some of the donors as to their motive. As already stated, their motive is not an essential element in the offence.

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There was sufficient evidence, if believed, to justify the opinion of the assessors and the judgment of the trial Judge that the appellant was guilty of the four charges of which he has been convicted. Obviously, this evidence was believed and in these circumstances this Court can see no reason for interfering with the judgment on this ground.

This appeal is accordingly dismissed and the convictions and sentences confirmed.

D. H. Mills-Owens (Sgd)
PRESIDENT

Marsack (Sgd)
JUDGE OF APPEAL

Crighton
JUDGE OF APPEAL

SUVA,

16th September, 1966.