CHANDRIKA

v.

REGINAM

[SUPREME COURT, 1962 (MacDuff C.J.), 4th, 18th May]

Appellate Jurisdiction

Criminal law—trial—disclosure of previous conviction by newspaper report between trial and judgment—whether miscarriage of justice resulted—Penal Code (Cap. 8) s.300(a)(ii)—Criminal Evidence Act 1898 (61 & 62 Vict., c.36) (Imperial) s.1 (f).

The appellant was convicted by a magistrate of the offence of embezzlement. At the conclusion of the evidence the magistrate reserved his decision and in his judgment referred to a report in a local newspaper which disclosed that the appellant had been previously convicted on a charge of theft. The magistrate stated that he had not allowed himself to be influenced in any manner by the report.

Held: Having regard to the strength of the evidence against the appellant and the fact that the magistrate had specifically ignored the newspaper report, there had been no miscarriage of justice.

Cases referred to: *R. v. Dyson* (1943) 29 Cr. App.R. 104; 169 L.T. 237: *R. v. Armstrong* [1951] 2 All E.R. 219; 35 Cr. App.R. 72: *R. v. Stratton* (1909) 3 Cr. App.R. 255: *Barker v. Arnold* [1911] 2 K.B. 120; 105 L.T. 112: *R. v. Featherstone* [1942] 2 All E.R. 672; 28 Cr. App.R. 176: *Stirland v. Director of Public Prosecutions* [1944] A.C. 315; [1944] 2 All E.R. 13.

Appeal from conviction by a magistrate's court.

K. C. Ramrakha for the appellant.

B. A. Palmer for the respondent.

The facts sufficiently appear from the judgment.

MACDUFF C.J.: [18th May, 1962]—

The Appellant was convicted by the Magistrate, Ba of the following offence:

" *Statement of Offence*:

Embezzlement: Section 300 (a) (ii) of the Penal Code, Cap. 8.

Particulars of Offence:

Chandrika alias Chandrika Prasad alias Keshwa s/o Girdhari, on the 28th day of May, 1960, at Lautoka in the Western Division,

being a servant of Millers Limited, Lautoka, fraudulently embezzled £20 in money, received by him on the account of his employer the said Millers Limited."

A and was sentenced to serve a term of nine months' imprisonment. He now appeals against that conviction.

The only ground argued by Counsel for the Appellant was:

"That, after the close of the case for the defence and prior to judgment being delivered in the said trial, 'The Fiji Times' a local B newspaper published in the Colony of Fiji, published a previous conviction against Your Petitioner for a similar offence (since quashed on appeal) and the said previous conviction was brought to the notice of the learned trial Magistrate, whereby Your Petitioner suffered a miscarriage of justice."

This ground of appeal arose out of the fact that the learned C Magistrate completed hearing the charge in the present appeal on the 9th February, 1962, on which date he reserved his judgment. He finally delivered judgment on the 17th February, 1962. In the meantime a report had appeared in the local newspaper to which the learned Magistrate, on completion of his judgment, referred in these words:

D "I consider it only right and proper for me to mention that in arriving at my decision in this case, I have not allowed myself to be influenced in any manner by reason of the report of the proceedings of the case as published in the Fiji Times in the edition dated 12th February, 1962.

In that report reference was made that accused was before E the Court 'on the second of two charges of embezzlement and theft as a servant when employed by Millers Ltd. at Lautoka'. The report went on to state that 'Chandrika is at present serving a sentence of two years' imprisonment on the first charge, involving 5 bags of sharps. Chandrika has appealed against the verdict and sentence'.

F Certainly I was not aware of these facts, as they had not been mentioned at any stage in the proceedings before me on 9th February, 1962 . . . ."

For the Appellant it was contended that the conviction of the Appellant was what may be called a "borderline" conviction where the credibility of at least one of the prosecution's main witnesses G was doubtful, and that the fact that the Appellant had a previous conviction for a similar offence must be taken to have had an adverse effect on the mind of the learned Magistrate in his finding the Appellant guilty of the offence with which he was charged.

Reliance was placed by the Appellant on the decision of the Court of Criminnal Appeal in *R. v. Dyson* 29 Cr. App. R. 104. In that case H the evidence against the Appellant was expressed to be overwhelming. However, the fact that a newspaper had published a list of his previous convictions was sufficient to induce the Court, in the special

circumstances of that particular case, to quash his conviction. Unfortunately the learned Justices of Appeal gave no reasons for so doing.

A *R. v. Dyson* (supra) was referred to and explained in the later case of *R. v. Armstrong* [1951] 2 All E.R. 219 where Lynskey J., who delivered the judgment of the Court, said :

> "It is urged that the decision of this court in *R. v. Dyson* indicates that the publication in local newspapers of information given to justices at the magistraes' court is a matter which ought to be taken into account with a view to quashing a conviction. B That case, however, lays down no principle. There the court thought it proper that, in the special circumstances of that particular case, the appeal ought to be allowed and the conviction quashed. The court did not lay down, and we do not propose to lay down, that, merely because a newspaper either local or national, discloses evidence of a man's previous convictions given at the court, on that, and that alone, this court must C quash the conviction at quarter sessions or assizes of a man who, on the evidence, is clearly guilty. So far as the publication of that information is concerned, this court has no power to compel the press, but this court agrees that it is very undesirable that such information should be given. The mere fact, however, that it is given is no ground for this court to infer either that the jurors who tried the case had read it, or, if they had read D it, that they were biased against the applicant for the purpose of the trial. There is no reason here for interfering with the verdict of the jury, and the application will be dismissed."

In that case the Court held that the facts were extremely clear, and, on the evidence, the jury could only come to one conclusion, namely, that the Appellant was guilty of the offence, and dismissed E the appeal.

Such other cases to which I have been referred deal with the wrongful admission of evidence of or reference to previous convictions, but they are apposite in that they reflect the attitude of the Court of Criminal Appeal in dealing with this question . In *R. v. Stratton* 3 Cr. App. R. 255 the headnote reads: F

> "Notwithstanding that the fact of a previous conviction has been illegally elicited in cross-examination, if the judge has successfully checked its influence on the mind of the jury, and the Court is satisfied that there has been no miscarriage of justice, the Court will not interfere."

G A similar situation to that in the case at present under appeal arose in *Barker v. Arnold* [1911] 2 K.B. 120, where again it is sufficient to quote the headnote which reads:

> "The appellant was charged before justices sitting as a Court of summary jurisdiction with an offence, and gave evidence on his own behalf. The solicitor who appeared for the prosecution asked the appellant in cross-examination whether he had been H previously convicted of a similar offence. The justices disallowed the question, as being contrary to s.l. (f) of the

Criminal Evidence Act, 1898, and no answer was given to it, the solicitor, however, remarking that he had a certified copy of the conviction. The justices convicted the appellant, stating that the abovementioned incident was entirely ignored by them A in arriving at their decision:—

Held that, though the question ought not to have been asked or the observation made, yet inasmuch as the decision of the justices was not affected thereby the conviction was not invalid."

Lastly, there is the line of decisions of which *R. v. Featherstone* B [1942] 2 All E.R. 672 and *Stirland v. The Director of Public Prosecution* [1944] A.C. 315 are examples. In each of these cases, although these had been a reference to the appellant's previous convictions, it was held that in the circumstances there had been no substantial miscarriage of justice and that the convictions should stand.

Counsel for the Appellant attacked the credibility of Ruab Ali, C a material witness for the prosecution, relying on certain discrepancies between the evidence which this witness gave on the 27th November, 1961, and his later evidence given on the 9th February, 1962. I have carefully scrutinized the evidence of this witness and have come to the conclusion that the discrepancies referred to are more apparent than real and that they occurred in respect of matters which were not material. Ruab Ali's evidence was corroborated, D in the main, by that of his son Shaukat Ali, by certain documentary evidence, and to some extent, by that given by a Mr. Bourke. The learned trial Magistrate belived Ruab Ali and his son and disbelieved the explanation given by the Appellant. In the light of all the evidence I am unable to say that he was incorrect in so doing. Accepting, therefore, the evidence of these two witnesses and that of the other prosecution witnesses, the evidence against the Appellant could lead to E no other conclusion than that of his guilt. The learned trial Magistrate in coming to his decision has specifically ignored the facts referred to in the newspaper report. Under those circumstances there has been no miscarriage of justice and the conviction must stand.

The appeal is dismissed.

Appeal dismissed.