

SURUJ LAL

v.

REGINAM

[COURT OF APPEAL, 1963* (MacDuff P., Marsack, J.A.), 4th, 8th April]

Criminal Jurisdiction

Criminal law—sentence of death—jurisdiction—application for extension of time for leave to appeal to Court of Appeal—Court of Appeal Ordinance (Cap. 3) ss. 17 (1) (b), 21 (1)—Criminal Appeal Act, 1907 (Imperial) s. 7 (1).

Criminal law—practice—certificate of trial judge—necessity for notice of appeal thereafter—Court of Appeal Rules r. 55—Privy Council Appeal Rules r. 9.

By virtue of s. 21 (1) of the Court of Appeal Ordinance the court of appeal has no jurisdiction in the case of a conviction involving sentence of death to extend the time within which notice of application for leave to appeal may be given; nor is an intending appellant relieved of the necessity to give notice in due time by reason of his having obtained a certificate of the trial judge that the case was a fit case for appeal.

Case referred to:

Twynham v. R. (1920) 15 Cr. App. R. 38.

Application for extension of time for appeal.

Kearsley for the intended appellant.

Gajadhar for the Crown.

Judgment of the Court [8th April, 1963]—

This is an application by an intended appellant for extension of the time within which he may give notice of his appeal against conviction. On the 11th day of February, 1963, the intended appellant was convicted of "Murder contrary to section 224 of the Penal Code (Cap. 8, Laws of Fiji)" and was sentenced to death. On 29th March, 1963, he filed the present application.

Section 21 (1) of the Court of Appeal Ordinance provides:

"21.—(1) Where a person convicted desires to appeal under this part of the Ordinance to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within thirty days of the date of conviction. Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal."

The wording of section 21 (1) quoted above is identical with that of section 7 (1) of the Criminal Appeal Act, 1907. That section was considered in *Twynham v. R.* (1920) 15 Cr. App. R. 38 in which Reading, L.C.J., delivering the judgment of the Court of Criminal Appeal, after reading the provisions of section 7 (1) went on to say:

* Leave to appeal to the Privy Council was refused.

" It follows, therefore, that this Court has power to extend the time within which notice of appeal or notice of application for leave to appeal may be given, except in the case of a conviction involving sentence of death; and it equally follows that in the case of a conviction of murder and a sentence of death this Court has no power to extend the time. There is a very good reason for the legislature making this provision, because the mere giving of a notice of appeal or a notice of application for leave to appeal against a conviction of murder or high treason, has the effect of postponing the date of the execution. Once that notice has been given, the execution cannot take place until a certain time after the hearing of the appeal. If it were possible to extend the time, it would be open to a murderer, having failed in one appeal, to give notice asking for an extension of time in order to bring some other matter before the Court, or not give the notice until the last moment, in order to provide for a further extension of time. Consequently, the Legislature deliberately declared that an appeal from a conviction involving a sentence of death must be made within the prescribed time. Therefore, this Court has no jurisdiction to extend the time for appealing or applying for leave to appeal against such a conviction."

It would appear clear, therefore, that this Court has no jurisdiction to consider the present application.

Counsel for the intended appellant submitted that this Court might consider, in the circumstances of this particular case, that it could apply the provisions of Rule 55 of the Court of Appeal Rules which reads:

" 55. Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force under the Ordinance, shall not prevent the further prosecution of his appeal if the Court of Appeal or a judge thereof considers that such non-compliance was not wilful and that the same may be waived or remedied by amendment or otherwise. The Court of Appeal or a judge thereof may in such manner as it or he thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify to the appellant any directions given by the Court or the judge thereof under this rule, where the appellant was not present at the time when such directions were given."

Counsel based his argument on the fact that after he had been convicted and before sentence of death was passed upon him the intended appellant said " I seek leave to appeal". This request was granted by the trial Judge after sentence had been passed, or to be more correct, in the words of section 17 (1) (b) of the Court of Appeal Ordinance, " the certificate of the judge who tried him that it was a fit case for appeal against his conviction on any ground of appeal which involved a question of mixed law and fact " was given. The obtaining of a certificate from the trial Judge does not obviate the necessity of an intended appellant giving notice of appeal within the time limit of thirty days of the date of conviction. After all it is a matter for the person convicted, having obtained a certificate from the trial Judge, to consider whether he should appeal or not. If he decides to appeal then he is required to give his notice in such manner as is provided in the Court of Appeal Rules within the time fixed by the Ordinance. Rule 55 enables this Court to waive non-compliance with the Rules or any rule of practice for the time being in force under the Ordinance but it cannot enable this

Court to assume a jurisdiction from which it is, in so many words, excluded by the provisions of the Ordinance itself. The Court finds itself unable to accept this submission.

For those reasons this application is refused.

This does not necessarily deprive the intended appellant of any further appeal. His attention is drawn to the provisions of the Privy Council Appeal Rules, in particular Rule 9 which deals with appeals in *forma pauperis*.

Application refused.

Solicitors for the applicant: *Kearsley and Kearsley.*

Solicitor-General for the Crown.