THE FIJI BANANA PLANTERS AND AGRICULTURAL PRODUCERS ASSOCIATION

v.

THE BANANA MARKETING BOARD

[SUPREME COURT, 1964 (Hammett P.J.), 2nd July, 5th August]

Civil Jurisdiction

Industrial associations—objects—to preserve safeguard and promote interests of agricultural producers—no power to grow or deal in produce—object not incidental or implied—Industrial Associations Ordinance (Cap. 94)—Banana Export and Marketing Ordinance, 1960.

The applicant Association, having obtained leave, filed a notice of motion for an order of certiorari to remove into the Supreme Court and quash the refusal by the respondent Board to grant to the Association a suppliers licence under the Banana Export and Marketing Ordinance, 1960. The Association is registered under the Industrial Associations Ordinance and under its constitution, membership is open to persons whose occupation is planting and selling bananas and certain other agricultural produce. The objects of the Association are to preserve safeguard and promote in a number of ways the interests of banana and agricultural producers and to do all such acts or deeds as are incidental or conducive to the attainment of the objects.

Held: The Association was not formed for the purpose of growing or dealing in produce but to safeguard the interests of growers and traders. To treat the growing and supplying of bananas as an incidental or implied object would be to hold that the Association was empowered to trade in competition with its own members. Such activities would be *ultra vires* and the application would be dismissed.

Notice of motion for order of certiorari.

R. A. Kearsley for the applicant Association.

G. N. Mishra for the respondent Board.

HAMMETT P.J.: [5th August 1964]—

The Fiji Banana Planters and Agricultural Producers Association is an Industrial Association registered under the Industrial Associations Ordinance.

On 11th April, 1963, this Association applied to the Banana Marketing Board for a suppliers licence under the Banana Marketing Board Ordinance. The Board refused to grant this licence and so informed the Association by letter dated 1st May, 1963.

On 20th February, 1964, the Association applied to the Court for leave to apply for a writ of certiorari against the Banana Marketing Board and leave to do so was granted on 6th March, 1964.

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On 1st April, 1964, the Association filed a notice of motion returnable on 9th April, 1964, for an order of certiorari to remove into this Court and quash the refusal by the Banana Marketing Board to grant a suppliers licence to the Association.

B On 9th April, 1964, Counsel for the Association applied for and was granted an adjournment to consider the matter further in the light of the affidavits filed in opposition of the motion. There is no note on the file of any application having been made by the Association to restore the case to the list for hearing and it appears that it was the Registrar who brought it before the Court again on 2nd July, 1964, for determination.

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On 2nd July, 1964, I heard Counsel and intimated that the application would be dismissed for reasons I would record and pronounce later. This I now do.

By Clause 3(a) of its Constitution membership of the Association is open to persons whose occupation is planting and selling bananas D and other agricultural produce other than sugar cane and copra. Its objects are contained in Clause 2 of its Constitution which reads as follows:

"The objects of the Association shall be as follows:

(i) To preserve, safeguard and promote the interests and welE fare of Banana and Agricultural Producers in the Colony of Fiji;

(ii) To encourage, foster and promote co-operative enterprises amongst Banana and Agricultural Producers in the Colony of Fiji;

(iii) To obtain and disseminate information relating to Banana F planting and Agricultural produce in Fiji;

(iv) To make representations to all those concerned on behalf of Banana Planters and Agricultural Producers in the Colony of Fiji upon all matters affecting their general interest and welfare;

(v) To organise and establish marketing boards to assist Banana G Planters and Agricultural Producers in selling their produce;

(vi) To purchase or take or lease or otherwise acquire property movable or immovable for the purpose of the Association and to improve, manage, develop, lease or otherwise deal with all or any part of the property of the Association;

(vii) For the purpose of the Association to borrow and raise H money in such manner as the Association may think fit;

(viii) To carry out all such acts or deeds as are incidental or conducive to the attainment of all or any of the above objects."

It is clear that this Association is not a trading body and was not formed for the purpose of growing or dealing in produce but for the purpose of safeguarding the interests of produce growers and traders.

I have been invited to treat the growing and supplying of bananas as one of the implied or incidental purposes of the Association. To do so would be to hold that the Association is empowered to trade in competition with its own members. In my view the Association was not formed for such an object and such activities would be quite ultra vires its own Constitution.

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For these reasons alone this application must be dismissed. It is not, therefore, necessary for me to give further consideration to the other grounds upon which the application was opposed.

I reserve the question of costs.

Application dismissed.

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NARAYAN

v.

REGINAM

B [COURT OF APPEAL, 1964 (Mills-Owens P., Marsack J.A., Briggs J.A.), 6th July, 7th August]

Criminal Jurisdiction

Criminal law—evidence—confession—threat or inducement—person in authority. Criminal law—evidence—previous inconsistent statements by witnesses—mode of reference to in direction to assessors—such witnesses not accomplices—application of proviso—Court of Appeal Ordinance (Cap. 3) s.18(1)—Criminal Appeal Act 1907 (Imperial—7 Edw.7, c.23).

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The appellant was convicted of murder upon evidence consisting substantially of his own confessions, one of which was made orally to one Sangoli Nair, one, also made orally, to a police officer, and a third, recorded in writing by another police officer as a cautioned statement. The appellant at his trial alleged that his statements were only made as the result of great pressure put upon him by Sangoli Nair and one Jaghur Singh and after strong persuasion by the appellant's father to take the blame upon himself. On the appeal it was submitted also that as Sangoli Nair and Jaghur Singh had made earlier statements inconsistent with their evidence in court it was not enough for the trial judge to draw the attention of the assessors to the discrepancies but that he should have gone further and specifically warned the assessors that though they were entitled to accept the evidence of these witnesses if they thought fit, the evidence should be subjected to the closest scrutiny before acceptance.

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F *Held:* 1. The rule as to the necessity for corroboration did not apply, as the objection to the evidence of Sangoli Nair and Jaghur Singh was based solely upon their previous inconsistent statements and they could not be considered as accomplices.

2. Even if the evidence of Sangoli Nair and Jaghur Singh were to be totally rejected the appellant's case would be in no way strengthened as the evidential value of the confessions made to the police officers would be in no way reduced; in any event no substantial miscarriage of justice had been occasioned.

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3. It could hardly be said on the evidence that either Sangoli Nair or Jaghur Singh made a threat or held out an inducement, but in any event neither was a person in authority.

H 4. It was not established on the evidence that the appellant's confession was obtained by any threat or inducement held out by his father and in any event his father could not be considered a person in authority.

Cases referred to: *Gyan Singh v. R.* (1963) 9 F.L.R. 105: *Davies v. Director of Public Prosecutions* [1954] A.C. 378; [1954] 1 All E.R. 507: *Ibrahim v. R.* [1914] A.C. 599; 111 L.T. 20: *Ravi Nand v. R.* (1964) 10 F.L.R. 37.

Appeal against conviction.

R. A. Kearsley for the appellant.

B. A. Palmer for the Crown.

The facts sufficiently appear from the judgment.

Judgment of the Court: [7th August, 1964]—

This is an appeal against conviction for murder on the 5th March, 1964. The trial took place before a Judge and five Assessors. All five Assessors gave their opinion that the appellant was guilty of murder. The trial Judge gave judgment in accordance with this unanimous opinion, convicted the appellant of murder and pronounced sentence of death.

The facts, in so far as they are not in dispute, are briefly these. Late at night on the 25th October a Police patrol car on the King's Road, Samabula, was stopped by the appellant and three other persons. The appellant, who was in a highly emotional state, informed the Police that someone had severely assaulted his wife and son. Police officers thereupon went to the appellant's house and there found three persons dead, including the appellant's wife Latchmi, whose death is the subject of the charge of murder in respect of which the appellant was convicted. On all three bodies were found a series of wounds which had been caused by a sharp instrument such as a knife. The body of Latchmi showed twelve serious wounds to the head, neck and back. These were all incised wounds caused by a knife or other sharp instrument and several of them, according to the medical evidence, would have required a considerable measure of force to inflict. Any one of three of the wounds would have been sufficient to cause death. From the number and nature of the wounds themselves it is impossible to avoid the conclusion that deceased was murdered. The only question which arose at the trial was whether it was established beyond reasonable doubt that the person who had inflicted the wounds and who was therefore guilty of murder was the appellant. The case for the prosecution was based largely on statements made by the appellant in the course of which he confessed to the murder of his wife.

Three grounds of appeal were argued before this Court. Of these numbers 1 and 2 were set out in the formal notice of appeal and the third was by leave adduced at the hearing. These were:

1. That none of the various confessions ought to have been admitted in evidence;

2. That the defence was not adequately put to the Assessors or adequately considered by the learned trial Judge;

3. That the learned trial Judge omitted to warn the Assessors of the danger of accepting certain prosecution evidence which was in conflict with previous statements made by the witnesses concerned.

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The statements made by the appellant which were admitted in evidence in the Court below and the admissibility of which is challenged in this Court were three in number. They were:

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(i) An oral admission made to one Sangoli Nair in the presence of appellant's father Chandu and one Shiu Singh (also known as Jaghur Singh), at Sangoli Nair's house on 27th October, 1963, after the funeral, when appellant said "I have murdered them";

(ii) An oral admission to Detective Inspector Koya at Sangoli Nair's house a little later the same day, to this effect: "I have murdered my grandfather, wife and baby";

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(iii) A cautioned statement made a few minutes later and recorded in writing by Detective Corporal Hannif, in the course of which appellant gave a detailed account of the manner in which he had killed all three deceased with a knife, which knife he had then thrown on to the land of one Babulal.

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The oral admission to Detective Inspector Koya, (ii) above, followed a statement made by Sangoli Nair to Detective Inspector Koya, in the presence of the appellant, "Narayan is saying that he has killed them". The Inspector thereupon asked the appellant, "What is this all about?" The appellant then gave the reply quoted above: "I have murdered my grandfather, wife and baby".

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A long and detailed statement taken at the Police Station, Samabula, from the appellant on the previous day, the 26th October, denied all knowledge of the circumstances of the crime and stated that the appellant had not the slightest idea who had killed his grandfather, wife and son. The statements in the course of which he incriminated himself were made the following day, after the funeral. Throughout his evidence at the trial the appellant denied any knowledge of how

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the injuries were inflicted on the three deceased. He further testified that he had made the statements acknowledging his guilt only as a result of great pressure which had been put upon him by Sangoli Nair and Jaghur Singh, and after strong persuasion from his father who had begged the appellant to take the blame upon himself in order to save his father, brother and sisters from the torture they would

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otherwise have had to endure at the hands of the Police.

Counsel for the appellant argued grounds 1 and 3 together. The "certain prosecution evidence" referred to in ground 3 was stated by Counsel for the appellant to be that of Sangoli Nair and Jaghur Singh. Counsel's submissions with regard to that evidence were in the form of two alternatives:

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(a) That the evidence of these two witnesses contained so many inherent contradictions and was to such a degree inconsistent with statements previously made by them to the Police that it should have been rejected;

(b) That if their evidence were accepted it established the fact that appellant's statement to Sangoli Nair, followed by the statements to Detective Inspector Koya, were made as a result of pressure applied by the witnesses and appellant's father and of inducements held out by them.

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There was a further phase of Counsel's argument on the first of these alternative submissions. That was that there was a duty cast on the trial Judge to draw the attention of the Assessors to the inconsistencies between their sworn evidence and the statements previously made and, in accordance with the authorities which are discussed in the judgment of this Court in *Gyan Singh v. R.* (1963) 9 F.L.R. 105, to direct them that it is dangerous to accept sworn evidence which is in conflict with statements previously made by the same witness. In the course of his summing up the trial Judge was careful to draw the attention of the Assessors to the discrepancies of which Counsel has complained; but the submission of the appellant was that he should have gone further than that, and specifically warned them, that though they were entitled to accept such evidence if they thought fit, the evidence must be subjected to the closest scrutiny before acceptance. Counsel then referred to the well known rule in *Davies v. D.P.P.* [1954] A.C. 378 where it is laid down, with reference to the evidence of an accomplice, that where the judge fails to warn the jury in accordance with this rule, the conviction will be quashed, even if in fact there be ample corroboration of the evidence of the accomplice, unless the appellate court can apply the proviso to section 4(1) of the Criminal Appeal Act, 1907. A similar proviso appears in the Court of Appeal Ordinance, Cap. 3, Section 18(1), which reads:

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> "Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred."

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In our opinion the total rejection of the evidence of Sangoli Nair and Jaghur Singh would in no way strengthen the appellant's case. There would still remain the oral confession made to Detective Inspector Koya, and the statement recorded by Detective Corporal Hannif after due and proper warning had been given; and the evidential value of these would not be in the slightest degree reduced by the excision from the evidence of the admission made to Sangoli Nair. The rule regarding the quashing of a conviction based upon the evidence of an accomplice because the jury had not been advised of the necessity for corroboration does not apply here. The witnesses concerned could not be considered as accomplices. The objection to their evidence is based solely on their previously inconsistent statements; and the Assessors had had the inconsistencies between the evidence of the witnesses and their previous statements pointed out to them and would no doubt have had these in mind when considering the value to be placed on their evidence.

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In any event, we are satisfied that there has been in that respect no substantial miscarriage of justice.

There is perhaps a little more weight in Counsel's argument that if the testimony of Sangoli Nair and Jaghur Singh is accepted there is some evidence that the self-incriminatory statement made to Sangoli Nair and followed by the admission of guilt to Inspector Koya was the result of pressure put upon him by Sangoli Nair and Jaghur Singh, and also of persuasion by the appellant's father Chandu. It is clear that in a general discussion after the funeral, culminating in the confessions by the appellant, all three of these persons said that it was the duty of the guilty party to admit his offence in order to save trouble to the Government and to the family. At no time, however, according to the evidence of these witnesses, did they put pressure on the appellant to confess to the crime. Their observations amounted merely to a statement that there was a duty cast on the guilty person, whoever he might be, to acknowledge the great sin he had committed. It is true that in cross-examination Jaghur Singh said: "I advised accused whoever had done it would be in better standing with God and with the authorities if he admitted it". He then went on to agree with the suggestion put to him by Counsel for the defence that he deliberately got the appellant to admit his guilt in order to ingratiate himself (i.e. the witness) with the Police.

As far as the advice given to him by Sangoli Nair and Jaghur Singh is concerned, we can see no ground for holding that the confession was obtained from the appellant "either by fear of prejudice or hope of advantage exercised or held out by a person in authority", to adopt the words of Lord Sumner in *Ibrahim v. The King* [1914] A.C. 599 at p. 609. Apart from the fact that it can hardly be said that they or either of them made a threat or held out an inducement, it is in our opinion perfectly clear that neither of them was a person in authority.

With regard to the persuasion said to have been exercised by the appellant's father Chandu, it is necessary to examine just what was said by Chandu to the appellant prior to the latter's admission of guilt. According to Sangoli Nair and Jaghur Singh, all that Chandu said to the appellant was that the person responsible for the crime should admit it in order to save them all trouble. Chandu himself, however, giving evidence for the defence, said "I told him to take the blame on himself and these people will help us as they have promised". He further deposed that the appellant then said "since you people are promising to assist me I will take the blame on myself". Chandu thereupon fainted. Under cross-examination Chandu stated that no growls, threats, force or assault were made to his son.

Although no specific finding was given on the point, it would appear that the evidence of Chandu given at the trial and quoted above was not accepted as being the truth. It would, in any event, be hard to understand why upon the appellant's agreeing to carry out the wishes of his father his father should sustain so great a shock as to cause him to lose consciousness.

In the result we are of opinion that it has not been established that the appellant's confession was obtained from him by any threat or inducement held out by his father. In any event his father cannot be considered a person in authority.

Counsel for the appellant further contended that all the self-incriminatory statements made by the appellant should be ruled inadmissible as they resulted from a conspiracy between Sangoli Nair, Jaghur Singh and the Police that Inspector Koya should be present and ready to take over as soon as Sangoli Nair and Jaghur Singh had succeeded in breaking down the resistance of the appellant to the extent of making him confess his guilt. Counsel suggests that it cannot have been a mere coincidence that Detective Inspector Koya did in fact arrive at the crucial moment and that he was then called in to complete what they had begun. We are unable to find evidence supporting this contention. It is certainly true that Inspector Koya had told the witnesses that he would see them after the funeral, but it would be proper, in the course of his duties, that he should go at that time and make inquiries among the people who might be expected to have information of value to him. It is undisputed that Inspector Koya did in fact arrive outside Sangoli Nair's house in the early evening after the funeral and there engage in conversation with Sangoli Nair's son for some few minutes. He then noticed the fall of Chandu in the house by the doorway when the appellant's father fainted. Jaghur Singh called for help and upon that call Inspector Koya went into the house. It was just after this that the admission of guilt was made by the appellant to Inspector Koya. We are unable to place any sinister interpretation upon the presence of Inspector Koya with his assistant, Corporal Hannif, at Sangoli Nair's house at that time and, therefore, cannot accede to Counsel's argument that the circumstances were such as thereby to render the appellant's confession unacceptable as not being voluntary.

Accordingly we can find no substance in grounds 1 and 3 put forward in support of the appeal.

Turning now to ground 2. It is submitted by Counsel for the appellant that in his summing up to the Assessors the learned trial Judge placed undue emphasis on the case for the prosecution and showed what he contended to be bias against the appellant when dealing with the evidence for the defence. We can find no substance in this argument. The trial Judge was careful to explain to the Assessors the general nature of the defence and actually read to them in full the evidence given by the appellant at the trial. He also referred to the evidence given by the appellant's father. He was particularly careful to remind the Assessors more than once that the onus of proof lay on the prosecution and that unless they were satisfied beyond reasonable doubt of the guilt of appellant they should express the opinion that he was not guilty. The question of the obligations of a trial Judge in the matter of putting the defence to the Assessors was carefully examined by this Court in *Ravi Nand v. R.* (1964) 10 F.L.R. 37. It is not necessary to quote in extenso from that judgment or the authorities therein cited. Suffice it to say that a careful examination of the summing up of the learned trial Judge discloses no reason for criticism on the ground put forward by Counsel for the appellant.

There is one further matter to which we think reference should be made. Counsel for the appellant in his argument before us submitted that there was no evidence against the appellant except his own con-

fession. The learned trial Judge, both in his summing up and in his judgment, expressed the opinion that the Crown case rested essentially upon the admissions of guilt allegedly made by the appellant. In our opinion it cannot be put more strongly than that the case for the prosecution rested substantially on the confessions made by the appellant. There is, in our view, evidence which, though doubtless of insufficient strength to lead to a conviction in the absence of the confessions, is at least strongly corroborative of the confessions and indicative of the appellant's guilt. Briefly summarised, these other items of evidence are:

(1) The fact that the time of death was established with reasonable accuracy at about half an hour after a meal, which according to the appellant's evidence was taken shortly after 7 p.m. on the 25th October, and from about 7 p.m. until about 8 p.m. the appellant was the only person known to have been present in the house with the three persons who were found murdered;

(2) The murder weapon was conclusively identified as a cane knife belonging to appellant's grandfather which, at material times, was on the table in the house where appellant lived and where the crime was committed;

(3) The murder weapon was actually found on Babulal's land just where appellant stated that he had thrown it;

(4) Appellant was seen on the main road a little over a mile from his house at about 8.15 or 8.20 p.m. on 25th October, when he had admittedly come straight from home; thus making it almost certain that he was at the house or in the vicinity at the time when deceased was killed.

There is also evidence, given by deceased's mother, that the appellant had threatened to "fix" his wife, and by deceased's sister, that the appellant had attacked his wife with a weeding knife and would have struck her but for her sister's intervention. The probative value of the evidence of these last two witnesses is perhaps small, but added to the other evidence which has been briefly outlined must, we think, be taken into consideration.

In the result we find that none of the grounds of appeal put forward on behalf of the appellant has been established; that the confessions and admissions made by the appellant were voluntarily given and accordingly were properly admitted in evidence; and that there is independent evidence on material points corroborative of the truth of the confessions made by the appellant.

For these reasons the appeal will be dismissed.

Appeal Dismissed.