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IBRAHIM KHAN

v.

REGINAM

B [SUPREME COURT, 1968 (Hammett C.J.), 23rd February, 22nd March]

Appellate Jurisdiction

Criminal law—evidence and proof—birth certificate—proof of certified copy—*maxim omnia praesumuntur rite esse acta*—Births, Deaths and Marriages Ordinance (Cap. 133—1955) ss.9, 32—Interpretation Ordinance 1967, s.38—Penal Code (Cap. 8—1955) ss.144, 147 (1) (a).

D To establish the age of a girl a certified photostat copy of her birth certificate was put in evidence. A certificate on the reverse side thereof bore the seal of the Registrar-General and purported to be signed by an Acting Assistant Registrar-General but his signature was not identified nor was the Gazette showing his appointment produced. The copy was identified by a clerk who had filled in the particulars in the original; he was not cross-examined, nor was any objection made to the admission of the copy in the Magistrate's Court.

E *Held:* The presumption *omnia praesumuntur esse rite et solemniter acta donec probetur in contrarium* applied in the circumstances of the case, and in the absence of any evidence in rebuttal it was not open to the defence to object to the document on appeal.

Case referred to: *R. v. Roberts* (1878) 14 Cox C.C. 101; 38 L.T. 690.

Appeal from a conviction by the Magistrate's Court.

B. C. Ramrakha for the appellant.

F B. A. Palmer for the respondent.

The facts sufficiently appear from the judgment.

HAMMETT C.J.: [22nd March 1968]—

G This is an appeal against the decision of the Magistrate's Court of the First Class sitting at Suva whereby the Appellant was convicted on each of the following offences:

FIRST COUNT

Statement of Offence

ABDUCTION OF GIRL UNDER THE AGE OF 18 YEARS: Contrary to section 144 of Penal Code.

Particulars of Offence

H *Ibrahim Khan* s/o Amir Khan on the 3rd day of May, 1967, at Suva, did take Fatima Bibi d/o Mohammed Umarji an unmarried girl aged 15 years 7 months and 11 days out of the possession and against

the will of her father Mohammed Umarji with intent to have unlawful sexual intercourse with her.

Third Count A

Statement of Offence

Defilement of girl between 13 and 16 years of age: Contrary to section 147(1) (a) of the Penal Code.

Particulars of Offence

Ibrahim Khan s/o Amir Khan on the 3rd day of May, 1967, at Rabulu, Tavua in the Western District, has unlawful carnal knowledge of Fatima Bibi d/o Mohammed Umarji a girl of the age of 15 years 7 months and 11 days. B

Upon conviction the Appellant was sentenced to 6 months' imprisonment on each count which were ordered to run concurrently. The Attorney-General has at the same time cross-appealed against the sentences passed on the grounds that they are manifestly lenient and wrong in principle having regard to the nature and circumstances of the case. C

There were eight grounds of appeal against conviction which are as follows:

- (a) The learned trial Magistrate erred in presuming the correctness or existence of the signature of a person who alleged himself as Assistant Registrar-General on the birth certificate tendered and in any event erred in assuming that the signature was over the words "Assistant Registrar-General." D
- (b) There was no proof of the age of the girl and the learned trial Magistrate erred in finding to the contrary.
- (c) That in any event, the learned trial Magistrate should have convicted Your Petitioner of either defilement, or abduction but not of both. E
- (d) That in any event, the learned trial Magistrate ought to have found in favour of Your Petitioner on the issue of abduction.
- (e) There was no corroboration of the girl's evidence relating to defilement. F
- (f) That having regard to all the circumstances of the case the learned trial Magistrate erred in accepting the evidence of the complainant Fatam alias Fatima Bibi and erred in ignoring the contradictions contained in her evidence especially in view of the fact that she admitted that she had told some lies.
- (g) That the learned trial Magistrate misdirected himself in holding that the injuries sustained by the complainant Fatam alias Fatima Bibi were such that they could only have been caused by sexual intercourse with the appellant. G
- (h) That the verdict is unreasonable or cannot be supported having regard to the evidence or to the circumstances of the case.

Learned Counsel for the Appellant abandoned ground (c) at the hearing and conceded that ground (d) was superfluous as it is included in ground (h). Grounds (e), (f) and (g) were argued at the hearing of the appeal as particulars of ground (h). H

The learned trial Senior Magistrate, in a carefully written judgment, held the facts to be as follows:

A Fatima Bibi is the daughter of Mohammed Umarji and was born on 22nd September 1951. She was, therefore, on 3rd May, 1967, the date of the offence, under 16 years of age. She is an unmarried girl who at all material times lived with her parents in Suva. The accused, a married man who lives at Tavua, used to stay at her parents home when he was in Suva and Fatima called him "Uncle."

B On 3rd May, 1967 when he saw her soon after mid-day in Suva, the Appellant invited Fatima to get into his truck on the pretext that he would take her to school. She got into his truck and he then drove her to Tavua, instead of taking her to school. On the way to Tavua the Appellant passed an on-coming police car and his behaviour in pressing the girl's head out of sight below the front windscreen excited the attention of the police. The Appellant was stopped and in reply to the Constable told him that he was the girl's relative and was taking her to Tavua. The girl made no complaint to the police and the police let them proceed on their journey.

C At Rabulu, near Tavua, where the Appellant has built a small shed, he stopped his lorry. He took the girl into this shed where during that night he had sexual intercourse with her.

D The next day the girl's mother came to the scene, with her brothers, and found the Appellant still inside this shed with her daughter. The girl immediately lodged a complaint to her mother and the Appellant fell onto his knees and begged forgiveness of the girl's mother.

E At his trial the Appellant did not give evidence or make an unsworn statement or call any witnesses. His defence was based on the two main factors, which are raised in this appeal, namely:

- (1) That the prosecution had failed to prove that the girl was under the age of 16 at the material time, and
- (2) That although he took the girl with him he did not do so with the intention of having sexual intercourse with her and that the prosecution had failed to prove that he did in fact do so.

F On the issue of age neither of the girl's parents were able to state her precise date of birth. The girl herself when she gave evidence, stated that her name was Fatima Bibi also known as Fatam. She was identified by Mohammed Umarji as his daughter by his wife Bismillah.

G Mohammed Umarji who is illiterate but can sign his name, said that after the birth of Fatima he gave all the particulars to Gyan Singh, including the date of birth, and he, Mohammed Umarji, then signed the document. He identified his signature on a document which was produced to him, which was a certified photostat copy of her birth certificate (Ex. H).

H Gyan Singh gave evidence that he is a civil servant who in 1951 was stationed at Rakiraki as a clerk in the District Administration. A part of his duties was to fill in birth registration forms. He identified, and tendered in evidence, the certified photostat copy of Fatima's birth certificate (Ex. H) of which he said he himself filled in the particulars in the

original from information given him by Mohammed. At the trial Counsel for the Respondent said he had no objection to this document being admitted in evidence.

This document bears on its reverse side the following endorsement:

"I hereby certify that on the reverse hereof is a photographic copy of an entry in the Register of Births kept at the Department of the Registrar-General, Suva, Fiji.

Dated 24 May 1967.

(Registrar-General's Seal) (Sgd.) R. Kurup
Actg. Asst. Registrar-General."

Sections 9 and 32 of the Births, Deaths and Marriages Ordinance (Cap. 133) read as follows:

"9. The Registrar shall sign and cause to be sealed all certificates or certified copies given in his office and all certificates or certified copies so sealed shall be received in all courts of justice as evidence of the birth, death or marriage to which the same relate and of the other particulars therein recorded without further proof of such matters, and every certificate of the Registrar that any original register of births, deaths or marriages for any specified period is lost or destroyed shall be received in any court of justice as conclusive evidence of that fact.

"32. A certified copy of a register or of an entry in a register in the custody of the Registrar under the provisions of this Ordinance made or given by the Registrar and purporting to be signed by him shall be received as prima facie evidence in any court of justice within the Colony of all the facts stated in the certificate of the birth, death or marriage to which it relates:"

The proviso to section 32 is not relevant to the issue in this case.

Section 38 of the Interpretation Ordinance 1967 (which came into force on 1st September 1967) reads as follows:

"38. Where, by or under any written law, anything is appointed or allowed to be done by the Registrar-General, the same may also be lawfully and for all purposes effectually done by any person gazetted as a Deputy Registrar-General or an Assistant Registrar-General."

It is submitted by Counsel for the Appellant that Exhibit H, the certified copy of Fatima's birth certificate in this case, is not admissible in evidence as such until it is first proved that the officer who signed it as an Acting Assistant Registrar-General has been gazetted as such.

I concede that the signature on the certificate endorsed on Exhibit H is not very legible and it may well be that some persons cannot see that it is in fact "R. Kurup."

The issue for consideration is whether, assuming for one moment this signature may not be legible, the Court may accept a signature, purporting to be that of an Ag. Assistant Registrar-General, to be that of a gazetted Acting Assistant Registrar-General.

A The question immediately arises is that if the signature is in fact illegible how can one prove that the appointment of an Acting Assistant Registrar-General is the appointment of the person who did in fact sign the certificate.

B For the Crown it is conceded that strictly speaking there should have been formal proof by the production of the Gazette in evidence showing that Mr. Kurup had been appointed an Acting Assistant Registrar-General and then of evidence identifying his signature. It is, however, submitted that since this document, purporting to be a properly certified true copy of a birth certificate, was formally tendered in evidence and, after Counsel for the Appellant had specifically stated he had no objection to it being admitted in evidence as such, it was properly admitted as such under the *omnia praesumuntur rite esse acta* rule, for the following reasons:

- C 1. That the person signing the certificate was in fact exercising a function which was a lawful function of an Acting Assistant Registrar-General;
2. That the document does in fact bear the seal of the Registrar-General;
- D 3. That the document also bears a certificate which purports to exercise properly the powers which are properly exercisable by an Acting Assistant Registrar-General;
4. Gyan Singh who tendered the document in evidence was a civil servant whose duties at the material time were concerned with the registration of births. His evidence was that it was a certified true copy of a birth certificate that was in fact filled in by him.
- E 5. In addition, another prosecution witness, Sukhdeo Sahaya, a clerk in the Registrar-General's Department, actually working in the Births, Deaths and Marriages Section, which keeps the records of all births in Fiji, specifically identified this document (Ex. H) as a "Certified true copy" of the entry of birth of Fatima d/o Mohammed. He could see the certificate on the back and the signature on that certificate. It is submitted that unless the certificate on this document (Ex. H) had been signed by a person entitled to sign it — i.e. by a gazetted Acting Assistant Registrar-General — this witness would not have asserted that it was a certified true copy of the entry in the Register of Births. He would have said it was either a forgery, or not a true copy or it was only a document that purported to be a certified true copy. It is to be noted that Counsel for the Defence did not cross-examine this witness on the subject of this certified copy of the birth certificate (Ex. H) and never questioned the authenticity of the signature by which it was so certified.

In my view the point raised by learned Senior Crown Counsel is a sound one and is well established by a long line of judicial authority.

H In *R. v. Roberts* 14 Cox C.C. 101 Lord Coleridge, C.J. said (p.103):

"One of the best recognised principles of law, *Omnia praesumuntur esse rite et solemniter acta donec probetur in contrarium* is applicable

to public officers acting in discharge of public duties. The mere acting in a public capacity is sufficient *prima facie* proof of their proper appointment; but it is only a *prima facie* presumption, and it is capable of being rebutted,”

A

In the present case the Counsel for the Defence, far from challenging either the proper appointment of Mr. R. Kurup as an Acting Assistant Registrar-General or this certified copy of a birth certificate or calling evidence in rebuttal, said he had no objection to it being admitted in evidence. I think the presumption must apply in these circumstances. It is not now open to the Defence to object to the document unless it wishes to call evidence in rebuttal which it was unable to call at the trial, and no application to do this has been made.

B

There was, in my view, ample evidence that this was a certified copy of the birth certificate of Fatam also known as Fatima Bibi d/o Mohammed Umarji, the female complainant in this case and that her date of birth was 22nd September 1951. She was, therefore, on 3rd May 1967 under the age of 16 years.

C

The remaining grounds of appeal complain of the acceptance by the learned trial Senior Magistrate of the uncorroborated evidence of the female complainant, Fatima.

I have examined the record of the evidence and the detailed judgment of the Court below with great care in the light of all that has been urged in support of this aspect of the appeal.

D

The learned trial Senior Magistrate was of the opinion that despite the abundance of evidence that was consistent with that of Fatima Bibi, there was in fact no corroboration of her testimony. He warned himself in express terms of the danger of accepting and acting on her evidence without corroboration and then reviewed the evidence in some detail. Having done so he expressed himself as satisfied beyond all reasonable doubt that on the essential issues of this case she was a witness of truth, in spite of certain aspects of her testimony which were not satisfactory.

E

In my view no grounds have been shown why the findings of the Court below should be disturbed. In my opinion, on this evidence and the view taken of the credibility of the witnesses, the decision reached by the Court below was inevitable and correct.

F

For these reasons the appeal against conviction on each count is dismissed.

I have considered all that has been said in support of and against the Attorney-General's appeal against sentence. The sentence of 6 months' imprisonment on the 1st Count was, in the particular circumstances of this case, an extremely lenient sentence. In these circumstances I do not quite understand why it was that the sentence of 6 months' imprisonment on the 2nd Count was ordered to run concurrently with it. I set aside that order and I order in lieu that the sentences on each count run consecutively.

G