

## ATTORNEY-GENERAL

A

v.

## GYAN CHAND

[SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 26th November]

B

## Appellate Jurisdiction

*Criminal law—trial—probation officer's report on background and antecedents of accused—dangers in practice of obtaining report before adjudication—Penal Code (Cap. 11—1967) s.302(a).*

*Appeal—criminal appeal—appeal by Crown against acquittal in Magistrate's Court—questions of fact—Penal Code (Cap. 11—1967) s.302(a).*

C

An acquittal in the Magistrate's Court on a charge of larceny set aside by the Supreme Court, though only questions of fact were involved, on the ground that the order of acquittal was unreasonable and could not be supported having regard to all the evidence. The case was remitted to the Magistrate's Court with a direction that a conviction be entered.

D

Observations on the dangers inherent in the practice of obtaining a probation officer's report on the background and antecedents of an accused person before adjudication of his guilt or otherwise.

Case referred to: *R. v. Hancox* (1913) 8 Cr. App. R. 193; 29 T.L.R. 331.

E

Appeal by Attorney-General against the acquittal of the respondent in the Magistrate's Court.

*K. A. Stuart* for the appellant.

*R. D. Patel* for the respondent.

F

The facts sufficiently appear from the judgment.

MOTI TIKARAM J.: [26th November, 1968]—

This is an appeal by the Crown against a decision of the first class magistrate, Ba, whereby he acquitted the respondent of the offence of larceny in a dwelling house contrary to Section 302 (a) of the Penal Code, Cap. 11. The particulars of offence alleged against the accused were as follows.

G

GYAN CHAND s/o Ram Udit, on the 1st day of August, 1968 at Namau, Ba in the Western Division, in the dwelling house belonging to Keshwa s/o Govindu stole 1 Roamer wrist watch, 6 bottle ghee, 1 short pant, 1 sport shirt, 14 eggs and together of the total value of £14.17.4 the property of the said Keshwa s/o Govind.

H

The Crown's petition against the order of acquittal contains the following grounds of appeal :-

- A (a) That the learned trial magistrate completely failed, and, or omitted to consider and evaluate the admissions made by the accused GYAN CHAND s/o Ram Udit in a written statement made on the 1st day of August, 1968 to Police Constable Vijay Prasad and which the said statement was tendered in evidence by the prosecution and marked Exhibit "B".
- B (b) That the learned trial magistrate completely failed, and, or omitted to consider and evaluate the admissions made by the accused GYAN CHAND s/o Ram Udit to Constable Rishinand on the 1st day of August, 1968, evidence of which the said admissions was given by Constable Rishinand.
- C (c) That the Order of Acquittal is unreasonable and cannot be supported having regard to all the evidence.

In addition to the sworn evidence of two police officers pointing to the guilt of the accused, there was also a written statement by the accused which amounted to a confession and which was tendered in evidence. The accused made an unsworn statement wherein he maintained that the goods in question were given to him by the complainant and said that he had borrowed the complainant's watch with the latter's consent.

Nowhere in his judgment did the learned trial magistrate make any reference to the evidence of the two police officers or to the written statement given by the accused. He was, however, of the opinion that the complainant was not telling the whole truth. Notwithstanding the fact that the learned trial magistrate was not entirely happy with the version given by the accused concerning the watch, he held that he entertained a reasonable doubt in his mind which debarred him from convicting the accused.

There was, in my view, ample evidence before the trial Court to hold on a proper evaluation that the accused was guilty of the offence charged. An appellate Court can and should set aside a verdict on a question of fact alone, where the verdict is obviously and palpably wrong (*R. v. Hancox* 8 Cr. Appeal Reports 193). I allow the appeal on the ground that the order of acquittal is unreasonable and cannot be supported having regard to all the evidence. The order of acquittal is set aside and this case is remitted to the first class magistrate's court, Ba with a direction that the trial magistrate do enter a conviction against the respondent on the charge as laid. He is to pass such sentence as he may consider appropriate after giving the accused or his counsel the opportunity of addressing the court in mitigation.

To shorten proceedings, I had considered convicting the accused in the Supreme Court and placing him on probation but on second thoughts, I feel it would be appropriate for the trial court to canvas the question of a proper sentence. I wish, however, to observe that the practice of obtaining a probation officer's report on the background and antecedents of an accused person before adjudication of his guilt or otherwise is

fraught with many dangers. In this case the trial Court asked for a probation officer's report before the trial proper commenced and the report, which is dated 16th September, 1968, was apparently submitted well before the date of adjudication which was 25th September, 1968. Such a procedure may very legitimately give the impression that the trial court was influenced in its decision by the report. It is perhaps a sheer coincidence in this case that certain doubts entertained by the probation officer are shared by the trial magistrate. A probation report ought not to express views which may directly reflect on the guilt or innocence of the accused.

A

*Appeal allowed.*