A

MANO DATT SHARMA

v.

REGINAM

B

[SUPREME COURT, 1996 (Thompson Ag. P.J.), 27th June, 10th July]

Appellate Jurisdiction

Criminal law—judgment—Magistrate's Court—undue brevity—failure to refer to issues raised by defence—requirements of Criminal Procedure Code (Cap. 14) s.154 (1)—Penal Code (Cap. 11) ss.371 (2) (a), 381 (a).

C

Criminal law—practice and procedure—contents of judgment—undue brevity—whether complying with Criminal Procedure Code (Cap. 14) s.154 (1).

A judgment in the Magistrate's Court whereby the appellant was convicted of forgery and of obtaining money on a forged document was extremely short, did not contain any full statement of the prosecution case and made no mention of the case for the defence. In the Magistrate's Court the defence had not been a bare denial, but had raised a number of issues which needed to be considered.

D

Held: 1. There is a degree of brevity in a judgment beyond which it ceases to comply with section 154(1) of the Criminal Procedure Code and ceases to show that the magistrate has applied his mind properly to the defence raised.

E

2. While there may be cases in which it can properly be inferred from the findings of a professionally qualified and experienced magistrate that he had taken into consideration the evidence adduced by the defence, this was not such a case and it would be unsafe to permit the convictions to stand.

Appeal from a conviction in the Magistrate's Court.

F

S. M. Koya for the appellant.

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

THOMPSON J.: [10th July 1969]—

G

The appellant was convicted in the Magistrate's Court of the first class at Nadi of the following two offences:

FIRST COUNT

Statement of Offence

FORGERY: Contrary to Section 371 (2) (a) of the Penal Code, Cap. 11.

H

Particulars of Offence

MANO DATT SHARMA son of Badri Prasad on 3rd day of January, 1968, at Nadi in the Western Division with intent to defraud forged a

bank of New Zealand Nadi withdrawal slip for the sum of £52.0.0 purporting to show the said withdrawal slip had been signed by *MAJAVE* daughter of Saiyed Hussain Dean.

SECOND COUNT

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 381 (a) of the Penal Code, Cap. 11.

Particulars of Offence

MANO DATT SHARMA son of Badri Prasad on the 3rd day of January, 1968, at Nadi in the Western Division with intent to defraud obtained the sum of £52.0.0 by virtue of forged Bank of New Zealand withdrawal slip knowing the same to have been forged.

The prosecution case was that a lady named Majave had a savings account at the Bank of New Zealand at Nadi. One of her sons, Mira Hussein, apparently an adult as he was living away from home at the time, took her savings account book without her permission. In doing so, it is alleged, he acted at the suggestion of the Accused who then filled in a withdrawal form in Majave's name for £52, put his own thumb-print on it and also wrote on it the signature of Taj Pira, another son of Majave. Mira Hussein then took this form to the bank and presented it to a clerk there, Miss Johns. As Majave was illiterate, Miss Johns, in order to comply with the bank's practice, made out a new withdrawal form herself for the thumb-print to be put onto it in front of her. However, Mira Hussein took the form out of the bank and the Accused then put his thumb-print on it and again wrote Taj Pira's signature. Mira Hussein returned to the bank and presented the withdrawal form to another clerk, Miss Johns made an entry in the book and he was then paid £52 from Majave's account.

That is the prosecution case; evidence in support of it was given notably by Mira Hussein and Miss Johns. Majave and Taj Pira gave evidence that the thumb-print and the signature respectively were not theirs. An officer from the police Criminal Records Office gave evidence that the thumb-print was the Accused's.

The defence case was that the thumb-print was not put onto the withdrawal form consciously by the Accused, but was presumably obtained on an occasion when Mira Hussein plied him with drink and made him drunk. He denied writing Taj Pira's name on the form. He gave evidence at some length of the occasion when he had been made drunk and in support of the defence case another of the clerks from the bank, Kashi Ram, was called to give evidence. Mira Hussein had given evidence that, when he presented the second form, Kashi Ram had said that he knew him well, the implication being that he vouched for him. Kashi Ram gave evidence that, although he knew Mira Hussein and his brother Raj Pira very well, he did not remember seeing Mira Hussein come to the bank with a withdrawal slip and he denied having ever told Miss Johns that he knew Mira Hussein. Under cross-examination he said "I just never have seen Mira Hussein in the bank — he could have been there but I've never seen him".

This witness also gave evidence that, if a person whose signature appears as a witness to a thumb-print has an account at the bank, as Taj Pira did, the signature is checked against his specimen signature as a matter of course.

The defence did, therefore, raise a number of issues which needed to be considered by the learned trial Magistrate. It was not a case of a bare denial with no evidence adduced to support the defence case.

The judgment delivered by the learned Magistrate was extremely short. It did not contain any full statement of what the prosecution case was; no mention whatsoever was made of the defence case. In so far as the judgment indicates the learned Magistrate's process of thought in considering the evidence adduced, there is nothing to show that he took the defence case, and the evidence in support of it, into consideration at all.

Section 154(1) of the Criminal Procedure Code is in the following terms :

> "154. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court in English, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it :
>
> Provided that where the accused person has admitted the truth of the charge and has been convicted, it shall be a sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the presiding officer at the time of pronouncing it."

The magistrates' courts are called upon to deal with large numbers of cases and to do so expeditiously. This undoubtedly militates against the writing of lengthy judgments. Nevertheless, there is a degree of brevity beyond which a judgment ceases to comply with section 154(1) and ceases to show that the Magistrate has applied his mind properly to the defence raised.

In this case there may well have been good reasons for rejecting the evidence of the Accused and of the witness called on his behalf. But there is nothing in the judgment to indicate that that evidence was taken into account at all.

I have considered whether, as the presiding magistrate is professionally qualified and experienced in the duties of a magistrate, it can properly be inferred from the findings which he made in respect of the prosecution case that he did take into consideration the evidence adduced by the defence. There may be cases in which such an inference can properly be drawn; but, in my view this is not such a case. It is not simply a matter of implicitly rejecting evidence of an apparently far-fetched story told by the Accused. There is the evidence of the witness Kashi Ram, apparently a respectable person in regular employment as a bank clerk, which conflicts with that of Mira Hussein, an admitted accomplice in the commission of the offences. Possibly Kashi Ram was lying in order to shield himself from being held responsible by his em-

ployers for the loss they suffered. But there is nothing in the judgment
A to show that the learned Magistrate considered at all the conflict between this witness's evidence and Mira Hussein's before making his finding that Mira Hussein had told the truth.

I have come, therefore, to the conclusion that it would be unsafe to permit the convictions to stand, based on a judgment which fails to show that any consideration at all was given to the evidence adduced by the
B defence. Accordingly I quash the convictions on both counts and set aside the sentences.

Appeal allowed.