A

**RAM RATTAN**

*v.*

**REGINAM**

B

[COURT OF APPEAL, 1969 (Gould V.P., Hutchison J.A., Marsack J.A.), 28th October, 7th November]

Criminal Jurisdiction

*Criminal law—accessory—clerk kept in employment after allegedly confessing to embezzlement—employer's hope of obtaining restitution—employer not accessory after the fact—active and personal assistance necessary—Penal Code (Cap. 11) ss.306(a) (i), 306(a) (ii)—Criminal Procedure Code (Cap. 14) s.178.*

C

*Criminal law—trial—summing up—judge letting his view be seen on aspect of the evidence—earlier warning to assessors not obliged to accept his opinion on facts.*

The action of an employer in continuing the employment of his chief clerk after the latter had allegedly confessed to the embezzlement of trust funds, in the hope of obtaining restitution, does not amount to the active and personal assistance required to constitute the employer an accessory after the fact.

D

At the appellant's trial on a charge of embezzlement the trial judge directed the assessors that if he expressed any opinions on the facts of the case they were not obliged to accept them and that they must arrive at their own conclusions. Later the judge let his view of certain evidence be seen by saying that the assessors might feel that the evidence of a confession by the appellant had an absolute ring of truth about it and that they might have no hesitation in relying upon it.

E

*Held*: In view of the earlier direction the part of the summing up complained of did not offend against the principle that a judge is entitled, with reasonable limits, to express an opinion on the facts of the case.

F

Case referred to: *Sykes v. Director of Public Prosecution* [1962] A.C. 528; [1961] 3 All E.R. 33.

Appeal against a conviction of larceny by a servant in the Supreme Court.

G

Appellant in person.

*G. N. Mishra* for the respondent.

The facts sufficiently appear from the judgment of the court.

Judgment of the Court (read by GOULD V.P.): [7th November 1969]—

H

The appellant was convicted by the Supreme Court of Fiji at Labasa on six counts of larceny by a servant contrary to section 306(a) (i) of the Penal Code on the 18th July, 1969. The charges against him had been framed as charges of embezzlement contrary to section 306(a) (ii) of the Penal Code but, under section 178 of the Criminal Procedure Code,

the Court had power to convict of stealing. There were three assessors at the trial and they were unanimous in the opinion that the appellant was guilty. At the appeal to this Court against his conviction the appellant preferred to argue his own case rather than accept the legal aid which had been made available.

The appellant was chief clerk to Khushaldas Chauhan, a barrister and solicitor carrying on business at Labasa. The charges related generally to the alleged misappropriation of moneys by the appellant in the course of his employment; moneys received by him which it was his duty to bank in his employer's trust account. The evidence consisted in the main of the testimony of Khushaldas Chauhan supported by various copies of receipts and statements, and including evidence of a confession made to him by the appellant. There was, in addition, evidence by Detective Corporal Net Ram of self-inculpatory words used to him by the appellant in March 1968: that was about a month after the investigation into this matter had commenced, though he was not arrested until August of that year.

The evidence of Khushaldas Chauhan disclosed, on his part, negligence of high degree in the supervision of his professional accounts, and the appellant has argued that it was incredible that he should have been unaware, over a long period, of the substantial deficiency in his trust account. The appellant also pointed to the fact that his employment had been continued for over a year after his alleged confession and argued from that and from various passages in the evidence that Khushaldas Chauhan was at least an accomplice in the theft of the clients' money. He said that the assessors should accordingly have been warned of the grave danger of accepting his evidence.

There can be no grounds for holding that Khushaldas Chauhan was in the position of an accomplice to the appellant's alleged crime. Rather the position was that, in evidence, each accused the other and the question was whether it was the appellant or Khushaldas Chauhan who was responsible for the misuse of the trust funds. Inasmuch as the appellant was not immediately reported to the police but was kept on in employment this is explicable by the desire of Khushaldas Chauhan to obtain restitution, which, on his evidence, he succeeded in doing to a substantial extent. His action did not amount to the active and personal assistance required to constitute him an accessory after the fact: *Sykes v. Director of Public Prosecutions* [1962] A.C. 528, 561. In his summing-up the learned Judge did refer to "Mr. Chauhan's foolish (Crown Counsel himself called it negligent) non-supervision of the trust accounts" and the effect of his evidence as contrasted with the appellant's version was essentially a question for the assessors and the trial Judge, who were obviously in no doubt.

The appellant next submitted that his alleged confession to Khushaldas Chauhan (which in evidence he denied making) was made, if at all, to his employer, who was a person in authority. This may well be so in the particular circumstances but there is no evidence, and the appellant made no attempt to point to any, that Khushaldas Chauhan held out any inducement or made any promise or threat to obtain the confession. The argument, therefore, does not avail the appellant.

The appellant next adverted to the evidence of his confession to Corporal Net Ram, submitting that it should not have been admitted in view of Net Ram's failure to caution the appellant, that the confession was too vague in its terms and that the trial Judge erred in law in suggesting that the confession had a ring of truth.

Corporal Net Ram was in charge of the inquiry into the transaction and his evidence was as follows :—

"Q. Under what circumstances you met him?

A. I was paddling a bicycle going towards the Police Station from the market when I saw a private car No. P.224 driven by the accused and stopped at the Post Office, Labasa. And when I approached this vehicle the accused then came out and stood behind the vehicle and stopped me.

Q. Do you know the exact date on which this happened?

A. 7th March, 1968.

Q. What happened when the accused stopped you?

A. When he stopped me then he said —
(Witness speaks in hindi; interpreter interprets) — "Friend, have you completed your inquiry?"

Q. You noted the conversation you had with him?

A. Yes sir.

Q. When did you note it?

A. Soon after the conversation.

Q. And you made a note of the conversation?

A. Yes.

Q. And he spoke to you in Hindustani?

A. Yes sir.

Q. And what was the first thing he said?

A. (Witness speaks in hindi; interpreter interprets) — "Friend, have you completed your inquiries?" I said, "Still going on". He said "When you are going to arrest me". I said, "I do not know". He said "Sala, I have made a mistake and I am worried of this. That I have eaten my family's money. I am thinking that I should pay their money then it would be good for me in mitigation. If I pay their money or give them the security then in that case I may not be sent to jail. You people are my friends, and you do not tell me anything". I then cautioned him at this stage in hindi. "You are not obliged to say anything unless you wish to do so but whatever you say may be given in evidence", and then he said "Either you caution me or do anything friend, I think I will be sent to jail for 5 years. I had good name but now I cannot show my face to anyone" and then he said, "O.K. bro see you when I am arrested", and then he went into the Post Office."

It will be seen that the initiative in the matter was taken by the appellant and, when he started to incriminate himself, he was cautioned, but persisted in his damaging remarks. The admissibility of the evidence was contested on various grounds at the trial, and the learned Judge held that it was a statement freely volunteered and was admissible. We have no reason whatever to take any different view.

The learned Judge's direction complained of in this connection was :—

> "The accused denies making such confession. It is for you to consider whether Corporal Net Ram has told the truth. You may feel that the conversation, as reported by the Corporal, has an absolute ring of truth about it, and have no hesitation in relying upon it."

The learned Judge did let his view of the evidence be seen there but had earlier directed the assessors as follows :—

> "On matters of fact, however, it is for you to reach your own conclusions. If I express any opinions on the facts of this case you are not obliged to accept those opinions. You must arrive at your own conclusions."

Provided he gives a direction in those terms, or to the same effect, a judge is fully entitled, within reasonable limits, to express an opinion on the facts of the case. The passage complained of did not, in our judgment, offend against this principle. As to the alleged vagueness of the confession, this was entirely a matter for the assessors and the Court who had the whole of the circumstances before them.

We are unable to find validity in any of the grounds of appeal put forward, or any other reason for interfering with the result of the trial. The appeal is, therefore, dismissed.

*Appeal dismissed.*