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## SHIU RATTAN

v.

B

## REGINAM

[COURT OF APPEAL, 1970 (Gould V.P., Marsack J.A., Tompkins J.A.), 21st, 27th July]

## Criminal Jurisdiction

C *Criminal law—evidence and proof—need for close scrutiny of the evidence of the two main prosecution witnesses—proper direction given to assessors—findings of fact depending almost entirely upon assessment of credibility—position of Court of Appeal.*

*Appeal—criminal appeal—conviction based almost entirely upon Supreme Court's assessment of credibility of main witnesses—assessors properly directed—no interference by Court of Appeal.*

D One of the two main witnesses against the appellant at his trial in the Supreme Court on a charge of arson had been sentenced to six years' imprisonment for manslaughter and there was a long history of personal antagonism between him and the appellant. The second main witness was related to the first and was his partner in business. Both Counsel in their addresses, and the trial Judge in summing up, dealt with the need for close scrutiny of the evidence of these two witnesses arising from these factors. The assessors were unanimously of opinion that the appellant was guilty, and he was convicted.

E *Held*: Though there were some unsatisfactory features about the evidence for the prosecution, the findings of fact in the Supreme Court depended almost entirely upon the credibility of the witnesses, and, the assessors having been properly directed, the Court of Appeal was not entitled to come to a different conclusion.

Case referred to:

F *Benmax v. Austin Motor Co. Ltd.* [1955] A.C. 370; [1955] 1 All E.R. 326.

Appeal against conviction and sentence by the Supreme Court.

*M. S. Sahu Khan* for the appellant.

*J. R. Reddy* for the respondent.

The facts sufficiently appear from the judgment of the Court.

G Judgment of the Court: (read by MARSACK J.A.) [27th July, 1970]

This is an appeal against conviction of the offence of arson entered at the Supreme Court sitting at Lautoka on the 25th March, 1970, and also against sentence of 3 year' imprisonment imposed upon that conviction. The trial took place before a Judge and three assessors. The assessors were unanimously of opinion the appellant was guilty of arson as charged. The learned trial Judge agreed with this opinion and entered a conviction accordingly.

H Lengthy grounds of appeal were set out in the notice of appeal, but at the hearing Counsel for appellant indicated that he proposed to argue two grounds only. These were expressed in the following terms:—

- “ 5. That the verdict and findings of the learned trial Judge and the assessors are unreasonable and cannot be supported having regard to the evidence. **A**
6. That the evidence of the prosecution witnesses were so unreliable that they should have been disregarded.”

These were argued together.

The evidence for the prosecution consisted largely of that given by two witnesses, Ram Lal and Ram Sundar; and it is the evidence of these two witnesses which Counsel contends was so unreliable that no conviction should have been founded on it. **B** It was established that there was a long history of personal antagonism between Ram Lal and appellant; and Ram Lal's character was attacked at the trial in that he had been convicted of manslaughter and sentenced to 6 years' imprisonment for that offence. Ram Sundar is related to Ram Lal and is also his partner in business.

Counsel contended very strongly that the background of these two witnesses was such that their evidence would be strongly biased against appellant; and he pointed out a number of inconsistencies, and of what he submitted were inconsistencies, in their evidence. **C** For these reasons he submitted that the learned trial Judge erred in accepting their evidence and basing a conviction upon it.

It is clear that the appeal turns solely upon the credibility of these two witnesses. In view of their personal history it was essential that their evidence should be submitted to the closest scrutiny and should not be accepted unless, after all those factors had been taken into consideration, the learned trial Judge and the assessors found that it was worthy of belief. **D**

At the trial Counsel for the accused emphasised the necessity for the assessors to take fully into consideration the past history of the two witnesses and their relations with the accused. Counsel for the prosecution very fairly stated to the assessors that the evidence in this case called for the closest scrutiny and critical examination. In the course of his summing up the learned trial Judge said:— **E**

“ It is absolutely essential that you should keep in mind at all times the following matters:—

- (1) the history of ill-will between the complainant and the accused,
- (2) the complainant's own character and background,
- (3) the relationship of Ram Sundar and the complainant who are not only related but who were operating a vegetable business in partnership, ” **F**

and further:—

“ For these reasons it is your duty to subject the evidence of these two prosecution witnesses namely, Ram Lal and Ram Sundar, to the closest scrutiny. You must critically examine the prosecution's evidence bearing in mind the fallibility of human observations and the propensity of persons who have enmity or ill-will to exaggerate and even to fabricate.” **G**

No exception was taken to the summing up by the learned trial Judge, and we are satisfied that his directions were as fair to appellant as they could have been. He also directed himself to the same effect.

It cannot then be said that either the learned trial Judge or the assessors were left in any doubt as to the tests they should apply to the evidence of Ram Lal and Ram Sundar. After the most careful direction they found that the evidence of these two witnesses was to be believed, and the Court held accordingly. **H**

A Although it appears to this Court that there are some unsatisfactory features about the evidence for the prosecution—and these were strongly emphasised by Counsel for appellant at the hearing of the appeal—that fact in itself would not in our opinion be sufficient to justify us in coming to a different conclusion on the facts from that in the Court below. As was said by Viscount Simonds in *Benmax v. Austin Motor Co. Ltd.* [1955] 1 All E.R. 326 at p. 327 after referring to the power of the Court of Appeal to draw inferences of fact:—

B “ This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness.”

In the same case at page 328 Lord Reid says:—

C “ No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness.”

D Here the finding of fact made by the learned trial Judge was supported by the unanimous opinion of the assessors who, as has been pointed out, were very carefully and fairly directed by the trial Judge as to the necessity for the most careful scrutiny of the evidence.

E In all the circumstances we feel that we are not entitled to differ from the findings of fact made in the Court below, particularly as those findings depended almost entirely on the view taken there of the credibility of the witnesses. Once the evidence of Ram Lal and Ram Sundar is accepted, as it was in the Court below, and the defence evidence of alibi rejected as it was, no other conclusion can be drawn than that the guilt of appellant has been established beyond reasonable doubt.

For these reasons the appeal against conviction will be dismissed.

F With regard to the appeal against sentence it is to be noted that, although the sentence of 3 years' imprisonment might be regarded as a heavy one, the maximum penalty fixed by the Ordinance is 14 years' imprisonment; and, taking all the facts into consideration, we are unable to say that the sentence is manifestly excessive or imposed upon a wrong principle. That being so, the appeal against sentence will also be dismissed.

*Appeals dismissed.*