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SIMON MOREA & OTHERS

v.

REGINAM

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[COURT OF APPEAL, 1971 (Gould V.P., Marsack J.A., Tompkins J.A.)
26th August, 7th September]

Criminal Jurisdiction

Criminal law—information—joint trial—joinder of charges—different persons charged in separate counts—Criminal Procedure Code 1961 (British Solomon Islands Protectorate) s.119(d)—Indictments Act 1915 (5 & 6 Geo. 5, c.90) (Imperial) Schedule 1, r.3:

C

Criminal law—evidence and proof—previous similar transaction—admissible as tending to negative innocence or inadvertance.

Criminal law—practice and procedure—joinder of charges—different persons charged in separate counts—joint trial—Criminal Procedure Code 1961 (British Solomon Islands Protectorate) s. 119(d)—Indictments Act 1915 (5 & 6 Geo. 5, c.90) (Imperial) Schedule 1, r.3.

D

Interpretation—statute—construction—joinder of charges—persons accused of different offences—meaning—Criminal Procedure Code 1961 (British Solomon Islands Protectorates) s.119(d)—Indictments Act 1915 (5 & 6 Geo. 5, c. 90) (Imperial) Schedule 1, r.3:

The six appellants were tried jointly upon an information containing six counts, three of which arose from a transaction which took place on the 26th September, 1970, and three from a transaction on the 5th December, 1970. The charges alleged false pretence and fradulent false accounting in relation to the signing of copra slips in respect of fictitious consignments of copra. In the case of one of the appellants there was only a single charge of false pretences which arose out of the earlier transaction, and in the case of another only a single charge arising out of the later transactions. By virtue of section 119(d) of the Criminal Procedure Code there may be a joint trial of person accused of different offences provided *(inter alia)* that they form or are part of a series of offences of the same or a similar character.

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Held: 1. Section 119(d) of the Criminal Procedure Code is not to be construed as requiring that every person charged must be charged with all of the different offences.

2. The offences charged were of the same or a similar character and the joinder was proper in the exercise of the discretion of the learned judge.

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R. v. Kray [1970] 1 Q.B. 125; (1969) 53 Cr. App. R. 569, applied.

The only evidence against the appellant Laore on counts 4 and 6 (arising out of the later of the two transactions) was that he, as an employee of the British Solomon Islands Ports Authority, signed a copra slip in respect of a non-existent consignment of copra.

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Held: That even though the judge was entitled to refer to the earlier transaction in determining whether Laore had acted inadvertently or innocently in signing the copra slip in question the sum total of the evidence on these counts did not amount to proof beyond reasonable doubt.

Other cases referred to :

A *Makin v. Attorney-General for New South Wales* [1894] A.C. 57; 69 L.T. 778.

Harris v. Director of Public Prosecutions [1952] A.C. 694; [1952] 1 All E.R. 1044.

B Appeals against convictions and sentences by the High Court of the Western Pacific at Honiara.

K. C. Ramrakha for the appellants.

T. U. Tuivaga for the respondent.

C The facts sufficiently appear from the judgment of the Court.

7th September 1971

Judgment of the Court (read by Marsack J.A.) :

These are appeals by six persons against convictions entered against them in the High Court of the Western Pacific, sitting at Honiara, on the D 21st April, 1971 and against the sentences imposed upon such convictions. It will perhaps be convenient, in the interests of clarity, to refer to the appellants by name rather than by the order in which those names appear in the Record.

All six appellants were jointly tried. Six counts in all were involved and these may be briefly summarised as under :

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First Count :	False Pretences (26th September, 1970)
Second Count :	(Alternative to First Count) : Conspiracy to Obtain Money by False Pretences (26th September, 1970)
Third Count :	Fraudulent Falsification of Accounts (26th September, 1970)
Fourth Count :	False Pretences (5th December, 1970)
Fifth Count :	(Alternative to Fourth Count) : Conspiracy to Obtain a Cheque by False Pretences (5th December, 1970)
Sixth Count :	Fraudulent Falsification of Accounts (5th December, 1970).

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No further reference is necessary to Counts Two and Five as these were alternative to Counts One and Four respectively, and the charges under those alternative Counts were dismissed.

H The basis of the charges of false pretences and fraudulent falsification of accounts is that the persons involved obtained payment from the Copra Board for fictitious consignments of copra, that is to say, for copra which did not exist. The procedure followed in the copra shed on the arrival of a ship with a cargo of copra is fully explained in the judgment of the learned trial Judge at pages 47 — 49 of the Record and it is not necessary

to set it out in detail in this judgment. Briefly the position is this. The bags of copra would be unloaded from the ship and taken by Ports Authority workmen into the copra shed. There the copra would be graded by the employees of the Agricultural Department. It would then be weighed by a clerk of the Ports Authority who would make out the copra slip showing the name of the owner, the weight, the grade and the value of the copra. The copra slip would then be signed by the clerks concerned and passed to the Copra Board for payment. It will thus be seen that several persons would be involved in each transaction. The case for the prosecution is that on the 26th September and on the 5th December slips were presented to the Copra Board, and paid by the Board, in respect of consignments of copra which in fact did not exist. If this fraud is proved it is clear that several persons must have been a party to it; from the employees in the copra shed to the purported owner that presented the slip and received payment. The moneys received by the last-named would be distributed among the parties to the fraud.

With regard to the offences alleged to have been committed on September 26, the defence set up that the copra covered by the relevant slips consisted of what were known as sweepings, that is the copra left on the floor when incoming consignments were tipped out for examination and grading, and a small quantity was left over when the copra was re-bagged. Even if this were so, it would make no difference on the question of criminal liability, as the sweepings were the property of the Copra Board.

The appellants were charged with the counts set out opposite their names below; alternative counts being omitted:

Simon Morea	— First Count
Francis Samora	— First Count
Christopher Laore	— First, Third, Fourth and Sixth Counts
Augustine Ramo	— First, Third, Fourth and Sixth Counts
Joseph Akuna	— Fourth Count
Dudley Lalunga	— Fourth and Sixth Counts.

Each appellant was convicted on each count charged against him and, with the exception of Chrstopher Laore, sentenced to twelve months' imprisonment on each charge. The sentence imposed on Christopher Laore was two years' imprisonment on each charge. In every case the sentences were made concurrent.

The appeals were heard together. The grounds of appeal filed by the appellants were, in each case, prepared by themselves personally without legal assistance. They are diffuse and at times hard to follow. They amount to little more than the normal general ground that the verdict is unreasonable and cannot be supported having regard to the evidence. At the hearing of the appeals, counsel for the appellants was given leave to adduce the following additional ground:

> "The appellants ought not in law to have been tried in one trial in respect of incidents which while similar in nature involved different persons and thereby there was a miscarriage of justice."

Counsel for appellants conceded at the outset that the issues had been carefully weighed by the learned trial Judge and that the appeals could not succeed on the facts; except that, in Counsel's submission, there was insufficient evidence to convict Christopher Laore on the second

charge (Counts Four and Six). The only evidence against him on this charge is that on the 5th December, 1970 he as an employee of the B.S.I.P. Ports Authority acting as agent for the Copra Board, signed a copra slip in respect of a non-existent consignment of copra. There is no evidence that he received any share of the proceeds paid out in respect of this slip. His explanation — which was categorically rejected by the learned trial Judge — was that he was away from the copra shed about an hour, and found a pile of slips awaiting signature on his return. He said he assumed that the checking of the copra had been done by some other person employed by the Authority, and "he signed the slips blind". The learned trial Judge, in his judgment says :

> "The pattern follows so exactly the previous transaction of only two months before that I have no doubt whatever, whether he received any profit from it himself or not, that he knew perfectly well that Joseph Akuna had not brought in 36 bags of copra or any other amount."

In drawing the inference from the facts of the previous case that Laore had not acted innocently on the second occasion, the trial Judge can be presumed to have applied the principle laid down in *Makin v. A.G.* for New South Wales (1894) A.C. 57, cited with approval in *Harris v. Director of Public Prosecutions* (H.L.) [1952] 1 All E.R. 1044 at pages 1046/7 :

> "The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

Although the learned trial Judge was thus fully entitled to refer to what happened in September in determining whether or not Laore had acted inadvertently and innocently in signing the copra slip in question, we do not think that, even allowing that the inference was drawn, there was sufficient evidence to support the Judge's finding as to the guilt of the appellant on this charge. There could be no doubt that the proved facts surrounding the signature of the copra slip in question raised suspicion against Laore. Standing by themselves they would not be sufficient to support a conviction. That suspicion would be intensified if consideration were given to what had taken place on or about the 26th September previously, and this would certainly throw grave doubts as to his honesty on this occasion. But in our view the sum total of the evidence against him on this count does not amount to proof beyond reasonable doubt. Accordingly, we allow the appeal on this count and quash the conviction of Christopher Laore on the Fourth and Sixth Counts.

With regard to the remainder of the appeals, Counsel for the appellants relied on two grounds which may be shortly stated as follows :

1. that the interpretation of the proceedings into and from the language understood by the appellants respectively was unsatisfactory, and that the appellants did not have at all times, the full understanding of what was said and done at the trial. This, in Counsel's contention, amounted to a miscarrige of justice;

2. the additional ground as to joinder of counts already quoted (supra).

In his argument on the first of these grounds, Counsel concedes that objection to the interpretation was made by only one appellant, Christopher Laore, at the hearing; but he submits that the unsatisfactory nature of the interpretation goes to the root of the whole trial. The Record shows that at the hearing on the morning of the 14th April, Christopher Laore said: A

"I ask that a fresh interpreter be found, I cannot understand this one."

The trial Judge replied: B

"Neither can I."

After some efforts had been made to obtain another interpreter, without success, the Court ruled that "Court will continue with the present interterpreter while efforts are made to find a better."

When some further evidence had been given, Christopher Laore again objecetd to the interpretation in these words: C

"I can understand the English but my friends are not understanding the pidgin interpretation. They want to adjourn until a better interpreter be found."

The learned trial Judge acceded to this request and adjourned the hearing until a better interpreter was found. The trial then continued without further objection until the afternoon of that day, when Joseph Akuna stated: D

"I do not understand pidgin well enough. I ask an interpreter in Langa Langa language."

The Court again adjourned until an interpreter in Langa Langa was found. Thereafter the trial proceeded for two full days and a portion of a day without any further objection being raised. E

It is evident that in the conditions obtaining in the Solomon Islands, and, in particular, the diversity of the dialects spoken by the Islanders, difficulties may well arise in criminal trials in ensuring that the accused persons have a full understanding of what is being said and done. In the present case, we are satisfied that the learned trial Judge did everything within his power to overcome these difficulties; and that with the exception of a short period, the record of which covers only about $1\frac{1}{2}$ pages of a total of some 60 pages covering the whole proceedings, interpreters, satisfactory to all the accused persons, were operating in the Court. There is nothing on the record to suggest that any of the accused persons had an insufficient understanding of the proceedings; and in fact, the statements made and the evidence given by all six accused after the case for the prosecution was closed, clearly indicate that they understood the charges and the evidence against them. In our opinion it cannot be said that any of the appellants were at all prejudiced in that respect, and consequently no miscarriage of justice occurred. Accordingly, this ground of appeal fails. F G

There remains for consideration the additional ground that a miscarriage of justice had been caused by the joinder in one trial of all the charges against all the appellants. H

The statutory provision applicable is section 119(d) of the Criminal Procedure Code in force in the Solomon Islands. This section reads:

"119. The following persons may be joined in one charge or information and may be tried together, namely :—

(d) Persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character."

The evidence clearly shows that the offences charged were of the same or a similar character in that they related to the signing of copra slips in respect of fictitious consignments of copra and, by that false pretence, receiving from the Copra Board sums of money for copra which either did not exist or consisted of sweepings the property of the Board. Counsel for appellants, however, contends that more is required to bring the offences charged within the scope of section 119(d). In Counsel's submission the word "persons" in that subsection means "the same persons." If this interpretation is not adopted then, in Counsel's submission, the evidence given on all the counts will be used against those persons who are accused of some only of the offences charged. In particular, he contends that this procedure operated greatly to the prejudice of Francis Samora, charged only with false pretences on the 26th September and Joseph Akuna, charged only with false pretences on the 5th December. Counsel further submits that although all the accused persons were not similarly prejudiced, the interests of justice demand that new trials should be ordered in all cases.

With regard to the correct interpretation of section 119(d), we cannot accept Counsel's submission that "persons" must mean "all persons". If the section had been so intended, there would have been no difficulty in so wording it as to make this clear. Rule 3 of Schedule 1 to the Indictment Act, 1915 (Imperial), which is expressed in precisely the same words as section 119(d), has been considered and interpreted by Courts of the highest authority. In *Kray & Others* (1969) 53 Cr. App. R. 569, Widgery L.J., in the course of his judgment at page 575 says :

"It is not desirable, in the view of this Court, that rule 3 should be given an unduly restricted meaning, since any risk of injustice can be avoided by the exercise of the judge's discretion to sever the indictment. All that is necessary to satisfy the rule is that the offences should exhibit such similar features as to establish a prima facie case that they can properly and conveniently be tried together."

In that case, two separate charges of Murder were joined in the one indictment. There were nine accused persons, of whom two only were charged on both counts, six under the second count and one under the first only. It was held that the joinder was proper. At page 576 the judgment proceeds :

"We are accordingly satisfied, not only that this joinder came within the terms of rule 3, but also that there is no reason to suppose that the trial judge erred in the exercise of his discretion in refusing to sever the trial of these charges."

In the present case, no application was made for severance. This may well have been due to the fact that the accused persons were not represented by counsel and did not understand the technicalities involved. In the absence of any such application by the accused persons, the matter of joinder or severance is still one for the discretion of the trial Judge.

Although he did not give any express ruling at the trial — and there was no reason why he should give an express ruling — it must be assumed that the learned Judge, in his discretion, did not consider that the circumstances called for a severance of the counts in the indictment. In our view, Kray's case is ample authority for a ruling that the joinder of counts against the six appellants came strictly within the meaning of section 119(d) and we so hold. A

In the result, the appeals against conviction must fail with the exception of the one conviction of Christopher Laore which we quash for reasons set out earlier in this judgment. B

With regard to the appeals against sentence, it has not been shown to our satisfaction that the sentences were excessive. In our opinion no lighter sentences could properly have been imposed in a case like this, of a deliberate fraud committed by persons in a position of trust. Except in the case of Christopher Laore, therefore, the appeals against sentence fail. As Christopher Laore is now convicted on only two counts, and not four as he was before the learned trial Judge, we think that the sentences imposed on him should be reduced accordingly. We take into account the opinion of the trial Judge, set out in his notes on sentences, that Laore was the leading spirit in the matter. The sentences of two years' imprisonment on 1st and 3rd counts are quashed and sentences of eighteen months' imprisonment imposed by this Court on each of those counts in lieu thereof, to be served concurrently. C D

Appeals by appellant Laore against conviction on counts 4 and 6 allowed; his appeal against sentence allowed in part. All other appeals dismissed.