

Appellate Jurisdiction

Criminal Appeal No. 37 of 1982

000362

Between:

RAMAN LAL BROTHERS LIMITED

and

REGINAM

Mr. H.M. Patel for Appellant

Mr. A. Gates for Respondent

JUDGMENT

The appellant company was convicted in the Suva Magistrates Court on two counts, the second and third counts, out of four counts in the charge and which were as follows:

"

SECOND COUNT  
STATEMENT OF OFFENCE

Failing to pay a worker to whom Wages Regulation (Wholesale and Retail Trades) Order, 1976 applied not less than the statutory minimum remuneration specified in the said Order: Contrary to subsection 2 of section 9 of the Wages Councils Act, Cap. 81

PARTICULARS OF OFFENCE

Raman Lal Brothers Limited, a limited liability company of Suva, between 27.10.78 and 2.11.78 in the Central Division being an employer of Amla Wati d/o Ramkesh employed in the capacity of a sewing machinist to whom Wages Regulation (Wholesale and Retail Trades) Order, 1976 (Legal Notice No. 55/76) applied, failed to pay not less than the statutory minimum remuneration of 71 cents per hour payable to a sewing machinist over the age of 18 years as set out in the schedule to the said Order thereby underpaying the said Amla Wati d/o Ramkesh the sum of \$1382 gross.

THIRD COUNT  
STATEMENT OF OFFENCE

Failing to pay a worker to whom Wages Regulation (Wholesale and Retail Trades) Order, 1976 applied not less than the statutory minimum remuneration specified in the said Order: Contrary to subsection 2 of section 9 of the Wages Councils Act, Cap. 81

PARTICULARS OF OFFENCE

Raman Lal Brothers Limited, a limited liability company of Suva, between 27.10.78 and 2.11.78 in the Central Division being an employer of Parvati d/o Ramsewak Singh employed in the capacity of a sewing machinist to whom Wages Regulation (Wholesale and Retail Trades) Order, 1976 (Legal Notice No. 55/76) applied, failed to pay not less than the statutory minimum remuneration of 71 cents per hour payable to a sewing machinist over the age of 18 years as set out in the schedule to the said Order thereby underpaying the said Parvati d/o Ramsewak Singh the sum of \$19.74 gross."

Upon conviction as aforesaid the appellant company was fined \$200 and ordered to pay a total sum of \$2,850 in back wages.

The nature and scope of the case and the findings of the learned trial Magistrate can be gathered from the following passage from his judgment:

" The Company's Articles of Association (exhibit 2) dated 2.2.77 show that it then had 4 persons named as directors; these are: SHANTILAL, GULAB DAS, DHIRAJ LAL and CHANDRA KANT. They are all brothers, and the last named of these gave evidence in defence of the defendant company. The company is one to which the Schedule of the Wages Council etc. Order 1977 L/N 148 p.427 applies. The employees fall within the Schedule to which the Wages Regulation etc. Order 1976 L/N 55 of 1976 p.95 applies. This provides that their minimum hourly remuneration is 71 cents.

The only point seriously in issue in the case is the identity of the employer company. The defence say that PW7, PW5 and PW6 were not employees of the defendant company at the material time, but were employees of a concern called SHANTILAL BUKHAN; in effect, they say, the wrong company has been prosecuted. There has been a lot of evidence but the relevant and important part may be summarised shortly.

PW5 (AMLA WATI) said that during 1977-78 she worked in a shop called Raman Lal Brothers. She said she had 4 bosses - and she named each of the 4 directors referred to in the Company's Article. She said that no other company name was used, although she did not sign the one Raman Lal Brothers Wages Payments Record Book that was put in evidence (exhibit 5). She was adamant that at no stage did she think she was working for a concern called Shantilal Bukhan, although of course she had dealings with a person called Shantilal.

PW6 (PARVATI) said much the same thing as PW5, though she did say that "about a year ago" she started working for Shantilal at which time Raman Lal Brothers was still operating. Nevertheless, in 1978 (the period in the charge) she did work for Raman Lals moreover in the same premises. She said that her employer now is on the first floor, with Raman Lals on the ground floor. She said Shantilal Bukhan was formed on 1.1.82. Again, she was sure that at the time material to this case she worked for the defendant company." 000364

Five grounds of appeal were relied on and which are as follows:

- (1) The learned Magistrate erred in law and fact in convicting the appellant on second and third counts when there was clear evidence that Ramanlal Brothers and Shantilal Bukhan were two separate businesses operating in Suva.
- (2) The learned Magistrate erred in law in not applying the doctrine of separate legal personality of the Company in arriving at his decision.
- (3) The learned Magistrate misdirected himself in law and in fact when he said that Amla Wati (P.W.5) and Parvati (P.W.6) named in the second and third counts were employees of Ramanlal Brothers Limited when there was overwhelming evidence to show that they were employees of Shantilal Bukhan which was doing solely a tailoring and drapery business at times in separate premises altogether and thereby caused miscarriage of justice.
- (4) That the learned Magistrate erred in law in admitting the extracts of wage records of Shantilal Bukhan (Exhibit 6) copied by P.W.4 Krishna Varma against the appellant and thereby caused miscarriage of justice.

- (5) The learned Magistrate erred in law in not giving proper weight and consideration to the Wage Register (Exhibit 5) and Fiji National Provident Fund payments (Exhibit 7) belonging to Ramanlal Brothers Limited even though there was clear evidence adduced by the Defence that Amla Wati and Parvati were both employees of Shantilal Bukhan.

Grounds (1), (2), (3) and (5) which overlap are directed to one main theme, namely that there was insufficient proof that during the period in question Amla Wati (P.W.5) and Parvati (P.W.6) were in fact employees of the appellant company. According to counsel for appellant company, the evidence presented in this case pointed clearly to the fact that P.W.5 and P.W.6 were employees of the tailoring business owned by Shantilal Bukhan who according to the wages record paid these employees their wages. The wages records pertaining to these two employees were checked by Labour Inspector, Krishna Varma (P.W.4). Commenting on P.W.4's evidence the learned Magistrate said this:

"P.W.4 was Labour Inspector at the material time. On 6.11.78 he inspected Raman Lal Business premises and one of the persons named as directors, Mr. Gulab Das, introduced himself as a partner. P.W.4 was shown 2 sets of records: one related to employees of Raman Lals, the other to those of Shantilal Bukhan. He confirmed that these two business were operating from the same premises, but the only name outside the shop was that of Raman Lal. He compiled extracts from hours worked, wages paid and under payments in respect of the employees and these figures were never disputed or questioned in any way. I do not therefore propose to re-iterate them here: they have been typed and are annexed to the summonses, and I have no reason to doubt their contents. The employees concerned, however, appeared to P.W.4, to be employees to Shantilal Bukhan and the receipts for the records (Exhibit 3) was apparently signed on behalf of Shantilal Bukhan."

The learned Magistrate also in his judgment gave this synopsis of the evidence of Chandra Kant given on behalf of the appellant company:

"Chandra Kant gave evidence on behalf of the Defendant Company, of which he admitted, he was a director. He explained how one of his co-ordinators (Shantilal) of that Company had been trading on his own since 1961 as Shantilal Bukhan. He also said that his Company (Raman Lals) helped Shantilal. He said that P.W.5 and P.W.6 were not working for Raman Lal."

Exhibit 7 (business licences issued to Shantilal Bukhan by the Suva City Council) seem strongly to support Chandra Kant's evidence that Shantilal Bukhan was running his own tailoring business at the material time though no similar licence was produced to show that the appellant company was also doing tailoring business at the time. The equivocal nature of the evidence in this case is such that it is difficult not to regard the evidence purporting to implicate the appellant company in the alleged offences as somewhat thin. It may well be that what in fact happened was a ruse to defeat the relevant labour regulations. However I do not think an inference to that effect could reasonably be drawn on the state of evidence as it stands. No doubt there is a grave suspicion against appellant company but this is not enough because proof required in a criminal case is one of proof beyond reasonable doubt. I do not think it can properly be said that the prosecution has discharged that proof in this case. Having reached this conclusion it is not necessary for me to deal with ground (4) of the appeal.

The appeal is allowed. The conviction and sentence and other orders entered in this case must be quashed.

Chief Justice

Suva,  
3rd September, 1982.