

Patesari Maharaj Vs. the King

Patesari Maharaj Vs. the King

SooperKanoon Citation : sooperkanoon.com/945336

Court : Privy Council

Decided On : Dec-04-1947

Reported in : AIR1948PC81

Judge : Lord Uthwatt, Lord Oaksey & Sir John Beaumont

Appeal No. : Privy Council Appeal No. 94 of 1946 (From Supreme Court of Fiji)

Appellant : Patesari Maharaj

Respondent : The King

Advocate for Pet/Ap. : Dingle Foot and Hon. Gavin Simmonds, for Appellant; Frank Gahan, for the King. Solicitors for Appellant, Barrow Rogers and Nevill; Solicitors for The King, Burchells.

Judgement :

SIR JOHN BEAUMONT:

This is an appeal, by special leave, against the judgment and sentence of the Supreme Court of Fiji D/ - 18 - 3 - 1946 whereby the appellant was found guilty of possession of a revolver without a licence contrary to S. 4 of the Arms Ordinance, 1937, and sentenced to nine months' imprisonment with hard labour. The accused was acquitted on a charge of being in possession of explosives contrary to the Defence (Explosives) Order, 1944.

2. At the conclusion of the arguments, their Lordships announced that they would humbly advise His Majesty that the appeal should be allowed, and the conviction and sentence quashed, and they now state their reasons.

3. The charge under the Arms Ordinance, 1937, related to the finding of a revolver in the bure annexed to the appellant's house by the police. The appellant, in his statement, admitted the finding of the revolver in the bure, but said that he did not know who placed it there, and that he knew nothing about the revolver; he suggested that some enemy of his might have planted it upon him. As no attempt was made to prove how the revolver came into the possession of the accused or to show that he was ever seen in possession of it, this denial deserved, their Lordships think, rather more consideration than it received from the learned Judge in his charge to the Assessors. He seems to have relied entirely on S. 37 of the Ordinance, which provides, that the occupier of any house, or premises in which any arms shall be found, shall be deemed, until the contrary is proved, to be the possessor of such arms for the purpose of the Ordinance, without considering whether there was evidence that the burden under that section had been discharged.

4. The trial took place before a Judge of the Supreme Court and two Assessors.

5. The material provisions of the Criminal Procedure Code in force in Fiji are the following:

156.-(1) The judgment in every trial in any Criminal Court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read out by the presiding Judge or Magistrate if he is requested so to do either by the prosecution or the defence.

157.-(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.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced.

248.-Every trial before the Supreme Court in which the accused or one of them or the person against whom the crime or offence has been committed or one of them is a native or of native descent, or of Asiatic origin or descent, shall be with the aid of assessors in lieu of a jury, unless the presiding Judge for special reasons to be recorded in the minutes of the Court thinks fit otherwise to order, and upon every such trial the decision of the presiding Judge with the aid of such assessors on all matters arising thereupon which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon.

308.-(1) When, in a case tried with assessors, the case on both sides is closed, the Judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused person is convicted, the Judge shall pass sentence on him according to law.

6. It is plain that, under these provisions, the Judge is required to give judgment, and it is for him to convict or acquit and, in so doing, he is not bound by the opinion of the Assessors At the present trial the learned Judge summed up the case to the Assessors, and there is on the record a short note of his summing up. He appears to have treated the Assessors as a jury and to have left to them the decision on all questions of fact. At the conclusion of the trial, the Assessors both

found the accused guilty of the offence under S. 4 of the Arms Ordinance, and thereupon the learned Judge passed sentence without delivering any judgment or even stating whether or not he agreed with the view of the Assessors. The provisions of the Code above referred to were completely ignored, and, in the result, the appellant was convicted by Assessors who had no power to convict him, and sentenced by a Judge who had not convicted him. In the circumstances their Lordships could only advise His Majesty that the conviction and sentence be quashed. .

Sentence quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com