



In the Privy Council.

**ON APPEAL FROM THE SUPREME COURT
OF FIJI (CRIMINAL JURISDICTION)**

BETWEEN

EMMANUEL JOSEPH APPELLANT

AND

THE KING RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal against the purported conviction of the Appellant by the Supreme Court of Fiji (Criminal Jurisdiction) on the 10th September, 1945, for the manslaughter on the 4th February, 1945, of a small child named Ravindra, and against the sentence of five years' penal servitude thereupon passed upon the Appellant. p. 158, ll. 10-16; p. 159, ll. 14-26

2.—The Appellant, aged 23 or 24, jointly with two younger men, was charged with and tried for the murder of Ravindra in the circuit court at Lautoka before the Chief Justice and five assessors. p. 1; p. 4 ll. 27-33

3.—Ravindra was killed about midnight on the 4th February, 1945, by a bullet which came through the floor of a store in which he was sleeping. The bullet was one of five fired from a semi-automatic carbine from a point 100 to 150 yards from the store. The store was on a hill and was raised on stilts 3 feet from the ground. The carbine was fired from lower down the hill. 10

4.—There was evidence that the Appellant, acting in concert with the two younger men, fired the carbine for the purpose of frightening Ravindra's father, the proprietor of the store. p. 129, ll. 19-38

5.—After a trial regular in all respects and on sufficient evidence each of the assessors expressed the opinion that the three persons charged were all guilty of manslaughter. p. 158, ll. 10-16
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6.—The Criminal Procedure Code of Fiji contains the following provisions :

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 :

* * * *

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. 10

(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.

* * * *

(4) Notwithstanding anything hereinbefore contained, in trials by jury the court need not write a judgment but shall record the heads of the charge to the jury. 20

* * * *

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.

* * * *

309. If the jury find the accused person guilty, or if the judge convicts him, or if the accused person pleads guilty, it shall be the duty of the registrar or other officer of the court to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings. 30

p. 158, l. 16
p. 159,
ll. 14-26

6.—The learned Chief Justice treated the opinions of the assessors as a verdict of guilty and (after police evidence of character) proceeded to pass sentence, instead of delivering judgment in the manner laid down in the Criminal Procedure Code.

7.—The Respondent submits that in his summing up to the assessors the learned Chief Justice made it quite clear that in his view the evidence did not establish the intent necessary to prove the charge of murder. The summing up and the remarks of the Chief Justice in passing sentence also, in the Respondent's submission, showed beyond doubt that the Chief Justice was satisfied that the accused were guilty of manslaughter.

p. 148, l. 10
to p. 158,
l. 7
p. 159,
ll. 14-26

8.—The Respondent submits that, although the learned Chief Justice did not deliver judgment in strict accordance with the Code, he clearly stated his own opinion that the accused were guilty of manslaughter, and
10 that accordingly no injustice has been caused by the irregularity.

9.—The Respondent therefore submits that the Appellant's appeal should be dismissed for the following amongst other

REASONS.

1. Because the evidence established that the Appellant was guilty of manslaughter.
2. Because the learned trial Judge found that the Appellant was guilty of manslaughter.
3. Because the irregularities in the trial after the assessors had stated their opinions caused no miscarriage of justice.

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No. 93 of 1946.

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