

In the Privy Council.

No. 5 of 1950.

ON APPEAL FROM THE SUPREME COURT  
OF SARAWAK

BETWEEN

KONG SIEW YAP ... .. APPELLANT

AND

THE KING ... .. RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

- 10 1.—This is an Appeal from a Judgment of the Supreme Court of Sarawak dated the 12th July, 1949, which dismissed the Appellant's appeal from his conviction on the 13th June, 1949, at his trial before the Second Circuit Court sitting with two assessors, of the murder on the 19th May, 1949, of the newly-born child of Liew Sam Kiew (hereinafter called "the mother") who on the 18th May, 1949, had been delivered of the child in the house of Sungei Gerinyu of the child's grandmother (also convicted of the murder) whither the mother had been sent by King Yee Fang (hereinafter called "the husband") who on the 12th November, 1948, had married the mother in ignorance of her pregnancy. The Crown alleged that the Appellant was the child's father.
  - p. 17, l. 28
  - p. 13, l. 6
  - p. 1
  - p. 3, ll. 4-7
  - p. 4, ll. 31-36
  - p. 3, l. 7
  
- 2.—Relevant provisions of the law of Sarawak are printed in an appendix to the Appellant's case.
  
- 3.—The midwife who attended the mother proved that the child had been born alive and was a full-time child. The case for the Crown was that between 8 and 11 p.m. on the day following the child's birth the Appellant had visited the grandmother's house and with the grandmother had strangled the child whose body was then thrown into the river and never recovered.
  - p. 3, l. 28
  - p. 3, ll. 12-18 ;
  - p. 4, ll. 11-20
  - p. 6, ll. 21-22
  
- 30 4.—On the 20th May, 1949, the grandmother reported to the police that the mother had been assaulted by the husband and his family with the result that the mother had had an abortion ; and a medical examination on the next day showed that the mother's condition was consistent with this report.
  - p. 6, ll. 3-15 ;
  - p. 22, l. 11.
  - p. 6, ll. 3-20

## RECORD

5.—The trial took place without a preliminary inquiry before the magistrate and the Appellant was not legally represented. Three witnesses stated that they saw the Appellant helping to strangle the child; the grandmother, jointly accused of the murder, whose evidence amounted to a confession: the mother, who alleged that she was too weak to resist or protest: and Liew Kim Shui, a son of the grandmother, whose account differed in important respects from that of the mother and grandmother.

p. 7, l. 27—p. 8, l. 17  
p. 3, ll. 4-20  
p. 4, ll. 3-28

6.—The Appellant denied that he was in the grandmother's house on the 19th May, 1949, and said that he was in Sibu, a considerable distance from Sungei Gerinyu. The evidence which the Appellant called to support his own evidence was not sufficient to establish the alibi alleged. Further evidence is contained in three affidavits printed in an appendix to the Appellant's case. Of these the affidavit of Kong Jee Chee is in conflict with the Appellant's evidence at the trial.

p. 8, ll. 10-35  
p. 9, ll. 3-11  
p. 8, ll. 30-32

7.—After a short but, in the Respondent's submission, adequate summing up, each of the assessors gave his opinion that the Appellant and the grandmother were both guilty of murder. The Court thereupon convicted them and sentenced them to death, for reasons set out in the grounds for Judgment which pointed out that (although there may have been a premature birth by reason of an assault on the mother by the husband and his family) there was conclusive evidence that a child was born alive and evidence of its murder by the Appellant and the grandmother. The grandmother's evidence was that of an accomplice but was corroborated whereas the Appellant had failed to prove an alibi.

p. 11  
p. 12, l. 37—  
p. 13, l. 4  
p. 13, ll. 7-23  
p. 13, l. 25—  
p. 14, l. 38  
p. 14, ll. 7-10  
p. 14, ll. 25-27

p. 14, ll. 31-33  
p. 14, ll. 28-30

8.—The Appellant and the grandmother appealed to the Supreme Court on grounds which went only to the weight of evidence. The Chief Justice dismissed the appeal on the grounds that (1) the absence of a preliminary trial did not occasion a failure of justice; (2) it was not shown that the Judgment was either wrong in law or against the weight of evidence; and (3) there was ample evidence to support the unanimous finding of the trial judge and assessors.

p. 15  
p. 17, ll. 27-41  
p. 17, ll. 3-14  
p. 17, ll. 15-19  
p. 17, ll. 20-22

9.—The principal matters of which the Appellant complained in his petition for special leave to appeal were in substance as follows:—

- (i) The absence of preliminary inquiry left the Appellant in ignorance of the case he had to meet, with specially unfortunate consequences as his defence was that he was not at the house at the material time, and all the available evidence to support his alibi was not obtained.
- (ii) The Appellant was not legally represented, and so the evidence for the Crown was not adequately tested by cross-examination, inadmissible evidence was received, and points in the Appellant's favour were not given proper weight.

- (iii) The grandmother gave evidence on her own behalf which if accepted proved the Appellant's guilt ; but the Appellant was not given any opportunity of cross-examining her.
  - (iv) A younger son of the grandmother, called by the Crown, gave evidence favourable to the Appellant, but was discredited by a statement which the witness had made to the police on the 24th May, 1949, this statement being not merely used to discredit the witness but being received in evidence apparently to prove the facts stated therein.
- 10
- (v) The summing up failed to give adequate weight to matters strongly in the Appellant's favour.
  - (vi) There was no proper direction about corroboration of an accomplice's evidence.
  - (vii) An opportunity should have been given to the Appellant to supplement the evidence in support of his alibi, and indeed the Court should have given the Appellant more assistance than it did in testing the credibility and weight of the evidence for the Crown.
  - (viii) The Appellant's conviction was against the weight of evidence.
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- 10.—The Respondent submits that there was no irregularity in the trial which occasioned any substantial miscarriage of justice, and that on the material before them both the Second Circuit Court and the Supreme Court came to the right conclusion, and that this appeal should be dismissed for the following amongst other

### REASONS

1. BECAUSE the Appellant had a fair trial properly conducted.
2. BECAUSE on the evidence the assessors, the Second Circuit Court and the Supreme Court were entitled to find the Appellant guilty.

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