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In the Privy Council.

No. 37 of 1949. W.C.1.

UNIVERSITY OF LONDON
9 - NOV 1956
INSTITUTE FOR ADVANCED
LEGAL STUDIES

ON APPEAL FROM THE HIGH COURT
OF THE COLONY OF SINGAPORE
(ISLAND OF SINGAPORE)

BETWEEN

(1) MOHINDAR SINGH
(2) MOHAN SINGH APPELLANTS

AND

THE KING RESPONDENT

CASE FOR THE RESPONDENT.

RECORD

1.—This is an appeal from a Judgment of the Supreme Court of the (Colony of Singapore (Murray-Aynsley, C.J.), dated the 1st June, 1941, which enhanced the sentences passed upon the Appellants by the District Judge of the First District Court on their conviction on the 11th April, 1949, of offences against the Prevention of Corruption Ordinance (No. 41 of 1937).

10 2.—The Appellants were fined by the First District Court, and a sum of \$2,000 given by the second Applicant as a bribe was confiscated. The Appellants paid the fines and did not appeal, but on behalf of the Crown the Deputy Public Prosecutor appealed to the Supreme Court on the ground that in the circumstances a sentence of fine only was manifestly inadequate as a deterrent of similar offences.

3.—The only question raised by the appeal is whether the Crown has any right to appeal against sentence only for the purpose of asking that sentence be enhanced.

RESPONDENTS CASE

RECORD

4.—Provision for criminal appeals has existed in Singapore at least since 1900. The Criminal Procedure Code (XXI of 1900) contained the following sections :—

Cases in which appeal lies.

288. (1)—No appeal shall lie from a judgment sentence or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

(2)—No appeal shall lie from a judgment sentence or order of a Police Court in any of the cases specified in the third Schedule.

(The third schedule specified a number of minor offences.) 10

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When plea of guilty limited right of appeal.

291. When an accused person has pleaded guilty and been convicted by a Bench Court or Police Court on such plea there shall be no appeal except as to the extent or legality of the sentence.

Appeal against acquittal.

292. When an accused person has been acquitted by a Bench Court or Police Court there shall be no appeal except by the Public Prosecutor. The petition of appeal shall be lodged within fourteen days from the date of the judgment.

Procedure for appeal.

293. Except in the cases referred to in section 288 and the two last preceding sections any person who is dissatisfied with any judgment sentence or order pronounced by any Bench Court or Police Court in a criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment sentence or order for any error in law or in fact by lodging within seven days from the time of such judgment sentence or order being passed or made with the Chief Clerk of the Police Court at the Court House of which the trial was held a petition of appeal addressed to the Supreme Court and by paying at the same time the sum of five dollars for the cost of making a copy of the record for the use of the Supreme Court and by giving security for the sum of seventy-five dollars for the costs of the appeal or such less sum as such Police Court may direct. 30

Petition of appeal contents.

294. Every petition of appeal shall be addressed to the Supreme Court and shall state shortly the substance of the judgment appealed against and the grounds of appeal and shall be signed by the appellant.

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Decision on appeal.

302. At the hearing of the appeal the Court may if it considers there is no sufficient ground for interfering dismiss the appeal or may— 40

(a) in an appeal from an order of acquittal reverse such order and direct that further inquiry be made or that the accused be re-tried or committed for trial as the case may be or find him guilty and pass sentence on him according to law ;

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(d) in an appeal from a conviction (1) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction or committed for trial or (2) alter the finding maintaining the sentence or with or without altering the finding reduce the sentence or (3) with or without the reduction and with or without altering the finding alter the nature of the sentence ;

(b) in an appeal from any other order alter or reverse such order.

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Power to call for records of inferior Courts.

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312. (1)—The Supreme Court may call for and examine the record of any proceeding before any inferior Criminal Court for the purpose of satisfying itself as to the correctness legality or propriety of any finding sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court.

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Powers of Court on revision.

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314. (1)—The Supreme Court may in any case the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge in its discretion exercise any of the powers conferred by sections 297 301 302 and 303 of this Code and may enhance the sentence.

(2)—No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence.

(3)—Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

In 1907 section 293 was amended by inserting references to the District Court and its Clerk.

5.—In 1910 the present Criminal Procedure Code was introduced. At the material time this Code as amended contained the following provisions :

Cases in which appeal lies.

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296.—(1) No appeal shall lie from a judgment sentence or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

(2) No appeal shall lie from a judgment, sentence or order of a Police Court in any of the cases specified in Schedule C.

(Schedule C refers to offences against municipal by-laws and offences punishable with fine only not exceeding \$25.)

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When plea of guilty limited right of appeal. 299. When an accused person has pleaded guilty and been convicted by a District Court or Police Court on such plea there shall be no appeal except as to the extent or legality of the sentence.

Appeal against acquittal. 300. When an accused person has been acquitted by a District Court or Police Court there shall be no appeal except 10 by the Public Prosecutor.

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Procedure for appeal. 302.—(1) Except in any case to which section 296 applies any person who is dissatisfied with any judgment sentence or order pronounced by any District Court or Police Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, sentence or order in respect of any error in law or in fact by lodging, within ten days from the time of such judgment, sentence or order being passed or made, with the Chief Clerk of the District Court or with the Chief Clerk of the Police Court at the Court House 20 at which the trial was held, a notice of appeal in triplicate addressed to the High Court and by paying at the same time an appeal fee of one dollar.

* * * *

Petition of Appeal. (4) Within ten days after the copy of the grounds of decision has been served as in the last preceding sub-section provided, the appellant shall lodge with the Chief Clerk of the District Court or with the Chief Clerk of the Police Court at the Court House at which the trial was held a petition of appeal in triplicate addressed to the High Court.

(5) Every petition of appeal shall state shortly the substance 30 of the judgment appealed against and shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred.

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(7) In the case of an appeal by the Public Prosecutor no fee shall be payable nor shall any security be required.

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Decision on appeal. 310. At the hearing of the appeal the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may—

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry shall be made or that the accused shall be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law ;
- (b) in an appeal from a conviction,
 - (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction or committed for trial ; or
 - (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence ; or
 - (iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence ;
- (c) in an appeal from any other order, alter or reverse such order.

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(The words " or enhance " and " or enhancement " were first inserted in 1933.)

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Grounds for reversal of judgment, etc., of District Court or Police Court.

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315. No judgment, sentence or order of a District Court or Police Court shall be reversed or set aside unless it is shown to the satisfaction of the High Court that such judgment, sentence or order was either wrong in law or against the weight of the evidence.

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Power to call for records of inferior Courts.

* * * *

320.—(1) The High Court may call for and examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court.

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Power of Court on revision.

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322.—(1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 305, 309, 310 and 311 of this Code.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence.

(3) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction.

(Section 305 provides for a stay of execution pending appeal ; section 309

authorises the arrest of an acquitted respondent to an appeal; and section 311 governs the taking of additional evidence.)

6.—Until 1938, section 300 had a second sub-section :

(2) The petition of appeal shall be lodged within fourteen days from the date of the judgment.

and section 302 (1) began with the words, " Except in any case to which " section 296 or 299 or 300 applies," and until 1933 allowed fourteen days for lodging a petition of appeal, no provision being made for notice of appeal.

7.—Unless section 302 (1) confers a general right of appeal, or unless the powers of revision are sufficient for the purpose, no provision is made in the Code for an appeal against sentence only either by the Crown or by a convicted person save in so far as section 299 authorises a convicted person who had pleaded guilty to appeal as to the extent or legality of the sentence. No objection to the competency of the appeal in the present case was taken in the Supreme Court, and the Supreme Court has constantly entertained appeals against sentence only without confining its jurisdiction to cases where the appellant had pleaded guilty. The figures since the war relating to criminal appeals under the Code are as follows : in 1946, of 113 appeals 77 were against sentence only, of which 14 were successful ; in 1947, of 163 appeals 54 were against sentence only, of which 14 were successful ; in 1948, of 162 appeals 60 were against sentence only, of which 18 were successful ; and in 1949 (the figures for which are incomplete) of 84 appeals 27 were against sentence only, of which 12 were successful. These appeals against sentence only included 4 by the Crown, all in 1949, of which 3 were successful.

8.—The Respondent submits that in the present form of the Code, section 302 provides a right of appeal in all cases except only the cases mentioned in section 296 where some law other than the Code gives the right of appeal, or where under sub-section (2) no right of appeal exists. There is no other section conferring a right of appeal, and the Respondent submits that even in cases falling within section 299, the appeal as to the extent or legality of the sentence on a person who has pleaded guilty is an appeal under section 302.

9.—The appeal under section 302 may be " in respect of any error in law or in fact." The Respondent submits that these words are not restrictive, but indicate that the fullest right of appeal is given, and not merely a right confined to questions of law. In passing sentence a Court exercises a judicial discretion which involves a consideration of all the facts of the case and a determination of the proper sentence, within the limits allowed by law, which should be passed on the convicted person. The Respondent submits that an appeal against a sentence either on account of its severity or its leniency is an appeal in respect of an error in law or in fact.

10.—From section 310 it is clear that on an appeal from a conviction the High Court may enhance the sentence. If a person who has pleaded guilty appeals against sentence only, the Respondent submits that the High Court has a like power to enhance the sentence under clause (c) of section 310. If, therefore, the Code permits an appeal against sentence, either by a convicted person who did not plead guilty or by the Crown, the Respondent submits that clause (c) entitles the Court, if it thinks fit, to enhance the sentence.

11.—An interpretation of the relevant sections which would only permit an appeal against sentence only in a case where the Appellant had pleaded guilty would create anomalies. In the case of an acquittal or a conviction after trial section 310 would provide machinery by which the High Court could determine the proper sentence, but no appeal could be entertained against sentence only. On the other hand, by a merely formal appeal against conviction, supported by no grounds or only by frivolous grounds, a convicted person could ask the Court to reduce his sentence, and the Crown could ask that his sentence be enhanced. The Respondent submits that a sounder construction of the relevant sections is that which reads section 302 as giving a right of appeal against the severity or leniency of any sentence independently of an appeal against conviction.

12.—The Respondent further submits that the record of the proceedings in this case having come to the knowledge of the High Court, the High Court had power under section 322 to enhance the sentence passed upon the Appellants.

13.—The Respondent therefore submits that this appeal should be dismissed for the following amongst other

REASONS

1. BECAUSE section 302 of the Criminal Procedure Code gives to the Crown a right to appeal against a sentence which the Crown alleges to be inadequate.
2. BECAUSE section 310 of the Criminal Procedure Code entitles the High Court to enhance a sentence when the appeal is against sentence only.
3. BECAUSE in exercise of its powers of revision the High Court has jurisdiction to enhance a sentence.
4. BECAUSE in the present case the High Court in sentencing the Appellants to imprisonment validly exercised its powers under the Criminal Procedure Code.

FRANK GAHAN.

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CASE FOR THE RESPONDENT

BURCHELLS,
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Solicitors for the Respondent.