

Judgment
4/8/1964

~~P.C.~~
~~601.6.2~~

IN THE PRIVY COUNCIL

No. 19 of 1964

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF THE
FEDERATION OF RHODESIA AND NYASALAND

B E T W E E N :-

RICHARD MAPOLISA Appellant

- and -

THE QUEEN Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

CASE FOR THE APPELLANT

10 78690

RECORD

- 1. This is an appeal in forma pauperis by special leave from a judgment of the Federal Supreme Court of the Federation of Rhodesia and Nyasaland (Sir John Clayden C.J. Sir Vincent Quenet F.J. and Blagden A.F.J.) delivered on the 16th day of December 1963, dismissing an appeal by the Appellant against his conviction by the High Court of Southern Rhodesia (Hathorn A.C.J. and two assessors) at the Salisbury Criminal Sessions on the 20th day of September 1963 and against the sentence then imposed upon him by Mr. Justice Hathorn. pp.179-180
pp.172-178
- 2. The appellant was charged on an indictment containing one count, namely:- pp.1-2

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"In that upon or about the 28th June, 1963, and at or near Salisbury ... the accused did wrongfully and unlawfully and without lawful excuse, by the use of petrol or some other inflammable liquid, set or attempt to set on fire a building or structure, that is to say, a house at 99, Silcox Avenue, Houghton Park, Salisbury, and thus the accused did commit the crime of contravening paragraph (a) as read with paragraph (c) of sub-section (1) of Section 33A of the Law and Order (Maintenance) Act, 1960, as amended."

RECORD

No.12 of
1963

3. Section 33A(1), as substituted by Section 4 of the Law and Order (Maintenance) Amendment Act, 1963, so far as relevant, provides as follows:-

"Any person who, without lawful excuse, the proof whereof lies on him -

(a) by the use of petrol or other inflammable liquid sets or attempts to set on fire any building, structure

shall be guilty of an offence and -

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(c) shall be sentenced to death where such offence was committed in respect of -

(i) any building or structure used for residential purposes and not owned, occupied or leased by the person convicted of the offence, whether or not at the time of the commission of the offence any other person was present in such building or structure;
.....

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(d) in the case of any other offence under this section, shall be liable to imprisonment for a period not exceeding twenty years."

p.169

4. On the said 20th day of September 1963 the appellant was found guilty of contravening paragraph (a) as read with paragraph (c) of sub-section (1) of Section 33A of the Law and Order (Maintenance) Act, 1960, as amended, and was sentenced to death.

p.162

5. Mr. Justice Hathorn and the two assessors found that a lighted petrol bomb was thrown through the window of Mr. Bonham's residence, 99 Silcox Avenue, Houghton Park, Salisbury, early on the morning of the 28th June 1963, that the Appellant, on his own admission, was present at the time the bomb was thrown, and that, also on his own admission, there was a common unlawful purpose between the Appellant and Cyprian, who was alleged by the Appellant to have been the prime mover and the thrower of the bomb. They found that it had not been proved that the Appellant threw the bomb.

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pp.164-166

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6. In his judgment Sir John Clayden said:

10 "The basis of the conviction was that there had only been an attempt to set the house on fire, for it had not caught fire when a petrol bomb was thrown into it, and that the Appellant had not himself thrown the petrol bomb but was a socius criminis of the thrower of the bomb in that he had accompanied and helped in the offence which he had a common purpose with the thrower to carry out."

p.172

20 7. Mr. Justice Hathorn held that in law the principal and the accessory commit the same crime, that an accessory is properly indicted as though he were a principal, that these rules apply to statutory offences and not only to common law offences, and that there was nothing in the statute whereunder the Appellant was charged to exclude these rules.

pp.167-168

8. Mr. Justice Hathorn held that he was obliged to pass sentence of death.

p.168

30 9. Following upon his conviction and his being sentenced to death the Appellant appealed to the Federal Supreme Court against his conviction and against the sentence. One of the grounds of appeal against the conviction was that in terms of the said Section 33A an accessory cannot be convicted at all of the offences set out in the Section. The ground of appeal against the sentence was that the learned Judge erred in holding that he had no discretion to pass a sentence other than the death sentence.

p.171

40 10. The appeal to the Federal Supreme Court was in the main concerned with the proper construction of the said Section 33A(1). The two arguments which were submitted on behalf of the Appellant were:-

p.172

p.173

(a) That upon a proper construction of paragraph (a) of sub-section (1) of Section 33A only the person who actually set or attempted to set on fire any building committed the offence set out,

RECORD

and that the Appellant should therefore have been acquitted.

(b) That even if a socius criminis may properly be convicted of an offence under paragraph (a) of sub-section (1) of Section 33A, the minimum sentence, sentence of death, laid down by paragraph

(d) does not apply to a socius criminis convicted of such an offence, and that Mr. Justice Hathorn therefore had a discretion as to punishment.

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pp.176,177, 11. The Federal Supreme Court rejected both
178. these arguments and dismissed the appeal of the Appellant.

12. In dealing with the basis of liability of a socius criminis in relation to statutory offences Sir John Clayden said:-

p.174

"The socius criminis is not made liable by statute; he is liable by reason of the common law ... Offences under statutes are normally set out in terms that a person who does something commits a crime. And by common law the socius criminis of that person is regarded as also doing that thing. He does it by helping to do it, or by making common purpose with one who does it."

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p.177

p.176

13. Sir John Clayden also said that "the socius criminis commits the very crime with which he becomes associated."

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14. The Appellant will contend that in the case of statutory offences the correct approach is to construe the language of the statute in accordance with the principles governing the interpretation of statutes and to determine whether that language covers the case of a person who did not do the thing the doing whereof the statute makes an offence but who was a socius criminis of the person who did that thing. If the language does not cover that case then the socius criminis cannot properly be convicted of contravening the statute.

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15. The Appellant will contend further that the language of paragraph (a) of sub-section (1) of the said Section 33A does not cover the case of a person who did not attempt to set on fire a building but was a socius criminis of the person who made the attempt.

10 16. The Appellant will also contend that, if a socius criminis of the person who attempted to set on fire a building may be convicted of an offence under paragraph (a) of sub-section (1) of the said Section 33A (which is denied), the punishment of the socius criminis is in the discretion of the Court.

20 17. The Appellant humbly submits that his conviction is wrong in law, and alternatively, if such conviction be not wrong in law, that Mr. Justice Hathorn had a discretion as to punishment, that the decision of the Federal Supreme Court dismissing his appeal against his conviction and against his sentence is wrong and should be reversed and that this appeal should be allowed for the following amongst other

REASONS

(1) Because, as he did not throw the bomb, the Appellant did not attempt to set the house on fire.

30 (2) Because, as he did not attempt to set the house on fire, the Appellant did not contravene paragraph (a) of sub-section (1) of the said Section 33A.

(3) Because the words "any person who .. attempts to set on fire any ... Building" in paragraph (a) of sub-section (1) of the said Section 33A do not include a person who does not attempt to set on fire any building but is a socius criminis of a person who attempts to set on fire any building.

40 (4) Because the common law rules as to, the criminal liability of a socius criminis do not apply to paragraph (a) of sub-section (1) of the said Section 33A.

RECORD

(5) Because, if the Appellant as a socius criminis of the person who in contravention of paragraph (a) of sub-section (1) of the said Section 33A attempted to set the house on fire is guilty of a common law crime, namely that of aiding and abetting such person to commit the statutory offence of contravening paragraph (a) of sub-section (1) of the said Section 33A, the Appellant is not guilty of the statutory offence of contravening paragraph (a) of sub-section (1) of the said Section 33A.

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(6) Because the conviction of the Appellant is wrong in law.

(7) Because, if the conviction of the Appellant is not wrong in law, Mr. Justice Hathorn was wrong in holding that he was obliged to pass sentence of death and the learned judge had a discretion as to punishment.

(8) Because the decision of the Federal Supreme Court is wrong.

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~~M.~~ W. POLLAK ~~W.~~
~~M.~~ L. LAZAR
~~M.~~ B. ANNS

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