Judgment 9 of 1972

No. 18 of 1971

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN

SAMSOONDAR RAMCHARAN — Appellant

AND

THE QUEEN — Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago (McShine, C.J., Phillips and Fraser, JJ.A.), given the 19th November, 1970, upon a case stated by the Supreme Court, (Achong, J.,) on the 10th November, 1970. The Court of Appeal set aside the sentence imposed by Achong, J., upon the Appellant, and imposed instead a sentence of five years imprisonment with hard labour. pp. 21-28; pp. 9-11; p.26

2. The Appellant was indicted on two counts. By the first count he was charged with shop-breaking and larceny, contrary to the Larceny Ordinance, Ch. 4. No. 11, Section 27 (a). The Particulars of Offence were that, between the 14th and 16th October, 1967, at Port-of-Spain, he broke and entered the store of the City and Loan Association and stole therein jewellery valued at $128,000.00 and cash of $2,000.00. By the second count he was charged with receiving stolen goods, contrary to the Larceny Ordinance, Ch.4, No. 11, Section 34 (1) (a). The Particulars of Offence were that, pp. 1-2

RECORD

between the 14th October and the 6th November, 1967, he received a quantity of gold jewellery, the property of the City and Loan Association, knowing the same to have been stolen.

p.5 l.21

3. The Appellant pleaded not guilty to the two charges. He was tried on the 12th, 13th and 14th October, 1970 before Achong, J. and a jury, at Port-of-Spain Assizes. He was acquitted of the first charge but convicted on the second. On the 30th October, 1970, he was sentenced by Achong, J., to a fine of $1,500.00 payable

p.6 l.36

within two weeks, or eighteen months imprisonment with hard labour in default. Further, he was required to enter into his own recognizance, in the sum of $1,000.00 to keep the peace for twelve months. In default of signing the bond he was

p.7 l.7

to serve six months imprisonment with hard labour.

pp. 9-11

4. On the 10th November, 1970, the learned trial judge, stated a case for the consideration of the Court of Appeal. In the case stated he said that, although the offence of which the Appellant was convicted was a felony, having regard to all the circumstances of the case and in particular the antecedents and health of the Appellant, he found himself disposed to leniency. The 34th Edition of Archbold on Criminal Law and Practice, at paragraph 661, contained a statement to the effect that at common law a fine was rarely if ever imposed in cases of treason or felony. This seemed to the learned judge to imply an inherent power at common law to impose fines in such cases. He had therefore imposed a fine. After pronouncing sentence it had been drawn to his attention that there was no power to fine for felony and that the sentence he had pronounced was therefore invalid. Since sentencing, he had come to the conclusion that, by 1848, the High Court in England had been deprived by statute of the power to fine for felony. (The statutes of general application ceased to apply to Trinidad after the 1st March 1848.) In view of this situation he wished to refer the matter by way of case stated to the Court of Appeal in accordance with the provisions of the Supreme Court of Judicature Act, No. 12 of 1960, Section 60.

5. The relevant statutory provisions are set out as an Appendix to this Case.

RECORD

6. The judgment of the Court of Appeal was delivered by McShine, C.J. His Lordship dealt first with the events which led up to Achong, J., stating a case. He continued by saying that it had not been contested before the Court of Appeal that the offence for which the Appellant had been convicted was a felony. The offence was statutory, by Section 34 of the Larceny Act. The Section made provision for the nature of the sentence that could be imposed, which sentence could not be one of fine. The mistake of the learned trial judge was, in the first place, that of assuming that the conviction was for a common law offence. The second mistake, realised by the learned trial judge as being a mistake when he re-considered the sentence he had passed, was that of assuming that at common law, there was a general power to fine for felony. In their Lordships view, the view of the law, expressed by Achong, J., in his case stated, after he had re-considered the position, was the correct one. That is, thst any common law power to fine for felony had gone by 1848. Further, they agreed with the reasons given by the learned trial judge for taking this view. Therefore, the case was not one in which the learned trial judge had wrongly exercised a discretion; he had no power to impose a fine, and in purporting to do so he had acted without jurisdiction.

pp. 21-26
p.22 l.34
p.23 l.19
p.25 l.4

7. McShine, C.J., then turned to the matter of the sentence that ought to be imposed. Their Lordships, he said, had given the matter anxious consideration. The offence, generally, was a grave one, and the present case a bad one. A A bond was most inappropriate. The only appropriate sentence was one of five years imprisonment with hard labour. The order of the learned trial judge was set aside; save as to the return of jewellery; and any fine paid by the Appellant was to be refunded to him.

p.26 l.26
p.26 l.24
p.26 l.30

8. It is respectfully submitted that the learned trial judge was right when, in passing sentence, he treated the offence as felony. Further, that he was right when, on re-considering the nature of the sentence he had passed, he took the view that he had been wrong in imposing

a fine, and that the sentence he had imposed was invalid. The question as to whether he was right or wrong on this point was one of law. In the premises he had power to state a case for consideration by the Court of Appeal, and he was fully justified in so doing. Further, whether or no the sentence was invalid, no final and conclusive step had been made, because, at the time his Lordship stated the case, the assize over which he was presiding was not concluded.

9. It is respectfully submitted that, for the reason mentioned in the last preceding paragraph, the Court of Appeal had power to receive the case stated and adjudicate upon the question raised therein. Further, it is submitted, the Court of Appeal were correct in holding the offence to be felony, and, for the reasons they gave, in holding that the judge had no power or jurisdiction to pass the sentence he did. The Appellant thus stood convicted but not sentenced. It is submitted, respectfully, that the Court of Appeal, in the premises, had power to award sentence, and that the sentence they awarded was, in the circumstances of the case, a just and appropriate one.

10. If, contrary to the Respondent's contention, the Court of Appeal erred in any respect it was in regarding the learned trial judge as having purported to deal with the offence as a felony at common law rather than by statute; and in speaking of the common law power to fine for felony as having gone. As to the former, it is submitted that the error of the learned trial judge lay, at the outset, in assuming that he had a common law power to sentence in a situation in which sentence was prescribed by statute. As to the latter, it is submitted that there never was a common law power to sentence for felony. Neither error (if error there was) affected the conclusion or invalidated the judgment and order of the Court of Appeal.

11. It is submitted, respectfully, that the appeal ought to be dismissed and the order of the Court of Appeal upheld for the following, among other

R E A S O N S

(1) BECAUSE the Appellant was convicted of felony.

(2) BECAUSE the learned trial judge had power to raise, by way of case stated, the question as to whether or no he had jurisdiction to fine for the felony, and because, in the premises, he was right so to raise this question.

(3) BECAUSE the Court of Appeal had power to receive the case stated, adjudicate upon it as they did, and pass sentence as they did.

(4) BECAUSE the sentence passed by the Court of Appeal was, in the circumstances, just and appropriate, and no miscarriage of justice has occurred.

(5) BECAUSE the judgment and order of the Court of Appeal were right and ought to be affirmed.

GERALD DAVIES.

RECORD

APPENDIX

Supreme Court of Judicature Act, 1962

Section 2.....

(g) "judgment" includes decree;

(i) "order" includes decision and rule;

(v) "verdict" includes the finding of a jury and the decision of a Judge

Section 42.....

"sentence" includes any order of the court made on conviction with reference to the person convicted or his wife or children and any recommendation of the convicting court as to the making of a deportation order or of an expulsion order in the case of a person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order or recommendation as the convicting court might have made and a recommendation so made by the Court of Appeal shall have the same effect for the purposes of any law under which such recommendation is permitted to be made, as the certificate and recommendation of the convicting court.

Section 44 (1) The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal: but the court may, notwithstanding they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Act, the Court of Appeal shall, if it allows an appeal against conviction, either quash the conviction and direct a judgment

and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

(3) On an appeal against sentence the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict whether more or less severe, in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

Section 45 (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court of Appeal may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as it thinks proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the Court of Appeal considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Appeal considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the

Court of Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court of Appeal to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) If on any appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under the Criminal Procedure Ordinance in the same manner as if a special verdict had been found by the jury under that Ordinance.

Section 48

(1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in like manner as prisoners awaiting trial.

(2) The Court of Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

Section 49.

(1) The time during which an appeallant, pending the determination of his appeal is admitted to bail, and subject to any directions which the Court of Appeal may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal, shall, subject to any directions which may be given by the Court of Appeal be deemed to be resumed or to begin to run, as the case requires, if the appellant is in

custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

(2) Provision shall be made by prison rules for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act or to any place to which the Court of Appeal or any judge thereof may order him to be taken for the purposes of any proceedings of that Court, and for the manner in which he is to be kept in custody while absent from prison for such purpose; and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

Section 51 In the case of a conviction involving sentence of death or corporal punishment -

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

(b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

Section 54

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present

Section 60

(1) Where any person is convicted on indictment the trial judge may state a case or reserve a question of law for the consideration of the Court of Appeal and the Court of Appeal shall consider and determine such case stated or question of law reserved and may either -

(a) confirm the judgment given upon the indictment;

(b) order that such judgment be set aside and quash the conviction and direct a verdict of acquittal to be entered;

(c) order that such judgment be set aside, and give instead thereof the judgment which ought to have been given at the trial;

(d) require the judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or

(e) make such other order as justice requires.

(2) The Court of Appeal, when a case is stated or a question of law reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

Section 61. Where a case is stated or a question of law reserved for the consideration of the Court of Appeal, the provisions of sections 48, 49, 51, 53, 54, 55 and 56, sub-sections (1) (3) and (5) of the section 57 and section 59 shall apply to such proceedings in like manner as to an appeal.

Section 62 In the case of an appeal which involves a question of law alone, the Court of Appeal may, if it thinks fit, request the Judge of the High Court to state the question together with all the circumstances under which the said question has arisen in such manner as may be prescribed by rules of court.

Section 84 The enactments specified in the first column of the Second Schedule have effect subject to amendments specified in relation thereto in the second column of the said Schedule.

The Criminal Procedure Ordinance, Ch.4 No. 3. 1950 Edition

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(c) Section 71, 72 and 73 are repealed.

Section 85

The Judicature Ordinance, the Criminal Appeal Ordinance and the Federal Supreme Court Regulations, 1958, in their application to Trinidad and Tobago, are repealed.

Criminal Offences Act, Ch.4 No. 4 1950 Edition

2. Every offence which, if done or committed in England would amount to a felony or misdemeanor at Common Law shall, if done or committed in the Colony, be taken to be a felony or misdemeanor, as the case may be, and shall be liable to be and shall be punished in the same manner as it would be in England, under or by virtue of any special or general Statute providing for the punishment of such offence, or, if there be no such Statute, by the Common Law: Provided always, that nothing herein contained shall be construed as limiting or affecting the power of the Governor and Legislative Council to make express provision, by Ordinance, for the punishment of any such felony or misdemeanor.

LARCENY ACT. Ch.4. No. 11. 1950 Edition.

Section 4 Stealing for which no special punishment is provided under this or any other Ordinance for the time being in force shall be simple larceny and a felony punishable with imprisonment for five years.

Section 27 Every person who -

(a) breaks and enters any dwelling-house, or any building within the curtilage thereof and occupied therewith, or any school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory, or workshop, or any

building belonging to Her Majesty, or to any Government department or to any municipal or other public authority, and commits any felony therein, or

(b) breaks out of the same, having committed any felony therein,

shall be guilty of felony and liable to imprisonment for ten years.

Section 34 (1) Every person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanor, shall be guilty of an offence of the like degree (whether felony or misdemeanor) and liable -

(a) in the case of felony to imprisonment for ten years

(b) in the case of misdemeanor, to imprisonment for five years.

Section 38

3) On conviction of a misdemeanor punishable under this Ordinance, the court instead of or in addition to any other punishment which may be lawfully imposed, may fine the offender.

4) On conviction of a felony or misdemeanor punishable under this Ordinance, the court, instead of or in addition to any other punishment which may lawfully be imposed for the offence, may require the offender to enter into his own recognisances, with or without sureties, for keeping the peace and being of good behaviour: Provided that a person shall not be imprisoned for more than one year for not finding sureties.

No. 18 of 1971

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N

SAMSOONDAR RAMCHARAN Appellant

AND

THE QUEEN Respondent.

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn
London, W.C.2.