

(1) M.M. Moraby and (2) M. Bahorun

Appellants

v.

The Queen

Respondent

(Consolidated Appeals)

FROM

THE SUPREME COURT OF MAURITIUS
(APPELLATE DIVISION)

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD ROSKILL

LORD GRIFFITHS

LORD ACKNER

SIR JOHN STEPHENSON

[Delivered by Lord Bridge of Harwich]

There are before their Lordships two appeals from judgments of the Supreme Court of Mauritius (Appellate Division) delivered on 23rd September 1985 dismissing appeals from convictions before the Intermediate Court of the appellants on 30th January 1985. The appellant, Moraby, had been convicted of two offences of forgery contrary to section 107 and 121 of the Criminal Code. The appellant, Bahorun had been convicted of an offence of receiving.

The common feature of the procedure which was followed in the Intermediate Court in both cases was that the hearing began and continued through a number of effective sittings before two magistrates, Mr. V. Narayan and Mr. A. Prasad, but before the judgment came to be delivered in the Intermediate Court on 30th January 1985 in both cases the magistrate Mr. V. Narayan had been replaced by another magistrate Mr. P. Lam Shang Leen who sat with Mr. Prasad to deliver judgment but who had not heard any of the evidence or submissions which had been made in court. In those circumstances the present appeals raise precisely the

same point as was raised in an appeal before their Lordships' Board in the case of *Pierre Simon Andre Sip Heng Wong Ng @ Wong and Louis Charles Mario Ng Ping Man v. The Queen* [1987] 1 W.L.R. 1356 in which their Lordships humbly advised Her Majesty on 18th June 1987 that the appeals should be allowed and the convictions quashed and in which reasons for taking that course were set out in a judgment of the Board delivered by Lord Griffiths on 20th July 1987. The crucial passage in the judgment is at page 3 where it is stated:-

"Their Lordships consider the defendants' [appellants'] complaint to be unanswerable. It should be said at once [and their Lordships' interpose that the same applies here] that the Solicitor-General very properly did not seek to uphold their convictions. The Courts Act 1945 (Cap. 168), as amended, provides that proceedings before the Intermediate Court shall be heard and determined by not less than two nor more than three magistrates and that where the court is composed of two magistrates the decision must be unanimous: (see section 85). In a criminal trial, whether before a jury or before magistrates, it is a fundamental requirement of justice that those called upon to deliver the verdict must have heard all the evidence. The evaluation of oral evidence depends not only upon what is said but how it is said. Evidence that may ultimately read well in a transcript may have carried no conviction at all when it was being given. Those charged with returning a verdict in a criminal case have the duty cast upon them to assess and determine the reliability and veracity of the witnesses who give oral evidence, and it is upon this assessment that their verdict will ultimately depend. If they have not had the opportunity to carry out this vital part of their function as judges of the facts, they are disqualified from returning a verdict, and any verdict they purport to return must be quashed."

The principles set out in that judgment are equally applicable to the appeals presently before their Lordships' Board and are equally fatal to the convictions.

Accordingly their Lordships will humbly advise Her Majesty that the appeals ought to be allowed and the convictions quashed. The respondent must pay the appellants' costs.



