THE QUEEN v. PODIRALAHAMY

235/1964

S. C. Apn/Gen. 63/64—Revision in M. C. Colombo South 23159/A

Criminal Procedure Code—Sections 356 and 357—Scope—Power of a Supreme Court Judge to call for record of any court.

When a Judge of the Supreme Court, acting in terms of section 356 of the Criminal Procedure Code, calls for the record of a case for the purpose of satisfying himself as to the legality or propriety of any sentence or order passed therein, he is entitled to deal with it himself.

REVISION of sentence in terms of section 356 of the Criminal Procedure Code.

Colvin R. de Silva, with *Nihal Jayewickreme*, for the accused-respondent.

Ranjit Dheeraratne, Crown Counsel, as amicus curiae.

December 17, 1964. SRI SKANDA RAJAH, J.—

Acting under the provisions of section 356 of the Criminal Procedure Code, I called for the record of this case and examined it. Then I ordered a notice to issue on the accused. He was informed: "Take notice that the Supreme Court will .... examine the record ... in order to satisfy itself as to the propriety of the sentence passed therein . . . ." In response he has appeared by counsel, who has made three submissions which took two hours and twenty minutes. They are:—

(1) Though the law empowers me to deal with this matter it would not be fair for me to do so for the reason that the accused, and even the public, may have a suspicion that I am already biased against him because I ordered the notice after examining the

record. (2) This case need not have resulted in a conviction, i.e., the conviction cannot be supported. (3) This is not such a case as would call for interference with the sentence.

Only in a totalitarian State punishment is motivated by revenge. That is not so in a democratic State.

Learned Crown Counsel spent only five minutes to meet these submissions quite effectively. He drew attention to: (i) the incident earlier that day which provided the motive; (ii) the blood-stains found by the police in the injured man's compound; (iii) the fact that the accused had gone into the compound of the injured man armed with a knife, and (iv) the nature of the injury—one inch deep and an inch and a half long. In order to meet the first submission he referred to the powers of a District Judge to deal with contempt committed in his presence.

As regards submission (2): There was sufficient evidence to warrant a conviction. Besides, the accused himself appears to have had no complaint against it; for, he has not appealed against the conviction.

As regards submission (1): Sections 356 and 357 should be read together. The former empowers this Court to "call for and examine the record of any case ..... for the purpose of satisfying itself as to the .... propriety of any sentence or order passed therein". Section 357 enacts that this 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 346, 347 and 348". Cases ranging from 1 N. L. R. to 64 N. L. R. were cited in support. This case can be distinguished from everyone of them. Therefore, it is unnecessary to refer to them in detail.

Special stress was placed on the following quotations at pages 359 and 360 in *The Queen v. Liyanage et al.*, which was decided by a Bench of three Judges of this Court including myself:

"It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should

manifestly and undoubtedly be seen to be done. . . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."—at 359.

"It is essential that justice should be so administered as to satisfy reasonable persons that the tribunal is impartial and unbiased,"—at 360.

Whenever a record was called for by any Judge of this Court he himself has always dealt with it. When he does so can there be the slightest suspicion in the mind of the ordinary or reasonable man that there has been an improper interference with the course of justice? This Court will take into consideration only what the ordinary or reasonable man would feel. It will not take into consideration what a mad man or a man who conjures up imaginary fears or suffers from hallucinations would feel. No man, unless reason has deserted him, will entertain even a suspicion that a Judge of this Court who deals with the proceedings of an inferior Court called for by him acts with a bias.

It is appropriate to refer to the procedure adopted by this Court in contempt matters reported by an inferior court. The Registrar submits it to His Lordship the Chief Justice, who then circulates it to the other ten Judges to ascertain their opinion as to whether a rule should issue. Then are all the eleven Judges of this Court disqualified on the ground of bias from hearing the matter in which the Rule was issued on their unanimous opinion? Are there not instances in which this Court had issued a Rule for contempt and then discharged the Rule after cause was shown? In Rule 17 of 1964: *Ananda Luxman Gunaratne, Proctor et al.*: S. C. Minutes of 1.7.64: Rule Nisi was issued against a Proctor and his client. After hearing, the proctor was convicted and fined Rs. 2,500; but, the Rule Nisi in respect of the client was discharged. To suggest that all the eleven Judges are disqualified on the ground of suspicion of bias in the mind of the respondent to a Rule for contempt would be "sheer nonsense", in the words of Hearne, J., in *Saram v. Sri Skanda Rajah*.

As regards submission (3): Knifing was described by counsel for the respondent as a very common offence tried daily by Magistrates. Knifing is so widespread that serious notice of it should be taken by this Court. The human body is not meant for being perforated with knives. The accused has acted in a high-handed manner. But in passing sentence the Magistrate said, "I convict him and sentence him to pay a fine of Rs. 100; in default 6 weeks' R. I. as he has one previous conviction, which is over 10 years old". That was a conviction for theft. As that conviction was not in respect of an offence which involved violence, it need not have been taken into consideration. However, from what the Magistrate said it looks as though he would have patted the accused on the back and sent him home but for the previous conviction. The sentence imposed by the Magistrate in the circumstances of this case is manifestly inadequate. I would, therefore, alter it to a term of four months' rigorous imprisonment. The fine, which appears to have been paid, should be refunded to the accused.

Before parting with this case I would confess that I have no knowledge of the principles that govern punishment in a totalitarian State. Perhaps counsel for the respondent knows and is right in his submission that revenge is the dominant factor.

Sentence enhanced.