

## PRIVY COUNCIL.

Before Lord Roche, Sir Shadi Lal and Sir George Rankin.

INAYAT KHAN—Appellant

versus

THE KING-EMPEROR—Respondent.

Privy Council Appeal No. 83 of 1935.

On Appeal from the Court of the Judicial Commissioner of the North-West Frontier Province.

*Privy Council — Practice — Criminal Appeals — Technical errors in procedure — not sufficient.*

Where an error in procedure in a criminal trial is of a technical character and does not detract from the essential fairness and justice in the conduct of the proceedings, the Judicial Committee will not advise interference with the judgment of the Court below.

*Dal Singh v. The King-Emperor* (1) and *In re Dillet* (2), referred to.

*Appeal from a judgment of the Court of the Judicial Commissioner (June 19, 1935) which confirmed a judgment of the Additional Sessions Judge, Peshawar Division (May 24, 1935).*

The appellant was charged with murder. In order to prove a motive for the crime, the prosecution called Md. Aslam Khan, a Sub-Inspector of Police who produced two anonymous letters, one addressed to the Senior Superintendent of Police, Peshawar, and the other to the Assistant Commissioner, Nowshera, which were received by the witness. These letters, which were exhibited, charged the appellant with murder and other offences. The Sub-Inspector produced the report which he had made after enquiring into the allegations in the anonymous letters. The report which was favourable to the appellant was exhibited. The prosecution also called a witness, Abdul Rahman, who stated that "the accused believed" that the deceased had sent the anonymous

(1) (1917) 44 I. A. 137; I. L. R. 40 Cal. 876. (2) L.R. 12 A.C. 459.

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letters, another witness, Labab Gul, who stated that the deceased wrote the anonymous letters and a witness, Moin-ud-Din, who said that the appellant had told him that the deceased had given information against the appellant to the Police.

It was contended that this evidence was inadmissible and that the trial was vitiated by its admission.

1936, April 28. GALLOP for the Appellant.

WALLACH for the respondent.

The judgment of the Judicial Committee was delivered by—

LORD ROCHE—This is an appeal by special leave from a judgment of the Court of the Judicial Commissioner, North-West Frontier Province, dated June 19th, 1935, which confirmed a judgment of the Court of the Sessions Judge, Peshawar, finding the appellant guilty of murder and sentencing him to death.

The ground upon which special leave to appeal was granted and upon which the argument upon this appeal was rested was that there was such a wrongful admission of evidence in the Courts below and such a consequent miscarriage of justice as to justify and require the interference of His Majesty.

The principles upon His Majesty will intervene in such matters and which will guide this Board in tendering advice to His Majesty in this regard have been frequently stated and are not in doubt. Their Lordships do not constitute a Court of Criminal Appeal. Their functions are thus defined in the judgment delivered by Lord Haldane in the case of *Dal Singh v. The King-Emperor* (1):—

“The general principle is established that the Sovereign in Council does not act, in the exercise of

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the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below."

The matter was thus stated by Lord Watson in the case of *In re Dillet* (1) :—

"The rule has been repeatedly laid down, and has been invariably followed, that Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done."

In the present case having carefully considered all the facts and evidence in the case and the judgments delivered therein and having heard a full and able argument on behalf of the appellant, their Lordships were satisfied beyond all doubt that no grounds existed here to bring the appellant within the principles thus stated or to require or entitle their Lordships to advise His Majesty to intervene. Accordingly their Lordships were of opinion that the appeal should be dismissed and humbly advised His Majesty accordingly.

(1) L. R. 12 A. C. 459, 467.

The reasons for the advice thus tendered to His Majesty are as follows :—

The charge was of murdering one Rahman-ud-Din by shooting him with a shot gun. It was clear that Rahman-ud-Din was so murdered. At the trial the evidence to prove that the appellant was the murderer was partly direct and partly circumstantial. Direct evidence was given by witnesses who saw the appellant fire the shots which caused the death, and by witnesses who saw him at or near the scene of the murder at the material time. The circumstantial evidence was strong and part of it so strong as, in the opinion of their Lordships, to point irresistibly to the conclusion that the appellant was guilty. In particular the appellant was proved by unimpeachable evidence to be possessed of a pair of sandals or shoes of a somewhat peculiar and unmistakable type. After the crime one was in his possession. The other was found close to the body of the murdered man.

The prosecution, being in possession of certain facts bearing upon a motive which might have acted upon the appellant to induce him to commit the crime, naturally and properly put that matter before the Court. The motive was ill-will due to the fact that the dead man had recently made accusations of criminal conduct against the appellant and that the appellant knew of and resented these accusations. The complaint made is that, in the proof of motive, matters and documents inadmissible in evidence were put in and that they were of a nature prejudicial to the appellant and must have prejudiced the tribunals against him. That complaint has in the opinion of their Lordships but slight foundation. The fact that the appellant knew or thought that the deceased had

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given information against him to the police and resented his doing so appeared from the evidence of a witness, Moin-ud-Din, a schoolmaster. Neither the character nor the testimony of this witness was criticised by the defence. It should be observed that the appellant was represented at the trial and on the appeal to the Judicial Commissioner's Court by experienced and competent counsel. It was clearly admissible and proper though not in any great degree important also to prove that the deceased man had given such information or made such complaint to the police. The actual evidence given as to this is open to some criticism and consisted in certain anonymous letters making very indiscriminate attacks on the appellant's character and evidence of a rather general character connecting the deceased with the authorship of these letters in fact and in the opinion of the appellant. There was also put in a police report on the character of the appellant made shortly after the receipt of these letters and obviously in consequence of them. It is difficult to see how this report was admissible or why it was put in evidence unless it was that it was put in out of justice to the appellant. It was generally favourable to him and its tenor was to explain away and discount the charges made against him in the letters. It is to be observed in this connection that there is no indication that any objection was taken by counsel for the defence to the admission of any of the documents which are in question. If real injury were done by the prosecution or the Court to an accused person the absence of objection by counsel for the accused would not excuse it, but the absence of objection with other circumstances in the case seems to their Lordships to indicate very clearly that no injury was done at all by reason of the form in which the evidence was given or

by the admission of the documents in question. There is nothing in the judgments of either the Judge in the Sessions Court or of the Judges in the Judicial Commissioner's Court to show that they were influenced in any degree by the charges in the anonymous letters or by any consideration, of whether the appellant was a good and respectable man or the reverse apart from the present charge. This matter was regarded solely from the point of view of evidence of motive. It would in the opinion of their Lordships have been more regular and more expedient if the evidence as to motive had not been given in the form in which it was given. But though irregularity is to be avoided, and even an appearance of action prejudicial to an accused in the conduct of a criminal trial is to be deprecated, their Lordships are satisfied that there was in reality no prejudice to the case of the accused owing to any of the matters complained of and that what was done did not lead to injustice of a grave or even of a slight character. The case is, therefore, more than covered by the language already cited from the judgment of this Board in *Dal Singh's* case (*supra*) (1). Here in the opinion of their Lordships the matters of complaint in no way affected the course of the trial or contributed to its result. The judgments below depended upon and were justified by other evidence of a most cogent character and of well nigh overwhelming weight, and it is right to say that in the opinion of their Lordships such errors of procedure as occurred were of a technical character and did not detract from the essential fairness and justice which marked the conduct of the proceedings in both the Courts. For these reasons their Lordships have

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humbly advised His Majesty that this appeal should be dismissed.

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*Appeal dismissed.*Solicitors for the appellant: *Rising & Ravenscroft.*Solicitor for the respondent: *The Solicitor, India Office.***FULL BENCH.**

*Before Young C. J., Coldstream, Monroe, Skemp,  
Bhide, Currie and Abdul Rashid JJ.*

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LALLA MAL-SANGHAM LAL (ASSEESSES)

Petitioners

*versus*

COMMISSIONER OF INCOME-TAX, PUNJAB—

Respondent.

*April 30.***Civil Reference No 72 of 1935.**

*Indian Income-tax Act, XI of 1922, section 9 (1) (2) — 'Annual value' — Tenant agreeing to pay the Municipal Tax payable by the landlord — whether such payments must be included in arriving at the 'annual value.'*

The assessee was the owner of certain houses in Delhi the which house-tax was payable, under the provisions of Punjab Municipal Act, by the landlord. By an agreement between the landlord-assessee and his tenant the latter agreed to pay the amount of the Municipal house-tax in addition to the sum reserved as "rent."

*Held*, that in estimating the 'annual value' or the sum for which the property might reasonably be expected to let from year to year, the amount paid by the tenant of tax petitioner on account of the Delhi Municipal house-tax should be included, that is, should be treated as part of the rent payable by the tenant to the landlord.

The amount of rent payable by the tenant to the landlord is, however, only *prima facie* evidence of 'annual value' and a consideration of the rents paid for similar and similar