POLICE v PĀTŪ (SIMANU SAPOLU)

Supreme Court Apia
5, 12 September 1977
Nicholson CJ

CRIMINAL LAW (Appeal) - Grounds for appeal - Judgment of Magistrate failing to indicate that he directed his mind to the danger of relying on uncorroborated evidence of an accomplice, or that he looked for, or found corroboration in the evidence before him - Appellate Court will not assume he was cognizant of the law and directed himself correctly.

APPEAL
from conviction of conspiracy to defraud contrary to s 97 of the Crimes Ordinance 1961.

Appeal allowed and conviction and sentence quashed.

Enari for appellant.
Cruickshank for respondent.

Cur adv vult

NICHOLSON CJ. This is an appeal against conviction and sentence, the appellant having been convicted of conspiracy to defraud contrary to Section 97 of the Crimes Ordinance 1961 in the Magistrates' Court at Apia on 6th July, 1977 and sentenced on 21st July, 1977 to six months' imprisonment to be followed by 12 months' probation.

Mr Enari for the appellant advanced a number of grounds for appeal but I have found it necessary to consider only one, which I may term the major ground advanced, namely, the reliance placed by the learned Magistrate upon the evidence of an accomplice, Solomona Milo, without reminding himself of the danger of relying upon an uncorroborated accomplice, and without apparent consideration of what corroboration, if any, was to be found in the evidence before the Court.

The learned Magistrate in his oral decision did not attempt to review the lengthy and detailed evidence adduced before him, as in my view, he ought to have done, given the complexity of the matter before him. He specifically found he believed the accomplice's evidence, he made findings of fact as to the actions of the appellant, and he drew an inference that the appellant must have known of Solomona's defalcations by virtue of his senior supervisory role over Solomona. At no stage in his judgment, however, did the learned Magistrate refer to the trite rule regarding the danger of relying upon uncorroborated accomplice's evidence, nor did he in so many words indicate that he had looked for corroboration, or found corroboration, in the evidence before him.

In a jury trial it is a rule of practice with the force of a rule of law that unless a judge warns a jury of the danger of relying upon accomplice's evidence and of the need to look for corroboration, and properly directs the jury as to what can amount to corroboration, the conviction must be quashed. The leading authority on the rule is

Davies v. Director of Public Prosecutions [1954] 1 All E.R. 507.

In the situation of a judicial officer sitting alone, the rules are no less appropriate, and an appellate court will not make any assumption that a magistrate has borne in mind the rule regarding accomplices. His judgment must of itself reveal that he has reminded himself of the rule, that he has sought corroboration, and what his findings are upon corroboration. It will not alter the position that there is ample evidence of corroboration shown in the record. The important question is whether the tribunal has directed its mind to the question.

Since I am unable to spell out from the learned Magistrate's judgment that he did direct his mind to this fundamental issue, the appeal will be allowed and the conviction and sentence are quashed.