THE PEOPLE v MULWANDA (1974) ZR 46 (HC)

HIGH COURT
DOYLE CJ
21st JANUARY 1974
(Review Case No. HPR/21 of 1974)

Flynote

Criminal Law - Corrupt practices - Propriety of sentence - Detention of witness under s. 33 (6) of the Preservation of Public Security Regulations - Propriety of.

Headnote

The accused was convicted of six counts of corrupt practices involving large bribes which the accused was found to have accepted as a senior civil servant. The prosecution case was based on evidence of witnesses who had been detained under S. 33 (6) of the Preservation of Public Security Regulations.

The trial magistrate imposed a fine of K1,000 on each count and also imposed sentences of imprisonment in lieu.

Held:

(i) The sentence was too lenient. A custodial sentence would have been appropriate and accordingly, in addition to the fines, a sentence of fifteen months' imprisonment with hard labour was to be imposed on each count to run concurrently.

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(ii) The use of s. 33 (6) of the Preservation of Public Security Regulations to detain witnesses was improper.

Legislation referred to:
Criminal Procedure Code, Cap. 160, ss. 337, 339.
Penal Code, Cap. 146, s. 385.
Preservation of Public Security Regulations, ss. 33, 33 (6).

P Cave, Jaques and Partners, for the accused.
E L Sakala, Senior State Advocate, for the People.

Judgment

Doyle CJ: This case was called for by the High Court under the provisions of section 337 of the Criminal Procedure Code for the purpose of considering the sentence, and ascertaining whether it was a proper one in all the circumstances. It appeared, *prima facie*, that the sentence for this offence might have been too lenient. In accordance with section 339 of the Criminal Procedure Code the court informed the convicted person he had the right to be heard on this and he was also informed that he could make representations in writing if he so wished. The convicted person was convicted of six counts of corrupt practices, contrary to section 385 of the Penal Code, and these counts related to bribes which the convicted person took to give citizenship to persons who were not entitled to it. When I first saw the sentence published in the Press, it came to me, I must confess with a sense of shock, that a person in one of the highest places in the Civil Service who took bribes of this nature, bribes which not merely struck at good government but struck at the Government policy of economic reforms and which degraded the Civil Service, should be treated so lightly. Where substantial bribes have been received a sentence of a fine is to a considerable extent merely a deprival of ill - gotten gains. That would appear to me to be the view that would be taken by the public and the sentence appeared to be one which might scandalise the public. Every day we have before us in court cases of persons who steal sums of money from the Government, sometimes small sums, sometimes large sums, and in nearly every case that person is given a custodial sentence for the simple reason that one must stop this sort of practice. I do not consider that corruption is less serious than stealing. It may be that the Government does not lose financially, but the Government loses in credit. I considered that this sentence on its face was an exceedingly light one, and for that reason I called for the papers. I could not go further at the time

because an appeal was then lodged. Revision was thereby excluded and it was only when that appeal was withdrawn that revisionary powers could be exercised.
I have heard what Mr Cave has said. I agree with him that there is something to be said for the fact that the convict was first approached by other people, but as the learned magistrate has said, he very soon succumbed and was very soon acting on his own. I fully understand that the strain of a long trial must have added greatly to the burden upon

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the convicted person. I wish to say some words about this long trial with the hope that such trials will not take place in the future. I think, as the learned magistrate has said, it would have been far better in this case had the State not proceeded on so many counts. It imposed a great strain not only on the parties but on the court itself. Had I been the trial magistrate I should have required the prosecution to split the informations. It would have been very much simpler to have had two or three informations. As it turned out the convict was only convicted of six counts. But the amounts obtained for these offences were large. One included a Mercedes motor - car.
The trial started on the 19th September, 1972, and on reading through the record, it appears that on approximately fifty - eight occasions the convict was before the court. On thirty - five of these days, evidence was taken. The remainder were either matters of argument or adjournments. Some appear to be reasonable adjournments, some I would criticise. However, on these thirty - five days upon which evidence was taken, I have found that the court rarely, if ever, sat before 10 o'clock in the morning and rarely, if ever, sat before 2.30 in the afternoon. That, of course, added to the length of the trial. This trial having started on the 19th of September, 1972, the State case ended on the 31st May, 1973. The matter was adjourned on a couple of occasions, and on the 26th of June submissions were made by the defence. The case was then adjourned again and on the 25th of July came the reply from the State. That is two months. Then on the 21st of August, another month later, there was a ruling by the court; thus it took three months from the date that the State's case finished to determine that there was a case to answer. Thereafter it took another month to deal with the matter after that. Almost eight months trial, three months to deal with submissions; a further month for defence and judgment. I consider that, had the magistrate sat from day to day, as should be the case in such trials; had he sat at a reasonable hour on each day, this case would have been finished in three months at the outside. I fully understand that senior resident magistrates have administrative duties, and that they have a considerable amount of work. I do not, however, appreciate how it is possible to save time by sitting at long intervals. The learned magistrate should have arranged his work so that he could sit from day to day in the case and he should have ensured that there were not unreasonable adjournments. The result is that this trial has taken more than one year I hope such matters will not occur again.
I fully appreciate the fact that the convict has suffered by this but that cannot completely offset that this was a very serious offence. I think that it would come with a sense of shock to the whole of the public were a custodial sentence not imposed. Here was a man, admittedly without previous convictions, as would be expected in a high civil servant. He had twenty - two years' loyal service, but despite that, when the crux came, he took large bribes. It is impossible for this court to fail to intervene where the courts regularly sentence junior civil servants and junior men in positions outside Government to jail for offences of less

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serious import but in this case a person in high position is allowed to escape with what is in effect mere financial restoration to the *status quo*. I am astonished that such a light sentence was passed in such a case. I fully appreciate the matters which have been raised on behalf of the convict, but I cannot think that I would be doing my duty if I allowed this case to pass without altering the sentence. I have given great thought to the matter. Had this case been properly dealt with, a more substantial sentence would have been passed. He

was charged with six counts which means that the maximum sentence could have been twelve years' imprisonment on those six counts. That of course would be excessive but I have no doubt that two years would not have been an excessive sentence. Having heard everything said on his behalf, I am unable to refrain from reviewing this matter and altering the sentence. I would like to point out one thing. The learned magistrate in imposing these fines of K1,000 on each count also imposed sentences of imprisonment in lieu. He made the fines consecutive but the imprisonment concurrent. I doubt if this a proper order. However, as the fine has been paid I do not propose to interfere. I propose to retain the sentences of fines which have been paid. I propose further to add to these fines a custodial sentence and I impose a sentence of fifteen months' imprisonment with hard labour on each count concurrent. Because of the long trial and because of the fact that the prisoner has been perhaps lulled into a sense of false security, because of an inadequate sentence, I consider that I am justified in imposing a somewhat smaller sentence than would ordinarily have been imposed at trial.

Order accordingly

Mr Cave asks for bail pending appeal.

Until an appeal is filed I cannot fix bail. As I said it is not possible for me to consider the question of bail until an appeal has been lodged, but I have listened to arguments and after, and if, an appeal is lodged, then I will hear an application from Mr Cave. It is not necessary for the State to be present, as I have already heard what the State has said. One further matter - the prosecution case was based on the evidence of a large number of witnesses. A considerable number of these persons were detained by a police officer acting under section 33 (6) of the Preservation of Public Security Regulations. Section 33 enables the President to detain a person where he considers it necessary for the purpose of preserving public security. Section 33 (6) enables a police officer to arrest and detain for up to twenty - eight days any person in respect of whom he has reason to believe that there are grounds to justify his detention under regulation 33. The object is to enable detention pending a decision by the President on the question of detention. I am surprised that it could be thought that this was a proper use of this section. As there may be other proceedings I do not wish to say any more than necessary. I consider, however, that *prima facie* this was a mis - use of the section and should not occur again in future. I do not appreciate how the detention of these people for the purpose of obtaining statements could possibly be thought to be appropriate under the section.