

IN THE SEYCHELLES COURT OF APPEAL

JOACHIM FLORENTINE

APPELLANT

Versus

THE REPUBLIC

RESPONDENT



Criminal Appeal No: 9 of 1998

[Before: Goburdhun, P., Venchard & Adam, J.J.A]

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For the Appellant: *Mr. F. Elizabeth*

For the Respondent: *Mr. M. Vidot*

JUDGMENT OF THE COURT

(Delivered by Adam J.A)

The appellant was found guilty of murder. The jury did this by a majority of 6 to 2 so Perera J convicted him in terms of Section 270(3) of the Criminal Procedure Code (Chapter 54).

In his Memorandum of Appeal against that conviction his grounds of appeal were that Perera J erred in accepting the majority verdict of the jury after approximately 2 hours deliberations which was wrong and that he ought to have sent the jury for further deliberations when the jury informed him of their majority verdict.

The trial commenced on 8 June 1998 at 9 am before Perera J and a jury consisting of 9 jurors. At 1.45pm on the same date both counsel informed Perera J that one of the jurors was disqualified under Section 239(e) of the Criminal Procedure Code. Perera J continued with the trial with 8 jurors. The charge to the Jury was given in the morning by Perera J on 15 June 1998. At 2.15 pm the foremen of the Jury informed Perera J of the majority verdict of 6 to 2.

Mr. Elizabeth on behalf of the appellant submitted that Perera J exercised his discretion wrongly in terms of Section 269(1) of the Criminal Procedure Code

in that he should have followed the English Practice Direction (Majority Verdicts) 54 Cr. App. R172 (which provided that any verdict of a majority shall not be accepted until 2 hours 10 minutes have elapsed for deliberations) due to the complexity of the case.

Mr. Vidot on behalf of the Respondent referred to Section 269(1) of the Criminal Procedure Code. This provides:-

“269(1) If the jury are not unanimous the Judge may direct them to retire for further deliberations.

He submitted that under Sections 269(1) a Judge had a discretion to decide when to accept a majority verdict. He argued that the jury had deliberated for far greater time than 2 hours. This period seems to be with reference to Section 17(4) of the English Juries Act 1974 which provides that the Crown Court shall not accept a majority verdict unless the jury has had at least 2 hours for deliberations. In *Barry v R* 61 Cr. App. R 172 (CA) it was held that the above statutory period was mandatory. But in *Baterson v R* (1969) 54 Cr. App. R11 (CA) Salmon LJ said at 17:-

“The PRACTICE DIRECTION ... should be complied with meticulously. This DIRECTION, however, is not mandatory, it is purely directory. If it is not complied with, it does not follow that the conviction, if there be a conviction, will be quashed.”

See also *Wright v R* (1974) 58 Cr. App. R 444 (CA) at 451.

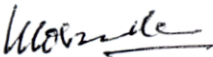
It is clear from the foregoing that there is a vast difference between the statutory provisions in the Seychelles and in England. The English Juries Act, 1974 lays down a mandatory period for deliberations for majority verdicts. On the other hand the Criminal Procedure Code here in most explicit terms gives a Judge a discretion on this and there is no fixed mandatory period for deliberations.

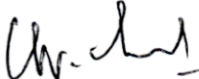
In Antat & Ors v The Republic Criminal Appeal Nos. 4, 5 and 6 of 1994 this Court indicated that what section 269(1) provided was a matter of discretion. See also Jameson v R (1965-1975) 5 SCAR 9 at 12-13. The conviction entered by Perera J can only be attacked on the ground that he exercised his discretion wrongly. Before this Court will interfere with the discretion exercised by a trial judge it must be shown that he did not exercise his discretion judicially. Put in another way it must be established that no court acting reasonably could have decided in the manner Perera J did by accepting the majority verdict of the jury in terms of section 269(1) of the Criminal Procedure Code. It is not enough merely to show that another judge would have exercised his discretion differently.


Without in any way trying to limit the discretion given under section 269(1), it would be good practice for a trial judge sitting without a jury where a majority verdict is given in a rush say within a very short time like 10 minutes of deliberations, to direct them for further deliberations. But this does not apply in this case because it was accepted by the appellant's counsel that jury deliberated for just over 2 hours.

We are satisfied that Perera J exercised his discretion judicially. Accordingly the appeal is dismissed.

Dated at Victoria, Mahe this 4th day of *December* 1998.


H. GOBURDHUN
PRESIDENT


L.E. VENCHARD
JUSTICE OF APPEAL


M. A. ADAM
JUSTICE OF APPEAL

