

National Supreme Court

Criminal Circuit

Before:

H.E. Hashim Abdullah Mohammed..... President.

H.E. Yahya Fadul Mohammed Fadul..... Member

H.E. Mohammed Mostafa Hammed..... Member

Trial of; Mohammed Abdullah Said and others

No. M A/ F G/H8/2015

Judgment

In a non-summarily trial under the number G I/17/2013, The court of the Municipality of Malleet convicted the above-mentioned persons; Adam Abdullah Fadluseed Ibrahim Zakaria Ahmed Omer, under Article 49/2 of the Criminal Code, and sentenced each to seven years as of the date they were detained on 6/5/2013 with the addition of one hundred lashes.

The two convicted persons presented a petition of appeal against the ruling where the Court of Appeal in North Dar fur issued decision no A S G/100/2013 ordering the cancellation of the appeal pro forma as it was submitted after the passing of the time limit determined by law.

Now, lawyer Moneer Mohammed Khatirr submitted the attached examination request on behalf of the convicts which we accept pro forma as it is void of a time limit.

Regarding the subject, the reasons for examination are summed up in that there was no solid evidence for the conviction of the two persons, and that what was mentioned in the Medical report that the plaintiff's hymen had been removed a long time earlier does not firmly lead to the conviction of the two accused, besides, the circumstantial evidences in the reasons for conviction does not lead to convicting the two accused men.

Finally, the lawyer presenting the examination plea requests that his request be accepted and that a suitable ruling be issued.

Having seen all the relevant documents and the ruling that was appealed against, we find that the Court of Appeal decided to cancel the appeal for having been presented outside the time limit, and that it did not intervene by exercising the authorizations confided to it under Article 188 of the Criminal Procedures Code and examine the procedures. It is quite known that the authority to examine is an unprompted one that the Court of Appeal can exercise, be it by its own discretion or in response to a plea presented to it. Choosing not to exercise that discretional

authority does not indicate misapplication of the law. And, refusing to exercise that authorization does not constitute a perceptible violation of the law that should justify the interference of our court as a court of law to impose its opinion. Nevertheless, that does not hinder a court of appeal from opting to examining the procedures stating that there is a need for examination to help achieve justice, taking into consideration the criminal nature of the lawsuit and what has been brought up in the appeal before it to be adopted as a basis for exercising that authorization pro forma.

Based on what has been mentioned above, I see no error in the procedures appealed against, and that the Court of Appeal is not obliged to examine those procedures as it had approved of the validity of those procedures and the need to abide by the time limit of the appeal – for all the above I see that the request be cancelled, awaiting the opinions of my honorable colleagues.

Mohammed Mostafa Hammed

Justice of the Supreme Court

2015

After viewing the date of submitting of the two appeals by the convicted; Mohammed Abdullah Fadul Said and Ibrahim Zakaria Ahmed Omer they were presented on 15/8/2013, where the (5) was amended to be (3), i.e. the date would be 13/8/2013. And after checking the agenda of the Judiciary of the year 2013 I found out that 31/7/2013 (the date they were sentenced) was a Wednesday from which began the time limit of the 15 days determined for submitting the appeal, and that ended on Wednesday 14/8/2013.

Thus, I see that if there had been a doubt about whether the appeal was submitted on 13/8/2013 or 15/8/2013, it should be interpreted in their favor, i.e., the date of submitting the appeal was 13/8/2013, and hence I believe they were submitted within the 15-day time limit in accordance with Article (183) of the Criminal Procedures Code of 1991.

That should not refute the statement that they were submitted to the judge authorized to grant the appeal who signed them on 22/8/2015.

I summarily believe that there was a delay in the arrival of the documents to the said judge.

Hence, I see that the ruling of the Court of Appeal be revoked and that the documents be returned to it to view those two appeals from a subjective perspective and with enough reason begun with a summary of the established facts.

With all due respect to the honorable colleague of the first opinion.

Hashim Omer Abdullah

Justice of the Supreme Court

27/5/2015

Final Judgment;

- 1- Annulment of the ruling by the Court of appeal – the appealed against.
- 2- Documents are to be returned to carry out the directives in the opinions of the majority above.
- 3- The two parties are to be informed.

Hashim Omer Abdullah Mohammed

Supreme Court Justice

President of the Circuit.

29/7/2015