

## APPELLATE CRIMINAL.

*Before U Thein Maung, Chief Justice, and U San Maung, J.*

CA GWE (APPELLANT)

*v.*

THE UNION OF BURMA (RESPONDENT). \*

H.C.  
1948

July 14.

*Shan States Manual, Rules 1 and 2 (1) (b) (iii) —Notification under—Conviction under Rule 2 of Shan States Customary Law—Whether an appeal lies to the High Court against the order of the Superintendent of the Southern Shan States.*

*Held:* The Superintendent of Southern Shan States exercises a general control over the administration of Criminal Justice within the Southern Shan States and he in exercise of such control can try and decide any case himself under Notification issued under Rules 1 and 2 (1) (b) (iii) and where he tries a case under Shan States Customary Law no appeal lies to the High Court. The Superintendent is an officer who exercises general control over the administration of Criminal Justice not only over the State of the Chief concerned but over the whole of the Southern Shan States and therefore no appeal would lie to the Chief of the State. There is no provision for appeal to the High Court and therefore no appeal lies to the High Court.

*Sein Bwa* for the appellant.

*Chan Htoon* (Attorney-General) for the respondent.

The judgment of the Bench was delivered by

U THEIN MAUNG, C.J.—The appellant Ca Gwe, who admittedly ran amuck in Mwena village, Kengtung Township, attacked about 13 persons with a *dah*, and caused the death of 3 of them, has been found guilty of an offence under section 2 of the Shan States Customary Law and sentenced to death by the Resident of the Southern Shan States on the 16th December 1947, *i.e.* before the date of the transfer of power.

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\* Criminal Appeal No. 422 of 1948 being appeal from the order of the Resident, Southern Shan States of Taunggyi, dated the 16th December 1947 passed in Criminal Regular Trial No. 1 of 1947-48.

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The memorandum of appeal which is dated the 19th December 1947 is addressed to the Governor of Burma ; but it has been forwarded to this Court by the Government of the Union of Burma, Ministry of the Shan State, and it has been admitted with the remark "the point whether the case can be entertained can be discussed at the hearing, if necessary." So we have treated the question as to whether there was an appeal from the judgment and sentence passed by the Resident of the Southern Shan States before the transfer of power as a preliminary issue and we have had the valuable assistance of the learned Attorney-General for the Union of Burma in connection with this question.

We are informed that the Resident is the Superintendent of the Southern Shan States who can exercise a general control over the administration of criminal justice within the Southern Shan States and who in exercise of such control can try and decide any case himself under Rules 1 and 2 (1) (b) (iii) of the Notification relating to Control over Administration of Criminal Justice, at page 45 of the Shan States Manual. He has tried the case not under the Penal Code but under the Shan States Customary Law. So the Federated Shan States Laws and Criminal Justice Order, 1926, does not apply and there cannot be an appeal under Article 10 (c) the second Schedule thereto.

The question as to whether an appeal from the judgment and sentence passed by him under the Customary Law must be determined with reference to Orders modifying the Customary Law in the Federated Shan States at pages 47 to 50 of the Shan States Manual. As a matter of fact the appellant has been convicted and sentenced under Rule 2 of the Rules regarding offences and punishments in the said order. Rule 4 of the Rules of Procedure therein provides that any person sentenced for an offence may appeal to the Chief of the

State. However, this rule must be read with Rule 1 which provides for appointment by the Chief of a State of officers to try criminal cases; and it is quite clear from the context that Rule 4 provides for appeals from sentences passed by such officers only. The Superintendent was an officer who exercised a general control over the administration of criminal justice not only in the State of the Chief concerned but in the whole of the Southern Shan States and there can be no question of an appeal from a sentence passed by him lying to the Chief of the State.

Rule 2 (2) relating to control over administration of criminal justice at page 45 of the Shan States Manual provides that the Superintendent in exercising the powers of general control shall observe the procedure prescribed for Magistrates by the Code of Criminal Procedure as modified by the Shan States Laws and Criminal Justice Order, 1926; but it does not give anyone a right of appeal from sentences passed by him under the Customary Law.

The learned Attorney-General has also submitted that after further consideration of the question he has come to the conclusion that no appeal lay from a sentence passed by the Superintendent under the Customary Law.

For the above reasons we hold that the Secretary, Shan State Government, is right when he says that "a judicial appeal does not lie" and that "the present appeal should be treated as a clemency petition to His Excellency the President under Rule 14 of the Orders modifying the Customary Law in the Federated Shan States."

The memorandum of appeal is accordingly returned to the Government of the Union of Burma, Ministry of the Shan State, for presentation to His Excellency the President of the Union as an application for clemency.

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