FRANK WINS A STAY; MAY ANNUL VERDICT

New Lawyers Enter Case, Raising Point That Opens Way for Appeal to U.S. Supreme Court.

STATE TAKEN BY SURPRISE

Prisoner's Rights Held to be Violated When He Was Kept from Court as Verdict Was Given.

Special to The New York Times.

ATLANTA, Ga., April 16.—Leo M. Frank, who was under sentence to be hanged to-morrow for the murder of Mary Phagan, obtained a stay to-day upon two motions filed by his attorneys before Judge Hill in the Superior Court. One of these motions—which came as a complete surprise—demanded the annulment of the verdict on the ground that the defendant was deprived of his right under the Constitution of the United States because he was absent from court when the verdict was announced. It is believed that this will be the basis of an appeal to the United States Supreme Court in the event that a new trial is denied.

The other motion was for a new trial on the general ground of newly discovered evidence. Arguments on both motions were set for April 22, and this action on the part of the court automatically acted as a stay of execution.

In the motion to set aside the verdict, it was asserted, Judge L. S. Roan, the trial Judge, requested that Frank be kept out of the courtroom when the verdict was announced on the ground of possible violence in the event of acquittal. It also was contended that two of his counsel, Reuben R. Arnold and Luther Z. Rosser, agreed to this, and waived his right to be in court. The motion for annulment was filed by Tye, Peeples & Alexander, attorneys not heretofore connected with the case. They contended that Frank did not know of the agreement to waive his presence in court and that he would have had no right to enter such an agreement, even if he had known of it. The point is regarded as the most vital one so far raised in the case.

One of the decisions of Judge Hill himself, when he was a member of the Court of Appeals, will play a part in the argument of the motion. This is the case of the State vs. Lyons, Seventh Georgia Appeals. A verdict was then set aside because an attorney, in a telephone conversation with the trial Judge, waived the presence of himself and the defendant.

Relative to the agreement on Frank's absence at the time of the verdict, Solicitor General Hugh M. Dorsey to-day issued the following statement:

"Under the promise of two of Frank's attorneys that no advantage would be taken of it, and over my protest to the Judge against proceeding under that promise, Judge L. S. Roan, of his own motion, permitted the accused to be absent from court when the verdict was rendered."

Lawyers Explain Agreement.

Attorneys Luther Z. Rosser and Reuben R. Arnold issued the following statement in reference to the filing of the motion by Attorneys Tye, Peeples, and Alexander:

The motion filed this morning to set aside the conviction of Leo M. Frank, on the ground, among others, that Frank was not present when the verdict was rendered, and did not consent to the return of the verdict in his absence, was filed by Messrs. Tye, Peeples, Alexander, and others. We do not appear as counsel in that motion.

The extraordinary motion for new trial, based upon newly discovered evidence and other like grounds, was filed by ourselves, together with Mr. Brandon Evans, Messrs. Herbert and Leonard Haas, and is a different proceeding, upon entirely different grounds from the motion to set aside.

During the trial of Mr. Frank the feeling against him on the part of some of the public was so evident and pronounced as to greatly concern the trial Judge for Frank's safety in the event of his acquittal. During the trial the Judge called attention several times to the danger of having Frank present at the reception of the verdict.

Nothing, however, was done about this until the last day of the trial and just a few minutes before the jury was charged. The Judge, then in the jury room adjoining the court room, again expressed grave apprehension as to Frank's safety upon the reception of the verdict, should Frank be present, and there be a verdict of acquittal. We as two of his counsel were present the verdict of the jury was rendered and the Judge requested us to agree that Frank should not be present when when the verdict of the jury was rendered, and that his counsel also should not be present. To this we agreed.

Suggested by the Judge.

Acting upon this agreement made at the suggestion of the Judge, Frank was not present at the return of the verdict, nor were any of his counsel.

There was no request on the part of the Judge that we get the personal consent of Mr. Frank to his absence, nor to the agreement made by us.

The situation was very tense and excitement in the court house and in the streets was great. The charge of the court was just about to begin and was at once given, and as soon as given Frank was carried by the Sheriff to the jail. We were intensely absorbed in the events taking place, especially as the charge began just after our conference with the Judge ended. In the excitement and confusion and in the multitude of things we had to do and look after it never occurred to us to mention our agreement with the court either to Mr. Frank or to our associate counsel. As a matter of fact, neither our associate counsel nor Mr. Frank were present when we had the conference with the Judge, and Mr. Haas knew nothing about it until after the verdict was received and after the sentence was pronounced.

Because of our participation in the agreement with the Judge as counsel we feel that we ought not to take part as attorneys in the motion to set the judgment aside upon the ground of Frank's absence. This case, however, is an important one to Mr. Frank and we have no right or desire to dictate to him what he ought to do under the circumstances.

The case is his, not ours, and it is his life which is at stake. Frank made no agreement with the court, and was asked to make none. If, as a result of what happened, he has been deprived of his legal rights, no fair-minded man can complain when Frank asks the law to correct the wrong done him.

The circumstances worked in the case of this man a practical denial to him, as well as his counsel, of the valuable right to be present when the verdict was received. This condition was brought about by the unjust, excited and prejudiced surroundings which made it impossible to conclude this trial with legal regularity.

Under ordinary, sane conditions, no such agreement would have been thought of by court or counsel.

The agreement was made and carried out on both sides with the utmost good faith, in promotion of what was thought to be in the interest of Frank's safety and public tranquillity.

Disclose New Evidence.

The extraordinary motion, based on the ground of newly discovered evidence, was simply filed with the court and ordered served a second time on Solicitor General Dorsey, who was not in court, but was represented by E. A. Stephens, his assistant.

The action of Judge Hill in setting a date for hearing the two motions means that Detective William J. Burns will be forced to disclose any new evidence he may have discovered by that date, that it may be incorporated into amendments to the extraordinary motion.

When Judge Hill took the bench this morning the first motion was that to set aside the verdict. This was read by Attorney Tye. Then Attorney Luther Z. Rosser filed the extraordinary motion. This was based on the statement of Dr. H. F. Harris that, in his opinion, the hair found on the lathe in the National Pencil Factory did not resemble that of the murdered girl; on the statement of Mary Rich that she saw Jim Conley, the negro accuser of Frank, emerge from the basement door of the factory at 2:20 o'clock on the afternoon of the murder, and on other points already revealed to the public.

R. R. Arnold of counsel for the defense presented to the court an order appointing the court reporter, D. O. Smith, a Commissioner to take the testimony of Dr. Harris, Mary Rich, and E. A. Stephens, Assistant Solicitor. The attorney said these witnesses had declined to make affidavits on points desired by the defense. Judge Hill suggested that the order be shown to the Solicitor for his comment. Mr. Arnold replied the Solicitor was not in court. The Judge suggested that the order be shown to the Assistant Solicitor, but Mr. Arnold said he was one of the witnesses from whom it was desired to take testimony.

Judge Hill said with emphasis that the arguments on both the motion to set aside the verdict and the extraordinary motion for a new trial must proceed next Wednesday morning unless very god cause for delay arose.

"I will require you gentlemen to proceed with the argument next Wednesday," said the Court. "I have not seen any disposition among you to delay the case unnecessarily, but I want to inform you that this court desires to proceed with it as rapidly as is consistent with justice."

Henry Peeples said his firm entered the case only a few days ago. He would not say whether his firm would take up other angles of the case.

May Go to Higest Court.

The injection of a Federal Constitutional question into the case is important, because it indicates that the fight for Frank's life may be carried up to the United States Supreme Court.

After Judge Hill had signed the order appointing Court Reporter Smith to take testimony and court was adjourned, John Black, a city detective, was examined. He testified that he carried to Dr. Harris the hair found on the lathe in the pencil factory.

Mary Rich was not in court. The defense asserted that she had made an affidavit for the prosecution contradicting some points in her testimony for the defense.

Motion to Annul Verdict.

The motion to set aside the verdict of guilty follows in part:

"Now comes Leo M. Frank, the defendant in the above-stated cause, against whom in said cause a verdict of guilty of murder was received by the court on Aug. 25, 1913, and moves the court to set aside said verdict for the following reasons:

"First—Because at the time that said verdict was received, and the jury trying the cause was discharged, this defendant was in the custody of the law and incarcerated in the common jail of said county. He was not present when said verdict was received, and the said jury was discharged, as he had a right in law to be, and as the law required that he should be. He did not waive said right nor did he authorize any one to waive it for him, nor consent that he should not be present. He did not even know that said verdict had been rendered and said jury discharged until after the reception of the verdict and discharge of the jury and until after sentence of death had been pronounced upon him.

"Second—Because, while in point of fact the statements above are true, yet the presence of this defendant at the reception of said verdict was a legal right of the defendant and a requirement of law which could not be waived even by this defendant himself, the charge upon which defendant was tried being a charge of murder subjecting him to possible deprivation of his life, and such waiver would be not only a renunciation of a right which the law had established in his favor, but would be a renunciation affecting the public interest.

"Because on the day said verdict was rendered, and shortly before, Hon. L. S. Roan, the Judge who presided at the trial of said cause, made his charge to the jury, the said Judge, in the jury room of the court house wherein the trial was proceeding, privately conversed with L. V. Rosser and Ruben R. Arnold, two of the counsel of the defendant, and in said conversation referred to the probable danger of violence that the defendant would be in if he were present when the verdict was rendered in this cause, if said verdict should be one of acquittal, and after said Judge thus expressed himself he requested said counsel to agree that this defendant need not be present at the time the verdict was rendered and the jury polled.

"Under these circumstances the counsel did agree with the Judge that this defendant should not be present at the rendition of the verdict. In the same conversation the Judge expressed the opinion that even counsel of this defendant might be in danger of violence if they should be present at the reception of said verdict.

Counsel Agreed with Judge.

"Under these circumstances, defendant's counsel, Rosser and Arnold, did agree with the Judge that this defendant should not be present at the rendition of the verdict. This defendant was not present at said conversation and knew nothing about the same or any agreement made as above stated until after the verdict was received and the jury discharged and until after sentence of death was pronounced upon him.

"Pursuant to the conversation above stated, neither the said Rosser nor the said Arnold, nor Herbert J. Haas, who were the sole counsel of this defendant in said cause, were present when the verdict was received and said jury discharged. Nor was this defendant present when said verdict was rendered and the said jury discharged.

"The defendant says he did not give said counsel nor any one else any authority to waive or renounce the right of this defendant to be present at the reception of said verdict or to agree that this defendant should not be present thereat; and the relation of attorney and client did not give such authority, though said counsel acted in the most perfect good faith and in the interest of the personal safety of this defendant.

"Neither the said conversation with Judge Roan nor the purport thereof, was communicated to said Haas, nor did said Haas know thereof until after sentence was pronounced on defendant.

"Defendant did not give to said Rosser, nor to said Arnold, nor to said Haas, any authority themselves to be absent when said verdict was received, nor did he agree that they, or either of them, might be so absent."

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