

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 10/82

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE ROWE, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A. (AC.)

IN THE MATTER OF AN APPLICATION
FOR LEAVE TO APPEAL TO HER MAJESTY
IN COUNCIL - PURSUANT TO SECTION
35 OF THE JUDICATURE (APPELLATE
JURISDICTION) ACT.

PETER HARRISON

VS.

THE QUEEN

Mr. Delano Harrison and Mr. A. J. Hutchinson for the applicant.
Mr. F. A. Smith for the Crown.

May 19, 1982; July 6, 1984

KERR, J.A.:

On May 19, 1982, this application was refused and we then promised to put our reasons in writing. Regrettably and perhaps because reasons are not usually reserved in application of this nature the matter was oversights and attention but recently adverted to this hitherto unfulfilled promise.

The applicant, a Corporal of Police, was convicted in the Resident Magistrate's Court on an indictment which charged him with bribery contrary to Section 4 of the Corruption Prevention Act for that he on the 21st November, 1980 in the parish of St. Catherine obtained from Marion Tulloch, the sum of \$300.00 as a gratification for showing favour in the exercise of his official functions to Ralston Morgan and Lambert Morgan who were charged with a breach of the Dangerous Drugs Law, namely cultivating ganja.

The Court (Carberry, Carey, White, JJ.A.) in dismissing his appeal against conviction "could not disagree with the learned

Resident Magistrate who expressed himself as being impressed by the witness Marion Tulloch" and, with respect to defence Attorney's submission that Tulloch had an interest to serve and therefore her evidence required corroboration, was of the view that in any event there was ample corroboration of her evidence.

The questions formulated as involving points of law of exceptional public importance and meriting a further appeal to Her Majesty in Council were:

1. In a trial without a jury is it incumbent on the Tribunal to demonstrate that the status of a witness as an accomplice vel non, or such as has an interest to serve has been considered?
2. Would the position be any different when there is a positive statutory requirement for the Tribunal to record his 'findings of fact'?
3. If the answer to 1 or 2 is in the affirmative, would the failure of the Tribunal so to do, effect a substantial miscarriage of Justice."

Section 291 of the Judicature (Resident Magistrates) Act so far as is relevant reads:

"..... Where any person charged before a Court with any offence specified by the Minister, by order, to be an offence to which this paragraph shall apply, is found guilty of such an offence, the Magistrate shall record or cause to be recorded in the notes of evidence, a statement in summary form of his findings of fact on which the verdict of guilty is founded."

The learned Resident Magistrate did in fact set out his findings of fact upon which he based his verdict as required by the Section. However, with respect to his omission to categorically state that the witness Tulloch was an accomplice it was clear from the notes that he was addressed on this aspect of the matter by attorneys appearing for the applicant in a no case submission and, therefore, he could not have failed to appreciate the position of the witness Tulloch and to approach her evidence with the care and caution required in relation to the evidence of an accomplice -
See R. v. Malek and Reyes [1966] 9 J.L.R. at p. 563.

Accordingly, in the light of the judgment of the Court of Appeal the questions as formulated would be merely of academic interest and could in no way affect the verdict.

With respect to the general question as to whether the provisions of Section 291 are mandatory we would adopt the approach of this Court in Appeals Nos. 2 and 7 of 1980 - Farrington v. Brandon (unreported) delivered August 12, 1980 - and say that notwithstanding that the provisions were couched in apparently mandatory language, the provisions are directory, because to hold that a verdict is invalid because of the Resident Magistrate's failure to obey the provisions would work unfairly and unjustly to parties who have no control over the proceedings. It would mean that an appeal against conviction though devoid of merit must be allowed if for some inexplicable reason a Resident Magistrate omitted to record his findings of fact.

Accordingly, we are of the view that the following observations in R. v. Leroy Sawyers (Resident Magistrate's Criminal Appeal - 74/80):

"Unless the resident magistrates faithfully abide by the provisions of Section 291 of the Judicature Resident Magistrates Act and set out what are their findings of fact neither the persons who have been convicted nor the Appeal Court, if the matters reach the Appeal Court, can understand fully why the resident magistrate came to the particular verdict,"

indicate no more than the probability of a problem arising from failure on the part of the Resident Magistrate to comply with the provisions of the Section and advocate the desirability of compliance.

For these reasons the application was refused.