

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 14/96

**BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE PATTERSON, J. A.
THE HON. MR. JUSTICE WALKER, JA. (AG.)**

R. V. ELVIS MARTIN

Lord Gifford, Q.C. and Mr. Hugh Wilson for the Applicant

Lloyd Hibbert, Q.C. and Miss Sharon George for the Crown

1st, 2nd & 22nd October, 1996

FORTE, J.A.

The applicant was convicted in the Home Circuit Court on the 25th January, 1996 of the offence of capital murder and, in accordance with the law, sentenced to death. On the 2nd October, 1996 having heard over a period of two days his application for leave to appeal, the application was granted, and the hearing of the application treated as the hearing of the appeal. We allowed the appeal, quashed the conviction, set aside the sentence, and in the interest of justice, ordered a new trial to take place in the current session of the Home Circuit Court.

Having regard to the reasons for allowing this appeal there is no necessity to refer to the evidence upon which the Crown relied, except to say that the case rested substantially, if not wholly, on the evidence of Ladrack Scott, who the learned trial judge quite correctly invited the jury to treat as an accomplice. Though there was at least one other valid complaint which could result in the appeal being allowed, having regard to the concession of Mr. Hibbert, Q.C. for the Crown, we need only refer to the following ground of appeal:

"4. The learned trial judge erred in law in his direction to the jury on the evidence of Ladrack Scott as an accomplice (p. 533-6). In particular the learned judge:

- (a) failed to direct the jury that it was dangerous to convict on such evidence in the absence of corroboration;
- (b) failed to direct the jury that there was no corroboration of Scott's evidence;
- (c) Misdirected the jury by using the expression 'supported in other respects'."

An examination of the summing-up discloses that the learned trial judge, did not define in adequate terms what in law is the meaning of corroboration. The following passage represents his total effort in that regard:

"The fact that he is seen by you in any aspect of the evidence as a participant does not mean that you cannot accept his evidence if you believe that he is speaking the truth, but you must examine his evidence very carefully because it is dangerous to use that evidence

unless it is supported in other respects in the rest of the evidence;.”

In our view, those words fell short of imparting to the jury, the necessary ingredients which would make evidence corroborative e.g. “independent evidence on a material particular.” This error, per se, is fatal, but nevertheless it was compounded by the learned trial judge’s omission to direct the jury that there was no evidence in the case, capable of corroboration. To the contrary, the learned trial judge, having told the jury that Scott’s evidence may be “supported in other respects in the rest of the evidence” thereafter pointed to evidence which he invited the jury to say did just that. It arose in this way. The appellant’s defence was an alibi, as he maintained that he never came to Hector’s River (the area in which the offence was committed) in the month of October. However, a witness, Andrea Lynch, testified that she had seen him there in October.

On the basis of that evidence, the learned trial judge directed the jury thus:

“He, of course, told you that he didn’t come to Hector’s River in October; he left in September, he came back one day in September, but here is evidence from Andrea Lynch that she saw him there in October, mid October, and it is for you to examine it as to whether or not that is a bit of circumstantial evidence that can go along to support what Ladrack Scott is saying that he was there on the 16th October in Hector’s River, doing what he said he did.” [Emphasis supplied]

It is clear that that evidence of Andrea Lynch could not be properly treated as corroborative evidence, as the mere fact that he was seen in the area sometime in October cannot in our view corroborate the evidence of Scott - that the appellant was present at the scene committing the acts which Scott attributed to him. The use of the word "support" in both passages by the learned trial judge, in our view, must have led the jury to believe that the evidence of Andrea Lynch could confirm in some way the truth of the testimony of Scott. This, of course, would be totally incorrect.

It is for these reasons stated herein that we allowed the appeal and made the order heretofore stated.