J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No.101/84

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Ross, J.A.

R. v. MICHAEL SAHADEO

Messrs. Ian Ramsay and Athlone Clarke for Appellant.

Mr. Carl Lawrence for Crown.

December 17 - 19, 1984 &
February 28, 1985

ROWE, P.:

Her Honour, Mrs. Leonie Vanderpump, Resident Magistrate for St. Andrew, after a painstaking trial lasting some 16 days spread over the period from April 11 to July 19, 1983, found the appellant guilty of larceny as a servant, the particulars being that he on a day unknown between the 23rd day of February, 1982 and the 25th day of February, 1982 in the parish of St. Andrew, being clerk or servant to the Bank of Nova Scotia, Jamaica Limited, stole $233,100.00 in cash from the said Bank of Nova Scotia Limited, and for his offence she imposed a sentence of two years imprisonment at hard labour. Three grounds of appeal were filed and argued by counsel for the appellant and in essence these were that at the very beginning the allegations of the Crown were insufficient to support an order for indictment, alternatively that at the end of the Crown's case the appellant ought not

to have been called upon for his defence and in any event at the end of the defence the learned magistrate ought not to have convicted. We did not find merit in any of the grounds of appeal argued and accordingly the appeal was dismissed, and the conviction and sentence affirmed. Out of deference to the interesting submissions of counsel, the assiduous investigations of the police and the very careful way in which the learned resident magistrate conducted the trial we promised to reduce our reasons into writing, and this we now do.

Shrove Tuesday 1982 was not just a routine banking day at the Bank of Nova Scotia, 236 Spanish Town Road as on that day bank inspectors carried out a visitation in the course of which they counted the cash in the bank. There was much activity within the bank and as evening approached the employees began to leave. Mr. Jones, the Assistant Scotia Plan Loan Officer and whose duty it was to see that everything of value was securely locked away in the vault, left at between 4 - 5 p.m. without performing his assigned duty or delegating anyone to act for him. At between 5 - 5.15 p.m. the appellant was outside the bank. He re-entered when Mrs. McDonald was about to leave and there were then in the bank Mr. Page, the Manager, Mr. Atterbury, the Accountant, Miss Morgan, a teller, and the appellant. Mr. Atterbury used his key to let himself and Miss Morgan out of the bank and re-locked the front door. Mr. Page used his key to let himself out of the bank through the front door and re-locked it. What of Mr. Sahadeo, the appellant?

Miss Skervin, the supervisor, had left the bank before Mr. Atterbury and was sitting on the front steps awaiting Mr. Atterbury by whom she expected to be driven home that evening. When Miss Skervin noticed that the appellant did not re-appear, having re-entered the bank, she apprised

Mr. Atterbury of this fact and both he and Miss Morgan went into the bank to search for the appellant. Mr. Atterbury looked in the vault. He did not see the appellant. Miss Morgan looked around and she called his name. No reply came from the appellant so with a feeling of uneasiness Mr. Atterbury, Miss Skervin and Miss Morgan drove home that night. Mr. Page locked the main door of the vault, locked the front door of the bank and went home. According to the appellant his re-entry to the bank was for the purpose of locating his personal keys, which he soon found and then he approached the front door, saw the key already in the door and he beckoned to someone within the bank to lock up after him. Thereafter he let himself out. Miss Skervin and Mrs. Atterbury were to the front of the bank outside and both swore that they did not see the appellant exit from the bank after his re-entry. All the bank personnel who were within the bank maintained throughout that they did not let the appellant out of the bank nor did they see him leave. After re-viewing all the evidence the learned resident magistrate concluded that:

> "So from this I must conclude he was not let out of that bank and at the end of the day when that bank was closed Sahadeo was locked up in the vault. "

There was abundant evidence from which the magistrate could conclude that Sahadeo was locked up in the bank on February 23, 1982 and Mr. Ramsay's submissions that the witnesses exaggerated their opportunities to observe the movements of the appellant and as a consequence their conclusions that he could not have left the bank without being observed by them were not supported by the evidence, did not persuade us to the contrary.

It is one thing to say that Sahadeo was locked up in the bank but quite another to hold that he was locked in the vault. Certain events occurred between the Tuesday evening and the following Thursday morning from which the inescapable inference is that they were brought about by a person with inside knowledge of the workings of the bank. When Mr. Atterbury returned to the bank on February 25, after the Ash Wednesday holiday, he found the outer doors securely locked, the main vault door securely locked and on first impressions everything in perfect order.

It is necessary to describe briefly the bank's security system. The main vault has an outer door which is operated by two separate combinations. One set of the combinations was held secretly by two officers, in this case the Manager and the Accountant while the other combination was held secretly by Mr. Jones and Miss Skervin. Within the vault was inter-alia, the sub-treasury which contained all the cash surplus to the amount being held by individual tellers. The sub-treasury was situate in compartment No. 5 which could be activated by two sets of combinations and a time-lock. As Head-teller, the appellant kept secretly, one of the combinations and the time-lock key. Miss Skervin, the teller-supervisor, kept the other combination. Each combination holder would set his or her own combination then memorise it, and the only written record thereof would be kept in a sealed envelope at the branch's Head Office, to be unsealed and used only in cases of emergency. For the security of the bank's officials, the main vault door is so constructed that it can be opened from the inside without any knowledge of the combinations and without dismantling those combinations. All bank officials are drilled into the mechanics of opening the vault from within and the implements to attain

this objective are kept at pre-determined points in the vault. To enhance security and discourage fraud, a combination holder is required to shield his/her combination from the person holding the complementary combination. In accordance with the existing procedure, Mr. Atterbury turned off his combination for the main vault door on Thursday the 25th February, Miss Skervin turned off her combination, Mr. Atterbury then opened the vault door and secured it against accidental slamming. An unusual picture presented itself when Mr.Atterbury entered the vault and switched on the lights. Money in currency notes of all denominations were scattered about on the floor of the vault. Mr. Sahadeo's cash tin was on the floor but compartment 5, the sub-treasury, was securely locked. By using their individual combinations and the time-lock key, compartment 5 was opened by Mr. Sahadeo and Miss Skervin. Most of the money which that compartment ought to have contained was missing but there was one foreign item therein, viz, a Valentine Card, on which was posted letters cut from what appeared to be a magazine. A check disclosed that $233,100 had been stolen and none of this money has ever been recovered.

Miss Skervin had on the Tuesday 23rd gone to work at the usual time. When the appellant came in he went to the vault, turned off his combination, inserted the time-lock key and Miss Skervin's attention was only attracted to the opening of compartment 5 when she heard the alarm go off indicating that she had but one minute to turn off her combination or otherwise the entire process would have to be repeated. Miss Skervin rushed to the vault, stooped and without shielding her combination, turned or spun it off, with the appellant standing over her holding taut the time-lock key so as to unnaturally extend the time for opening the lock. Exposing her combination as she did, was a practice adopted by Miss Skervin

as she had impaired vision and this to the knowledge of the bank's authorities. And what occurred on the morning of February 23 was not an isolated incident as the appellant had on previous occasions commenced the opening procedure for the sub-treasury without the presence of his supervisor. Thus the appellant had opportunity to observe and become acquainted with the combination used by Miss Skervin. No direct evidence was tendered that he was seen peering down upon Miss Skervin as she turned her combination off but there was no gainsaying the point that such opportunity had been created partly by the way in which the appellant performed his duty of opening the sub-treasury and partly because of Miss Skervin's impediment.

Evidence from the Crown went further to say that Sahadeo could have concealed himself in an empty filing cabinet which reposed in the vault. A finger-print was found on the cabinet which when compared with that of the appellant was proved to be inconclusive but the opinion of the finger-print expert is that the print could have been made by someone who being inside the cabinet, tried to close it by grasping the door by the edge. Moisture was found on the inside of the cabinet and documents found therein could have provided a cushion for someone sitting therein. All these pointers were significant indicia that someone may well have secreted himself or herself in the cabinet but by themselves they did not point exclusively to the appellant or to anyone else for that matter. The presence of this empty filing cabinet large enough to conceal an adult person lent support to the prosecution's theory that the thief was locked in the vault on the evening of February 23.

But even if the appellant had knowledge so as to get into compartment No. 5 unaided and to release himself from the vault, how did he get out of the bank without obvious signs of breaking. The prosecution's case proceeded on two bases. Admittedly, the appellant did not have lawful possession of a key to the outer doors of the bank. The key used by the employees to egress and regress from the bank during non-banking hours was that possessed by the accountant. It would be placed on a ledge and would in most cases be used by the security guard to let an officer out and to re-lock the door. Evidence was led that on at least two occasions the appellant was seen to take the key for the front door, open the door and let himself out, leave the bank's premises with the key in his possession, then return about half-an-hour later and let himself into the bank. Shortly before the 23rd February, on a visit by the locksmiths to service the several locks in the bank the appellant caused one of the locksmiths to fashion a key for him which the locksmith said was of a type similar to that used for the front door of the bank. Sahadeo in his defence denied ever leaving the bank with the key for the front door and said that the key which he caused the locksmith to cut for him was to replace his lost house key. There was thus evidence of opportunity in the appellant to procure a key for the front door of the bank.

Mr. Ramsay submitted that the Crown had given no watertight explanation as to how the appellant could unaided get into the sub-treasury and then leave the bank. It would be utterly unfair he said to draw an adverse inference from the making of the key at the bank, by the bank's own locksmith openly for all to see and in the face of evidence that another

employee at the same time had a key made by the same technician. Security Guard, Mr. White had contradicted other evidence from the Crown that the appellant had on occasions left the bank with the front door key. There was no specific finding on this aspect of the case by the learned magistrate but it is inconceivable that she could have convicted had she not accepted the evidence of Jacqueline Morgan that the appellant had on at least 2 occasions gone away from the premises with the front door key in his possession and from which the inference could be drawn that he gave himself the opportunity to duplicate that key.

Resting as the Crown's case did, wholly on circumstantial evidence, Mr. Ramsay and Mr. Clarke submitted that there were a number of persons who had equal or greater opportunity to enter and rob the bank, than did the appellant, yet they were not thoroughly investigated and that the police quite wrongly concentrated upon the appellant because of the opinion of the bank's senior security officer, a Canadian, a Mr. Vey. Brinks Security Service had a key for the front door of the bank and had authority to enter and check on the bank on non-banking days. They had no knowledge of the combinations of the vault or to the compartments within the vault. Minott's Janitorial Services had keys for the doors to the bank. They were kept by Delroy Dixon who said he spent half-an-hour in the bank on the Ash Wednesday, but had no knowledge of the combinations for the vault or its compartments.

Sydney Johnson Janitorial and Plant Hire Services had a key for the bank so that they could tend the flower pots containing growing plants therein. Their operator, Mr. Daniel Mattison did not attend at the bank on Ash Wednesday and he had no knowledge of any of the combinations for the vault or its compartments.

It was speculated by the appellant that if one of the bank's officers, e.g. the Manager or the Accountant or the Teller Supervisor or a combination of them, wished to enter the bank and specifically compartment 5 this could be done by getting hold of the written down combination of the appellant, getting hold of the duplicate time-lock key which was itself kept under a separate combination in the vault and by using their keys to the bank and their combinations to the vault, be able to extract the money.

Then there were the locksmiths who had serviced the combinations in the vault shortly before the theft. Their evidence was that it was impossible for them in the way they performed their duties to gain knowledge of the combinations in use. The learned resident magistrate made a specific finding on these aspects of the evidence in relation to equal or greater opportunity in others. She said:

> "It was contended by the defence that other persons had access to the bank and the vault and compartment No. 5 by virtue of the fact that they were in possession of keys to the bank and the combinations in respect of the vault. That the evidence did not point exclusively to the accused - all these persons were called as witnesses. Evidence was given concerning the system that obtained to preserve the secrecy of the numbers. The only time these numbers were written was for the purpose of their being submitted to Head Office for safe-keeping in the event they are required if for any reason the holder finds it impossible to perform his duties. Evidence was given as to how the information is obtained when the number is required for use. They were cross-examined vigorously. Their integrity was unchallenged and remained unimpaired."

Much depended upon the impression which the several witnesses who had some access to the bank made upon the tribunal of fact. She did not detect in them any semblance of conspiracy. Indeed she said their integrity was "unchallenged" but I think she really meant that their integrity was "unshaken" even under the most vigorous cross-examination.

Mr. Ramsay referred to the mystery which surrounded the whereabouts of the appellant at lock-up time on February 23. In his submissions, the mystery was cleared up when Mr. Atterbury and Miss Morgan searched and satisfied themselves that the appellant was not locked in the vault. In our opinion their state of mind was directed to a situation of innocence as their first thought was that the appellant in his zeal to complete his day's work was unmindful of time and was in the vault filing away documents. They had no reason to think that he, and not files, would be in the filing cabinet. Miss Skervin expressed her relief to the appellant when she saw him on the morning of the 25th for, as she said, his non-appearance on the evening of the 23rd had caused her blood-pressure to rise dangerously. Indeed the mystery was cleared up by the learned resident magistrate when she found that the appellant had secreted himself in the filing cabinet in the vault.

Our attention was directed to dicta of Pollock C.B. in his charge to the jury in R. v. Exall and Others [1867] 4 F. & F. 922 at 928, to buttress the submission on behalf of the appellant that all the circumstances in the instant case should be fairly considered before a verdict of guilt could be sustained. Pollock C.B. was dealing with a case of burglary and larceny involving three accused and the prosecution relied on the doctrine of recent possession. At page 928 of the Report Pollock C.B. directed the jury that:

> "What the jury have to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable, or otherwise."

With this direction we entirely agree and proffer the comment, how was it possible for Sahadeo not to have been able to tell on February 25 who had let him out of the bank and how after months and even years of reflection he could not call a name when there were but three persons who could have done so.

In considering the evidence tendered in the case the learned magistrate applied the proper test in relation to circumstantial evidence when she said:

> "On the evidence before me I am satisfied not only that the circumstances are consistent with the accused man's having committed the act alleged, but also that the facts are such as to be inconsistent with any other rational conclusion than that the accused was the guilty person. "

This is the test approved by this Court in R. v. Cecil Bailey [1975] 13 J.L.R. 46. We were in complete agreement with the learned magistrate's analysis of the evidence and to the conclusion to which she arrived and in consequence dismissed the appeal, and approved the conviction and sentence.