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Judgment Book

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 54/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. SAMUEL O'CONNOR

Noel Edwards, Q.C. & Alpheus Hines
for appellant

Miss Carol Malcolm for the Crown

31st July, 1989

CAREY, J.A.

In the Resident Magistrate's Court for the parish of St. Elizabeth held at Black River on the 31st of May, 1989 the appellant was convicted on an indictment which charged him for praedial larceny of a quantity of escallion valued at $200.00 the property of one Glenrick Powell then growing in the plantation of the said Glenrick Powell. This is, to say the least, a most odd case. It is odd because the appellant happens to be a police officer and he is charged for stealing really something of no value whatsoever since, on the evidence, it is accepted that he himself also owns an escallion plantation.

As we have come to the clear conclusion that this appeal must be allowed, we will say no more than is

absolutely necessary to understand the conclusion to which we have been impelled. The appeal is being allowed on the basis that the verdict is unreasonable, because in our judgment the learned Resident Magistrate did not use the opportunity of considering the proper inferences to be drawn from the facts which he had before him.

The Crown's case was that on the early morning of the 3rd of March, 1988 the owner of the plantation, Mr. Powell said he saw this appellant in his escallion plantation, really a patch, pulling up his escallion which annoyed him no end, and although his common-law wife was in bed with him he never did call her attention to this strange occurrence outside his window. He himself regarded this as rather strange. The appellant whom he was able to see at a distance of a chain, was bare-footed and wore no shirt. Mr. Powell went outside, he said, chased and finally held him. According to Mr. Powell, the appellant began to say to him that it was escallion "he was looking to sell and if he had his gun what he would do with it." Powell called a neighbour Delphine Elliott to see for herself. He then went to his field where he noticed that his escallion was uprooted and he saw escallion inside the garden. Some, he said, had been "carried away." There is some evidence about seeing the appellant's wife after these events when Mrs. O'Connor is alleged to have paid $200.00 to Mr. Powell.

The appellant denied that he was uprooting any escallion and the story he gave was that he was chasing after some suspicious character whom he thought was a thief when he was accosted by Mr. Powell who was then armed with a fish gun.

One of the curious features of this case, which we already pointed out, was that Mr. Powell, the owner, never apprised his wife of the presence of an intruder in the garden. Then there is also curious evidence that when the witness Delphine Elliott examined the escallion she said it appeared to be spoiling. Escallion, as everyone knows, does not spoil in a short time. It is also curious that the escallion was never ever taken to the police station nor did the police come to look at the escallion which was in the field.

During the course of the hearing, and we must point out that counsel who appeared before us did not appear below, it became apparent that the appellant was having an affair with the girlfriend of the plantation owner. Now this fact did not seem to have been of any significance at the trial. The learned Resident Magistrate certainly did not accord it very much importance but it explains the event of the night which, if the learned Resident Magistrate had stopped for a moment and considered, would seem to fit into place. It is clear that the appellant had gone there the night on a tryst and was undoubtedly surprised. That explains why he was dressed as he was; at the time he was wearing neither his shoes nor any shirt.

In our judgment the learned Resident Magistrate did not really consider the story or the facts before him in a realistic manner and he did not give significance to curious pieces of the evidence or draw from those curious pieces of evidence the proper inferences which he ought to

draw. Had he done so, we feel sure, he would have been in no doubt that this was no bona fide case of praedial larceny whatever.

There is also one other curious feature which we note; it is this: the so called larceny took place on the 3rd March and if the matter was of such moment and significance, it is passing strange that no report was made to the police until some nine days later. All these are factors which as we have indicated, should have told in favour of the appellant and led the learned Resident Magistrate to come to a view other than that at which he arrived. In our judgment, the appeal should be and is accordingly allowed, the conviction quashed and the sentence set aside.