JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 198/65

BEFORE: The Hon. Mr. Justice Henriques, Ag. President
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston

R. vs. WESLEY SCARLETT

Mr. D.H.McFarlane for the appellant

Mr. I. Forte for the Crown

20th July, 1966.

HENRIQUES, Ag. P.,

The appellant in this matter was convicted at the Circuit Court for St. Thomas on the 30th of November, of the offence of receiving stolen goods on an indictment which charged him both with larceny and receiving, and he was sentenced to five years hard labour. He has appealed against his conviction, and learned Counsel on his behalf has taken two grounds of appeal.

The first is:-

" The learned trial judge erred in his directions to the jury on the Law, in that in dealing with the Law affecting a case of receiving stolen property he omitted to direct the jury on the aspect of the Law relating to possession of the property by the appellant. A necessary ingredient of the offence of receiving stolen property is possession of the property in the accused."

It is unnecessary for us to deal with that particular ground of appeal, in view of the decision at which we have arrived on another ground.

The second ground is:

" The learned trial judge erred in his directions to the jury on the law in omitting to direct them on the manner in which they should regard the evidence given in Court by one accused, as it implicated the other.

(a) On the conduct of the case by the Crown the two

/accused...

accused were accomplices and the jury should have been warned that they could be regarded as accomplices and that insofar as the evidence in Court of one accused implicated the other, it was dangerous to convict either accused on such evidence without corroboration, although they might do so.

(b) The jury should have been warned further, that even if they did not, after a proper direction, regard the two accused as accomplices they should treat the evidence of each, implicating the other in the same way as that of an accomplice as regards the necessity for corroboration if, as in the instant case in giving evidence each accused had some purpose of his own to serve."

The appellant Scarlett had been charged along with another defendant and they had both given evidence in the witness box, and in the course of that evidence each sought to exculpate himself and to inculpate his co-accused.

Learned Counsel for the appellant has referred to the case of R. v. Rudd in 32 C.A.R., p. 138 and also to the case of R. vs. Prater, 44 C.A.R., p.83. However, it appears to us that this Court was faced with a similar problem in the case of R. vs. Singh, reported in 5 W.I.R. at page 61. In the course of the judgment in that case, there is to be found the following passage:-

" We have had to consider what warning would have been appropriate in the instant case, bearing in mind that both the accused gave evidence and that each sought to exculpate himself and implicate the other. It may well be, as counsel urged on behalf of the Crown, that the usual warning against uncorroborated evidence might have confused the jury in their consideration of the case of each defendant separately. We think that this is the type of case in which it is desirable that the sort of direction which was held to be a proper direction in R. v. Meredith, and which was approved in R. v. Rudd, should be given.

/It is....

It is perhaps best stated in the headnote to R. v. Meredith:

> ' Where several prisoners are tried jointly, and one or more of them gives evidence on oath, it may in some cases be desirable that the jury should be directed that, although the evidence given by one prisoner does in those circumstances strictly become evidence against his co-prisoners, they should not regard it as such, but should use that evidence only for the purpose of considering whether that individual prisoner has given an explanation which may be true, or whether his evidence compels the jury to disbelieve him.'

The Court went on to say:

" We adopt this statement as being the proper direction which it was desirable to give in this case."

That is the same situation which confronts this Court, and in our view we think that the proper warning or directions which ought to have been given to the jury in this case were those approved of in R. vs. Singh.

In Singh's case the Court went on to consider the rest of the evidence in the case, and came to the conclusion that it was clear and convincing. The Court, therefore, held that though there was an omission to direct, that omission did not result in a miscarriage of justice. The Court refused, therefore, to interfere with the conviction and refrained from applying the proviso and proceeded to dismiss the appeal.

We have considered the evidence in this case with anxious care and we have come to the conclusion that though the evidence was sufficient to sustain a conviction, it cannot be said to be clear and convincing. In the circumstances, therefore, the Court is disposed to allow this appeal, quash the conviction, and in the interests of justice order a new trial to take place at the next sitting of the St. Thomas Circuit Court, the appellant in the meantime to remain in custody.