JAMAICA

Judgment Book 511
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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 58/82

BEFORE: The Honourable Mr. Justice Rowe, J.A.
The Honourable Mr. Justice Campbell, J.A. (Ag.)
The Honourable Mr. Justice Wright, J.A. (Ag.)

ALEXANDER SCOTT v. REGINAM

Mr. W.A. Richmond for the Crown.

Mr. Frank Phipps, Q.C. for the Appellant.

June 30, 1982

WRIGHT, J.A. (AG.):

This is an appeal by the appellant, Alexander Scott, from conviction and sentence in the Resident Magistrate's Court for Saint Andrew, where, on a conviction for smoking ganja he was fined fifty ($50.00) dollars or one month imprisonment and for possession of ganja, sixty ($60.00) dollars or one month imprisonment.

There are two grounds of appeal. The first is that the verdict was unreasonable and cannot be supported, having regard to the evidence; and that is particularised into Ground 1(a), (b), (c) and (d). The second ground is that the learned Resident Magistrate wrongly admitted in evidence, the testimony of Det./Sgt. Watson, which could only have been presented as corroboration for the testimony of Det./Cpl. Ewan on a collateral issue, relating as it did entirely to a matter of credit. The evidence of Det./Sgt. Watson was relied on by the learned Resident Magistrate in determining the guilt of the defendant/appellant, instead of being rejected. The improper reliance on inadmissible evidence resulted in a substantial miscarriage of justice.

The charge arose out of an incident on the 1st of March, 1981, when Detective Acting Corporal Victor Ewan and, it appears, Special Constable Edward Watson, went to the gate of premises on Ambrook Lane in Saint Andrew where they saw the appellant standing at the gate with

his back towards the road.

It is alleged by both witnesses that they saw the appellant smoking a white cigar. From there on there seems to be not much agreement between the two witnesses, and in analysing the evidence before us Mr. Phipps has enumerated several points of discrepancies between these two witnesses as to what transpired at the scene. They seem not to have agreed as to the purpose of their presence there or the time or even as to the sequence of the events that followed their arrival there.

It is to be said that both these officers were dressed in plain clothes and when the appellant was accosted by Det. Ag./Cpl. Ewan, it is alleged by both officers that the first thing Ewan did was to identify himself by showing his booklet. It is contended by the appellant that there was no such identification and it was not unreasonable for him to think that they weren't anything but thieves. Indeed, the evidence of the officers is that he addressed them using words, "You nuh police; you a damn thief."

It is maintained by both officers that the appellant threw away the cigar. One officer, in more detail, says he threw it over a zinc fence; the other say he threw it away. Ewan retrieved it and, it would appear from the evidence of Watson that after it was thrown away the next thing was for Ewan to retrieve it. Then, there was an impasse between Ewan and the appellant, whereupon the appellant thumped Ewan and Ewan was about to relate a struggle which resulted. That portion of the evidence, however, was not gone into. It turned out subsequently that it would have been important and helpful to the learned Resident Magistrate, had the struggle been fully ventilated. However, Mr. Phipps contends that in cross-examination the details were pulled out.

Now, it is the contention of Ag./Cpl. Ewan that they searched the appellant and in his right side back pocket he found a brown paper parcel which, when opened, revealed vegetable matter resembling ganja. This was told to the appellant whereupon he replied, "You going see

what going to happen."

Now, a major discrepancy arises at this point because, according to the witness Watson, the appellant at that stage said, "Go 'way boy, mi have big superintendent uncle in the force and mi have big barrister by the name of Mr. Phipps." He followed by saying that the accused then pulled a knife from his pocket and stabbed at Detective Ewan, whereupon Watson intervened.

Now, from the evidence of Ewan, there is reference made to this high ranking Detective in the police force but this was after he had taken the appellant to the Half-Way-Tree police station and had arrested him - not at that time to which Watson testified.

So then, here is a major discrepancy between the two witnesses who were the only ones called as to what transpired on the scene.

Of course, Watson's inability to testify to certain matters seemed to be covered up by the fact that he testified that promptly, on arriving at the station, he left; he had nothing more to do with the appellant. It is also of significance that the question of the stabbling at Ewan with the knife is not mentioned by Ewan at all; it is Watson who mentioned this.

There are other matters of discrepancy which are on the record.

The appellant, when he arrived at the police station, was seen by an officer - about whose evidence there was much contention - to have been bleeding; and he saw him in a position indicating that he had subsequently fainted.

Ewan mentioned that there was a struggle and as a result of a crowd trying to pull the appellant away from the police the appellant fell and hit his head. When he rose up or was taken from the ground, he saw bleeding.

It is significant that Edward Watson did not see any bleeding at all. Yet, when the appellant was seen at the station in the region of 3:00 o'clock by Det./Sgt. Watson, to whom a report was made, the sergeant related that he saw him with blood, not only on his head but on his hand.

So, there are major discrepancies which, if they are not explained by the evidence, should enure to the benefit of the appellant.

Now, in an effort, it seems, to bolster the case presented by the prosecution - and at a point where it appeared that things were not going too well along certain lines after the prosecution had indicated that they had two witnesses - they called Det./Sgt. Volney Watson, and objection was taken to his evidence on the ground that the prosecution was calling that witness to corroborate their own witness merely on a matter of credit. It appears, however, that the Court must have been misled by the tenor of the objection. The witness was called.

The evidence that he gave was available to the Court for only a limited purpose, that is, it was to scotch the idea that the mention of the charge of ganja was an after-thought because - it turned out from the cross-examination - it was not mentioned by the prosecution at all that there had been preferred against the appellant a charge for unlawful possession of a watch which was found on him on the 1st of March but which, when subsequently claimed with the assistance of documents, resulted in the charge being dropped.

It is to be observed that as a result of directions issued by Det./Sgt. Watson on the 1st of March, the appellant was taken off to the hospital; and it appears that after he was sufficiently well he left hospital, even though it is contended by the prosecution witness that he was under guard by some policeman whose name he does not know.

So, it was on the 4th of March that the police returned to his home and took him back into custody. It was contended by the defence that the charges of smoking and possession of ganja were advanced by the police officers to cover up the fact that they had beaten the appellant and the only charge which they originally had, had to be dropped.

So that, as I said before, the evidence of Det./Sgt. Watson was available to demonstrate to the Court that it was not an after-

thought in that on the very day of the incident the charge was made in the presence and hearing of the appellant. It appears, however, that the learned Resident Magistrate made greater use of the evidence of this witness than he ought to have, and, in that regard, erred because he regarded him as giving strong supportive corroboration of the evidence of these two witnesses whose testimony is replete with unexplained discrepancies (and whom he found to be acceptable).

So that, on the question of the quality of the evidence as submitted in Ground 1, the verdict was unreasonable and could not be supported. The Crown has yielded and has not endeavoured to support the conviction at all.

There is another aspect in which the learned Resident Magistrate erred, in that it is apparent at one stage - though he seemed to have capitulated - that he was not laying much significance on the injuries sustained by the appellant. It was at the core of the defence that these injuries were significant in that they explained why a prosecution was continued after the original charge of unlawful possession of property had been discontinued. The account given by the police witnesses was that the appellant had fallen. There was, tendered in evidence, photographs of the sort of injuries that the appellant received. Unfortunately, the Court has not been privileged to see these photographs but they demonstrate, it is contended, that the nature of the injuries was such that they were still visible after seven (7) days.

It is submitted, in the light of the authority of R. v. Cassells (well-known Jamaican case), 9 J.L.R. page 72, that the significance of the injuries is that, having regard to their nature, they could not have been received in the manner stated by the prosecution and, therefore, the credit of the witness who so testified was seriously impeached inasmuch as there was no other explanation given. As much as the learned Resident Magistrate seemed not to have appreciated the significance of the evidence and the principle to be applied, he also erred.

The two grounds of appeal argued are upheld.

Before passing, I will deal with the matter of the character evidence because two gentlemen of high standing were called - a Mr. Peter Hudson, employer of the appellant and the Reverend Herman Spence, Rector of the St. Andrew Parish Church.

Their evidence seemed to have been treated with scant regard in arriving at a verdict of conviction by the Resident Magistrate. It appears that the principle to be observed in dealing with character evidence was not well observed in this case because, where it is plain on the record that there were unexplained and violent discrepancies in the prosecution's case, then of course the character of the witness, as testified to by witnesses of such standing, cannot be lightly regarded. They add strength to the contention of the appellant that he was not involved in criminal activity such as the prosecution would have the Court believe.

So, therefore, on that ground also, the conviction would be quashed.

In the circumstances the appeal is allowed, the conviction quashed, the sentence set aside and a verdict of acquittal entered.

ROWE, J.A.:

Mr. Phipps the Court has considered your application under Section 271 of the Judicature (Resident Magistrate's) Act that the prosecution should be ordered to pay the costs of the defence on the ground that the prosecution was baseless and high-handed. We are of the view that this is not a proper case in which to make such an order and consequently the application is refused.