

Privy Council Appeal No. 11 of 1978

Trevor Stone - - - - - Appellant

v.

The Queen - - - - - Respondent

FROM
THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, Delivered The 4th March 1980

Present at the Hearing:

LORD DIPLOCK
LORD SALMON
LORD ELWYN-JONES
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL
(Delivered by LORD DIPLOCK)

The appellant, Trevor Stone, was tried on May 11th, 1976 before Melville J., sitting without a jury, as a High Court Division of the Gun Court, upon an indictment which charged him

1. with illegal possession of a firearm contrary to section 20(1)(b) of the Firearms Act,
2. with robbery with aggravation contrary to section 37(1)(a) of the Larceny Act, and
3. with shooting with intent to cause grievous bodily harm.

All three counts related to offences which fall within the jurisdiction conferred upon a High Court Division of the Gun Court under section 5(2) of the Gun Court Act as amended by the Gun Court (Amendment) Act, 1976 ("the Amended Act"). The learned judge convicted Trevor Stone on the first two counts and acquitted him on the third. On the first count the judge imposed a sentence of imprisonment for life, which is mandatory under section 8(2) of the Amended Act; on the second count he imposed a sentence of twenty years imprisonment and six strokes.

Against these convictions Trevor Stone applied to the Court of Appeal for leave to appeal on a

number of grounds, one of which raised a question of interpretation of the Constitution of Jamaica. His application was refused by the Court of Appeal on July 29th, 1977, and leave to appeal to Her Majesty in Council against such refusal was granted by the Court of Appeal on March 15th, 1978. The only ground of appeal that has been relied on before this Board is that which raises a question as to the interpretation of the Constitution - the Constitutional Point.

Put in summary form the submission made on behalf of the appellant is: that the right of an accused to trial by jury in the case of grave crimes is entrenched in the Constitution of Jamaica; it can only be withdrawn or restricted by an Act of Parliament passed in accordance with the special procedure prescribed by section 49 of the Constitution; neither the Gun Court Act nor the Gun Court (Amendment) Act, 1976, was passed in accordance with those procedures; therefore, in so far as sections 4(b), 5(2) and 9(b) of the Amended Act purport to provide for the trial of grave crimes (i.e. fire-arm offences) by a Supreme Court judge sitting without a jury they are inconsistent with the Constitution and void. (See Constitution, section 2.)

In the reasons for judgment of the Court of Appeal delivered by Rowe J.A. (Ag.) the grounds on which this submission must be rejected are set out compendiously. Their Lordships, since they are in full agreement with the reasoning of the Court of Appeal, feel able to deal with the matter briefly.

The entrenched constitutional rights of a person charged with a criminal offence are to be found in section 20 of the Constitution. They entitle him to be tried "by an independent and impartial court established by law". The section contains no mention of trial by jury; though this is where one would expect to find such a right if it were intended to be entrenched.

The appellant is accordingly driven to rely upon section 97(1) of the Constitution:

"97.-(1) There shall be a Supreme Court for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law."

His submission is that because at the date of coming into force of the Constitution grave crimes were tried in Circuit Courts by a judge of the Supreme Court sitting with a jury, the reference in this section to a Supreme Court coupled with the provision in section 13(1) of the Jamaica (Constitution) Order in Council 1962 that

"the Supreme Court in existence immediately before the commencement of this Order shall be the Supreme Court for the purposes of the Constitution"

by necessary implication entrenched in the Constitution the then existing right to be tried by jury in the Supreme Court in all cases of grave crimes.

Their Lordships see no ground for any such implication. As was pointed out by the Judicial Committee in Hinds v. The Queen (1977) A.C. 195 at p. 213, the expression "Supreme Court" in the Constitution is used as a collective description of all those individual judges who, whether sitting alone or with other judges, or with a jury, are entitled to exercise the jurisdiction which was exercised by the Supreme Court of Judicature of Jamaica before the Constitution came into force. The power of Parliament under section 48(1) to make laws for the peace, order and good government of Jamaica, embraces a power to establish new courts, to confer jurisdiction upon them and to regulate their practice and procedure and those of courts already in existence at the time the Constitution came into force. This Parliament may do by ordinary law unless either:

1. it would be inconsistent with sections 20 or 25 of the Constitution (in which case it must be passed in the manner prescribed by section 50) or
2. it would conflict with what this Board in Hinds v. The Queen held to be a necessary implication from Chapter VII of the Constitution: that jurisdiction to try crimes of great gravity (as reflected by the sentences which they attract) may not be conferred upon a court, by whatever label it is described, unless the individual judges of the court are judges of the Supreme Court or have been appointed in the same manner and upon the same terms of tenure as those to which judges of the Supreme Court are entitled under Chapter VII.

A High Court Division of the Gun Court does consist of a Supreme Court judge. So there is no conflict with the Constitution under that head.

That when exercising the criminal jurisdiction conferred upon him by section 5(2) of the Amended Act, the Supreme Court judge sits without a jury is, in their Lordships' view, more aptly described as a matter of practice and procedure rather than "jurisdiction" or "powers" as those expressions are used in section 97 of the Constitution. The only fetters upon Parliament's power to regulate the practice and procedure to be followed by courts of law in exercising their jurisdiction are those contained in sections 20 and 25 of the Constitution; and it is rightly conceded that these provisions do not confer any entrenched right to trial by jury for criminal offences.

Moreover, even if the mode of trial, in the instant case by a Supreme Court judge sitting without a jury, were, on a liberal interpretation, capable of falling within the expressions "jurisdiction" or "powers", section 97 would, in their Lordships' view, be of no avail to the appellant; since, if while sitting under the description of a "High Court Division" of the Gun Court a Supreme Court judge is in substance exercising the jurisdiction of the Supreme Court, as their Lordships consider he is, section 97(1) by its reference to "any other law" authorises Parliament to extend the jurisdiction or powers of the Supreme Court, as it existed at the commencement of the Constitution, to try grave crimes by a judge of that court when sitting with a jury, by adding to it jurisdiction or power to try such crimes when sitting without a jury.

In their Lordships' view the Constitutional Point is without substance. They are in full agreement with the reasons given by the Court of Appeal for refusing the appellant leave to appeal to that Court. They will humbly advise Her Majesty that this appeal should be dismissed.