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1.

IN THE PRIVY COUNCIL

No. 13 of 1970

O N A P P E A L
FROM THE COURT OF APPEAL FOR JAMAICA

B E T W E E N

DENNIS HALL Appellant

- and -

THE QUEEN Respondent

C A S E F O R T H E A P P E L L A N T

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10 1. This is an appeal in forma pauperis from a Judgment of the Court of Appeal for Jamaica (Wellington J.A., Shelley J.A., and Fox J.A.), dated the 7th April 1969, dismissing the Appellant's application for leave to Appeal against his conviction in the Resident Magistrates' Court for the Parish of St. Andrews of being unlawfully in possession of ganja when he was sentenced to three years hard labour.

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20 2. The Appellant was charged on an information that on Saturday, the 21st day of September 1968, the Appellant, Daphne Thompson and Daisy Gordon of 31, Hope Town Road and within the jurisdiction of the said Magistrates' Court had in their possession ganja contrary to Section 7(c) of Chapter 90 Dangerous Drugs Law.

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11.10-16

30 3. The case for the Crown was substantially proved by the evidence of Detective Sergeant Leonard Campbell and Constable Grant and was that on the 21st September 1968, at about 5.30 a.m., Detective Sergeant Leonard Campbell, Constable Grant and other policemen went to premises at

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31, Hope Town Road, St. Andrew with a Search Warrant under the Dangerous Drugs Law. There was a two apartment building there and, having knocked on the door, they called out to the Appellant. Detective Campbell said that he knew the building before and he knew that the Appellant and the two other accused, Daisy Gordon and Daphne Thompson, lived there. The door was opened and when they entered Daisy Gordon was seen lying on a bed in one room and in another room Daphne Thompson was also seen lying on a bed. Daphne Thompson was told to go into the room in which Daisy Gordon was and that room was searched after the Search Warrant was read to the other two accused in Gordon's room. Under a table was found a blue brief case, and when it was opened, 24 packets wrapped in white paper and 21 parcels wrapped in brown paper were found, and also a large carton wrapped in newspaper. Some of these parcels were opened and in each was seen ganja. When shown to Gordon and Thompson, Gordon said "Me no know nothing about it sah" and Thompson said "It the first me see it".

The search continued and a brown grip was found on the floor which Gordon admitted was hers. It was searched and in it was found 4 white paper packets which when opened was shown to contain ganja. This was shown to Gordon and she was told it was ganja. She said nothing. Thompson and Gordon were then taken into another room, and in that room a Grace shopping bag was found in a corner of the room, which when opened was found to contain 7 white paper packets, 15 brown paper packets and 6 parcels wrapped in a newspaper. Some of the parcels were opened and in each was found vegetable matter resembling ganja. This was shown to both Thompson and Gordon and Thompson said "Ah fe Shaddow sah is him bring it come here". The Appellant is apparently known as Shaddow. The Appellant was brought into the room and he was shown all the parcels found in both rooms. Detective Sergeant Campbell told him that Daphne Thompson said that the ganja belonged to him. He made no statement.

4. The Defence submitted inter alia that there

was no evidence against the Appellant

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p.6.
11.20-32

The learned Magistrate found that there was a case to answer.

5. It is submitted that the learned Magistrate was wrong in not acceding to the submission that there was no evidence against the Appellant.

10 6. The Appellant respectfully submits that the learned Magistrate should have upheld the Defence submission of no case to answer, because the silence of the Appellant provided no evidence and further that after Detective Campbell had shown the Appellant all the parcels found in both rooms it was wrongfully put to him that Daphne Thompson had said that all the ganja belonged to him, in fact Daphne Thompson had only connected the Appellant with the ganja contained in the Grace shopping bag.

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11.40-43

p.3
11.29-38

7. The case for the Appellant was as follows:-

20 The Appellant, unsworn and not represented, (although he had been represented on the first day's hearing) said "I have nothing to say. I know nothing at all". At no time did the Appellant make any statement. The Appellant said nothing on sentence; the learned Magistrate made no comments when convicting and sentencing.

p.7
11.1-3

p.7 1.17

p.7 1.21

30 8. The Appellant applied for leave to appeal to the Court of Appeal of Jamaica on several grounds including those to be argued in this appeal, but in a Judgment, dated the 21st January 1969, the said Court refused the application.

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11.4-29

p.9
11.1-8
pp.11-17

9. The Court of Appeal stated

" The important bit of evidence so far as the incrimination of Dennis Hall is concerned, rests on the accusation or statement which Daphne Thompson had made, when the ganja was found in her room - 'Ah fe Shaddow Sah, is him bring it come here.' Dennis Hall was then brought into the room, and this accusation was repeated to him

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by the police and to this accusation he made no statement. The question arises, whether the silence of Dennis Hall in these circumstances could amount to an adoption by his demeanour of the truth of the statement which Daphne Thompson had made.

In this respect it is perhaps helpful to refer to Archbold Criminal Pleading Evidence & Practice, Thirty-Six Edition, paragraph 1125 headed "Accusations made in the presence of accused persons." The learned author says this: 10

" A statement made in the presence of an accused person, accusing him of a crime, upon an occasion which may be expected reasonably to call for some explanation or denial from him, is not evidence against him of the facts stated, save in so far as he accepts the statement so as to make it in effect his own. If he accepts the statement in part only, then to that extent alone does it become his statement. He may accept the statement by work or conduct, action or demeanour, and it is the function of the jury which tries the case to determine whether his words, action, conduct or demeanour at the time when the statement was made amount to an acceptance of it in whole or in part. " 20

and then further down in the paragraph a reference is made to the case of R.v.Norton (1910) 2 K.B. 496, in which the following passage from the judgment of the Court of Criminal Appeal is quoted: 30

" When the statement is admitted, the jury should be directed that if they come to the conclusion that the prisoner acknowledged the truth of the whole or any part of the facts stated they may take so much of the statement as was acknowledged to be true (but no more) into consideration as evidence in the case generally, not because the statement, standing alone, affords any evidence of 40

the matter contained in it, but solely because of the prisoner's acknowledgement of its truth; but they should also be told that unless they find as a fact that there was such an acknowledgment they ought to disregard the statement altogether. "

10 Here it was the function of the learned Resident Magistrate (as a Jury) to say whether or not from the silence of Dennis Hall, in these circumstances, he accepted that as being an acknowledgment by Hall of the truth of the statement which Daphne Thompson had made. It was entirely a matter for the learned Resident Magistrate and it appears from his verdict that he accepted that Dennis Hall had by his silence in the circumstances accepted the truth of Daphne Thompson's statement.

20 We cannot say that the learned Resident Magistrate was wrong in so treating Dennis Hall's silence in the matter, and we cannot say therefore that the conviction was wrong. In the circumstances, the Court dismisses the appeal of Dennis Hall. "

10. The Appellant submits that the Court of Appeal erred in taking the view that it was entirely a matter for the learned Resident Magistrate for it is respectfully submitted that the Appellant's silence could not afford any evidence upon which to sustain a conviction.

p.16 1.42

to

p.17 1.15

11. On the 23rd day of February 1970 the Judicial Committee of the Privy Council granted the Appellant special leave to appeal in forma pauperis against the Judgment of the Court of Appeal in Jamaica and on the 25th day of February 1970 an Order granting the said Special Leave was made by Her Majesty in Council.

p.17
11.17-31
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11. 1-45
p.9
11. 1-10

40 12. The Appellant respectfully submits that this appeal should be allowed and his conviction and sentence quashed for the following among other

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R E A S O N S

1. BECAUSE silence alone is not evidence.
2. BECAUSE silence in the circumstances of this case when there was no evidence of demeanour could not amount to an adoption by demeanour of the truth of the statement made by Daphne Thompson.
3. BECAUSE the Court of Appeal was wrong.

BRIAN SINCLAIR.

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