

IN THE COURT OF APPEAL

GRENADA

Criminal Appeal No. 2 of 1972

Between: CLIFFORD PHILLIP Appellant
and
THE QUEEN Respondent

Before: The Honourable the Ag. Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Ag.)

D. Knight and E. De Freitas for the Appellant
D. Lambert for the Respondent

1972, September 6

JUDGMENT

The judgment of the Court was delivered by -
ST. BERNARD, J.A.

The appellant was convicted on the 21st June, 1972 of arson contrary to section 264 of the Criminal Code. He was sentenced to 3 years' imprisonment at hard labour. The facts show that on the 4th of September, 1971, the appellant who was the owner of a small dwelling house at Content in the parish of Saint David, set fire to the said dwelling house which was completely destroyed. He had lived in the house for some time up to August 1971 with his common law wife and 3 children. She left him for a few weeks to visit her sick mother, and on the 4th September, 1971 he went to work and returned home at about 3.30 p.m. He went to one Gentillia Mathlin and told her that she could take anything she wanted from inside the house. He stated that he was going to hang himself. She replied she did not want anything. He visited his sister-in-law, Cathrine Francis and offered to sell the house to her for \$100. She refused the offer. Then a little later he returned to her and said he was going to burn the house and hang himself. He left, went home, and returned in

/about

about 10 minutes with a box of matches and soon after the persons in the area saw the house on fire. Eventually the house was completely destroyed. He said "I light it long ago and I burning it flat".

The question which falls to be determined in this appeal is whether or not the appellant can be convicted for setting fire to his own dwelling house without any proof of an intention to injure or defraud any person. The section under which he is charged states that the act of setting fire must be intentional and unlawful. There is no doubt on the evidence that the act was intentional but in order to convict the appellant the act must also be unlawful. Is it unlawful to burn one's own building without any intention to injure or defraud another? In defining the word 'unlawful' the learned trial judge in his direction to the jury stated -

"Whoever intentionally and unlawfully causes any dwelling house to be set on fire commits an offence so that what you have to decide after analysing the evidence and finding the facts is whether this accused intentionally and unlawfully caused the dwelling house to be set on fire."

That statement is perhaps quite correct but the judge further stated -

"The word 'unlawfully' means without any right in law or without any legal justification and again the prosecution must satisfy you of this ingredient which forms part of the offence of arson. When you analyse the evidence are you satisfied so that you can say you feel sure that the accused acted without any right in law?"

In the Court's view the learned judge failed to direct the jury adequately on the definition of the word 'unlawful'. It seems to the Court that he should have explained to the jury in what circumstances it is unlawful to set fire to your own building and in what circumstances it is not unlawful to do so.

/In

In the Court's view, in order for the setting of fire to be unlawful under section 264 there must be an intention to injure or defraud. What is wrong, for example, if you have a dwelling house in a field of your own and in order to destroy the dwelling house you set fire to it instead of employing workers to demolish it? What is the unlawful act? It could only be unlawful if the offence is an absolute one and if the offence was an absolute one there was no need for the word 'unlawful' in section 264. This view of the intent to injure another is supported by the common law definition of arson. The learned author of Russell on Crime, 12th Edition, Volume II at page 1332, states -

"Arson is a felony at Common Law and has been described as the malicious and voluntary burning of the house or out-house of another, for it is not arson at Common Law to burn one's own house."

The learned author goes on -

" but burning one's own house in a town or near to other houses to create danger to them is the misdemeanour at Common Law."

In the Court's view section 264 of the Code is declaratory of the common law. This is also supported by subsection (4) of section 25 of the Criminal Code. That subsection states that a person who is sole owner for his own benefit of any premises or thing can be guilty of any crime punishable under the aforesaid provisions by an act done with intent to injure or defraud any person or cause harm to any person although the act be not otherwise unlawful. The converse would be that it would not be unlawful to damage your own property if you do not intend to injure or defraud anyone. The Court's view is that the definition of 'unlawful' under section 24(4) of the Code should be applied to section 264 of the Code.

Counsel for the respondent cited the case of the Queen v. Pardoe, Vol. 17 Cox's Cases at page 715. In that case Pardoe was indicted under 24 and 25 (Vict) Chapter 97. The indictment /stated

stated that he feloniously, unlawfully and maliciously did set fire to two window curtains then being in a certain building, to wit a dwelling house in possession of him, the said Samuel Pardoe, being in the said dwelling house. He pleaded guilty and we do not know what the facts of this case were, but all that was reported was that the Court held that he was a person in a dwelling house and was rightly convicted. We do not think the case has any application to the facts of the present case.

The decision of this Court is that the appeal is allowed, the conviction is quashed and the sentence is set aside.

E. L. St. Bernard
JUSTICE OF APPEAL