

SAINT VINCENT

-IN THE COURT OF APPEAL-

Criminal Appeal No. 3 of 1974.

BETWEEN:

RONALD SARDINE - APPELLANT

vs

THE QUEEN -RESPONDENT

BEFORE: The Honourable the Chief Justice (Ag.)
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin(Ag.)

B. St. John, Q.C. for Appellant

M. Joseph, Crown Counsel for Respondent

1974, September 17

JUDGMENT

The Judgment of the Court was delivered by-

PETERKIN J.A. (Ag.).

The Appellant was charged on an Indictment containing two counts which alleged Larceny and Receiving respectively in regard to a tape recorder valued \$250 U.S. He was convicted on the first count, namely, that of Larceny of the tape recorder and sentenced to be kept to hard labour for a period of one year. He has appealed against conviction

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and sentence, and has set out four grounds as the reason why he alleges his conviction should be quashed. They are as follows:-

(1) That the Learned Trial Judge did not adequately put the defence to the Jury.

(II) That the Learned Trial Judge failed to direct the Jury on how to deal with the Statement of the Appellant given from the dock.

(III) That the Learned Trial Judge's observations concerning the witnesses called by the Defence were improper.

(IV) That the verdict is unreasonable and cannot be supported by the evidence.

Ground one has now been amended, and a 5th ground has been added namely,

That the Learned Trial Judge failed to direct the Jury on the question of whether or not the witness Andrew Sam was an accomplice, and if so, that his evidence should be corroborated.

The facts and circumstances are shortly as follows:-

The Yacht "Aquarius" was moored in the harbour at Bequia in January of 1973. The owner of the yacht, John Lawrence, was away at the time, and his yacht had been left in the care of Norbert Simmons. The tape recorder in question had last been seen on the yacht by Simmons on 2nd January, and his evidence is to the effect that he had become aware that it was missing on the night of 3rd January. The matter was reported to the Police on 6th January. The following morning Sgt. Kenneth Williams

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saw a launch belonging to the Appellant berthed alongside the Bequia Slip at Hamilton. He requested permission from the Appellant to search his launch, and, in his presence, found the missing tape recorder in the stern section. He asked the Appellant how it got there, and the Appellant replied that it had been given to him by one Andrew at his father's bakery in Kingstown. At the Police Station the Appellant asked to be allowed to explain further, and he was duly cautioned. He then elected to write a statement which he later signed. In his statement he said in part as follows:-

"Thursday the 4th January, 1973, I was at the Bakery when a boy by the name of Andrew brought a tape recorder set to sell me. I told him I am not sure if I would buy it. He left it with me to decide. I had the tape recorder on the boat with me when I came to Bequia on 6th January, 1973."

At the trial this statement was tendered in evidence by the Prosecution as part of the Crown's case. The Prosecution then called Andrew Sam as a witness. His evidence was to the effect that he had not spoken with the Appellant on 4th January, 1973, nor had he at any time offered any equipment for sale to the Appellant.

The Appellant in his defence at the trial elected to speak from the dock. In his unsworn statement from the dock he more or less repeated what he had said in his earlier

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statement to the Police. He then called two witnesses to testify on his behalf, the first of whom, Raymond knights testified that a man by the name of "Onion" had brought the tape recorder from the shop of Andrew Sam, and had shown it to him outside of Sam's shop. The second witness, Egbert London testified that Andrew Sam had first offered this tape recorder for sale to him, and further that he had been present when Andrew Sam had handed it to the Appellant at his father's bakery in Kingstown.

There is no evidence whatever that the Appellant was seen in Bequia before the 7th January, 1973, and so the entire case for the Crown rested on the doctrine of Recent Possession. The doctrine of Recent Possession is based on a discretionary presumption of fact. It may be rebutted either by the sworn or unsworn evidence of an Accused. He merely has to give an account which, though not necessarily true, is one which may well be true. In the instant trial what the Appellant was in effect saying was that he got the tape recorder from Andrew Sam, that he did not know then that it was stolen, and that, indeed, there had not been any fraudulent appropriation of it on his part. If believed it amounted to a complete defence.

Irrespective of the merits, or otherwise, of the other grounds raised by the Appellant in this appeal it is an

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accepted proposition that in a case where it is not clearly established that a witness was a participant in the crime, but there is evidence on which a reasonable Jury could find that he was, the issue of "accomplice vel non" is for the Jury; and the Judge should direct them that if they consider on the evidence that the witness was an accomplice, it is dangerous for them to act on his evidence unless corroborated. The learned trial Judge appears himself to have adverted to the possibility of the witness Sam being an accomplice when he said as follows at p.18 of the Summing up:-

"Would you as honest and reasonable members of your community see a person like Same come to you with a tape recorder of that kind and not feel in your minds that this tape recorder is "hot"? To use the modern expression, that it is too hot to handle?".

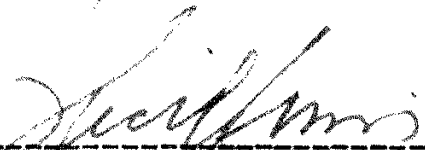
This Court is of the view that there was material in the instant case upon which he would have been justified in presenting Andrew Sam to the Jury as a witness whom they might possibly have regarded as being a participant, and in leaving the issue of "accomplice vel non" to them as being entirely their province. We are of the opinion that such a warning was in prudence called for. The issue was not left to them, and consequently no such warning was given. It is possible that the Jury might well have evaluated the evidence in an entirely different light after adverting to the warning, and have acquitted the Appellant. It should be borne in mind that the Crown

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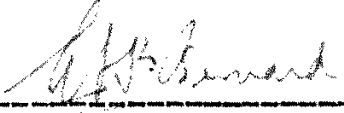
had charged the Appellant alternatively, with receiving the tape recorder, moroso as he had not been seen in Bequia at the relevant time, and that it would have been open to the Jury if so directed to have found that Andrew Sam had participated in the Crime. This possibility, along with the appropriate warning, was unfortunately not put to them.

In the circumstances, we are of the opinion that the conviction should not be allowed to stand.

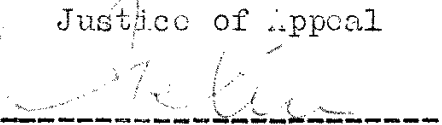
The appeal is accordingly allowed and the conviction and sentence set aside.



P. G. Lewis
Acting Chief Justice



E.L. St. Bernard
Justice of Appeal



N.A. Peterkin
Justice of Appeal (Ag.)