

DOMINICA

IN THE COURT OF APPEAL
CRIMINAL
APPEAL NO. 1 of 1976

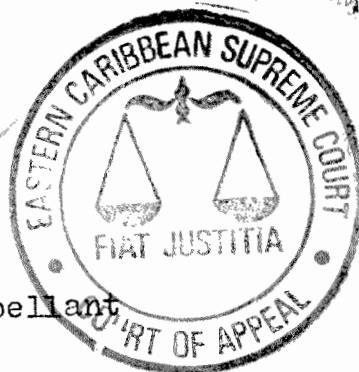
BETWEEN: LENTIE LAWRENCE

- Appellant

v.

THE QUEEN

- Respondent



Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: E.H. Francis for Appellant
B. Alleyne with him

R. David for Respondent
C. Wilson with him

1976, October 20, 21

J U D G M E N T

PETERKIN, J.A. delivered the Judgment of the Court:

The Appellant was on the 1st of June 1976, convicted for the offence of falsification of accounts and sentenced to three years hard labour. He now appeals against conviction and sentence.

The Crown's allegation is briefly summed up in the particulars of the indictment and they read as follows:-

"Lentie Lawrence on a day unknown between the 7th and 14th days of March 1975 at Massacre in the Parish of St. Paul, Dominica, being a clerk to the Government of Dominica, wilfully and with intent to defraud made false entries on Time Sheets 15136 and 15137 belonging to the said Government of Dominica purporting to show that Astaphan Joseph was employed on Public Works Project at Coulibistrie during the fortnight ending the 13th March, 1975 and that he was entitled to draw the sum of \$211.72".

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The evidence in this trial presented a collision of facts. Briefly, the Crown's allegation was that the appellant was an employee of the Public Works Department during the relevant period that is, 28th February to the 13th March 1975. He was a time keeper on the Coulibistrie Project. He had to make out and sign time sheets as time keeper. Time sheets for the relevant period were transmitted to the Ministry of Works for processing. They were processed by Matthew George and dispatched to the Treasury, and pay packets were sent back to Matthew George, and he was assigned as Pay Master. He handed three packets over to Rita Lawrence, (Rita Lawrence is an Executive Officer in the Ministry), and George said he handed them to Rita Lawrence on presentation of an order from her.

Now Rita Lawrence said that the appellant phoned her and as a consequence of that telephone conversation, she wrote out that order. She went on to say that the appellant came to the Ministry that same day and that she handed him the pay packets, one was in the name of Astaphan Joseph. She went on to say that she saw the appellant hand over pay packets to two persons but that she did not know Astaphan Joseph.

Now the evidence of Astaphan Joseph was that he was a carpenter and save for early this year - that is this year 1976 - he last worked for the Public Works Department in the year 1973. He went on to say that on the last occasion he worked with the Public Works Department, he worked on the Gabriel Bridge as a carpenter. He said he had never made a culvert in his life, and that he does not know anything about masonry and that he never had a job to gather gravel. In short, the witness is saying that he did not work for the Works Department in the year 1975.

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Now he went on to say this, and we regard it to be of some significance. He said that his card showed on it the figure \$1.12 and that he had given that card to the appellant to register at \$1.34 for him. He said he wanted the rate increased. Sometime in 1975, he gave the appellant that card and up to now that card has not been returned to him. The purpose of course of the card is that it had to be presented in order that payment of wages could be made.

Now five witnesses, five other witnesses testified that during the relevant period, Astaphan Joseph had not worked on the Coulibistrie Project. There was one witness called for the Crown namely Carlton Miller, who was tendered for cross-examination. And in cross-examination this witness said that he was in charge of the Western Coast Road and he said that he delegated to the appellant the authority to hire workers; that the appellant was his time keeper. He was here referring to the Culvert Project at Coulibistrie. He said that he knew Astaphan Joseph to be a registered Public Works Department employee. This witness said that he certified time sheets 15136 and 15137 and that on those time sheets he saw the name of Astaphan Joseph appearing. He went on to say that there was nothing false about those time sheets as far as he was concerned. And he said that he visited the Project during that fortnight and saw Astaphan Joseph working there. In short, his evidence was in favour of the appellant.

Now the defence. The Appellant elected to give evidence on oath and what he said was this. He said that the time sheets which are in evidence - referring to the timing of workers for the Public Works Department for the Coulibistrie Project - were prepared by him and were certified by Carlton Miller and that all the names appearing on those

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time sheets were of persons who worked during the relevant period. The appellant said he employed Astaphan Joseph and that to his own knowledge Astaphan Joseph was working on those days during the fortnight 28th February to 13th March 1975. He said that he was collecting gravel at Gabriel Beach during the entire period, and with him was Newton Groton.

The appellant went on to say that he knew both Groton and Astaphan Joseph were paid for the period and he said that they received their pay at the Ministry. The appellant said that it was only a matter of seconds after he received the pay packet for Astaphan Joseph that he handed the pay packet to him.

Now he called as a witness Newton Groton, and Groton said that he was employed during the fortnight 28th February to 13th March 1975, and that he was employed by the appellant, and that his supervisor was Carlton Miller. And he went on to say that he worked on Gabriel Beach for the entire fortnight collecting gravel and that with him at the time was Astaphan Joseph. He said that Joseph also received his pay together with him - that is on Friday - and he said that the appellant gave him his pay at the Ministry.

Now having regard to this evidence, we are of the view that the main issue for the jury in this trial, was the issue which the Learned Trial Judge stated to the jury on page 52 of the record. It is one of fact for the jury to determine. And he stated it as follows:-

'As I told you very early in my charge to
you, ^{the} issues narrow down to the question:

Did Astaphan Joseph work on the Coulibistrie
Project during the fortnight beginning on
the 28th February and ending on the 13th
March 1975? That is the all important question.'

/I.....

I come now to the grounds of Appeal. The grounds of appeal number five in all and they are as follows:

- (1) The Learned Trial Judge erred and was wrong in Law in that, during the course of re-examination of the witness Carlton Miller, a prosecution witness giving evidence entirely favourable to the accused, the Learned Trial Judge after having ruled in the presence of the jury that a certain statement in writing alleged to have been given by the witness to the police could not be put to the witness for the purpose of his testimony being contradicted thereby, nonetheless allowed the application of Learned Counsel for the prosecution:-
 - (a) to put the document itself to the witness in the presence of the trial jury, for the purpose of identifying his signature thereto, and as well
 - (b) to have the witness read the document silently to himself in the presence of said trial jury, which events were likely have raised suspicion in the minds of the jury sufficient to prejudice the case against the accused, and influence the verdict.
- (2) The Learned Trial Judge erred and was wrong in law in directing the jury, as he did (at P.26 of the record) that if, after a full consideration of all the evidence in the case, they were satisfied to the extent that they felt sure of the guilt of the accused, they must return "a proper verdict and that is one of guilty as charged".
- (3) The Learned Trial Judge omitted to put the defence adequately to the jury, in that inter alia he failed to properly analyse the evidence of Rita Lawrence and Matthew

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George, and to relate the same to the case for the defence.

- (4) The verdict is unsatisfactory having regard to the evidence; and
- (5) The sentence is too severe.

Now I propose to deal with these grounds in the order in which they were dealt with by Learned Counsel for the appellant. First of all, Counsel dealt with ground 3. He referred here to certain aspects of the evidence of Rita Lawrence and of the witness Matthew George. And he said that the judge had omitted to tell the jury that when Rita Lawrence said that she saw the appellant hand over pay packets to two persons none was a woman. He went on to say that Matthew George must have been correct in what he said. George had included Fanny Nicholas in his list of three, whereas Rita Lawrence had included Martin Joseph.

Now Counsel then submitted that when the judge put it to the jury that the pay packets were in respect of three men, he misrepresented it in that, he did not introduce Fanny Nicholas and so, Counsel argued, when the witness Groton said he saw Astaphan Joseph receive his pay packet, the jury might have been inclined to believe him. Well now, the point here really is this, that Rita Lawrence never said at anytime that she saw Astaphan Joseph receive a pay packet from the appellant. She stressed that she did not know Astaphan Joseph and the point is that he was not presented to her at the trial at any stage. We do not think that there is any merit in this ground.

Learned Counsel next dealt with ground (1). He referred to the evidence here of Carlton Miller, and his main objection was this, he objected to the showing of the document to the witness. He submitted that it was

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an irregularity and it was a miscarriage of justice and it prejudiced the appellant. We do not agree. The record shows no request to treat the witness as hostile, and nothing was said according to the record about evidence in the trial being inconsistent with the document which the witness saw. The jury could not have been misled.

Learned Counsel cited a number of cases but none of these cases was directly in point and they were not helpful. We do not see any merit in this ground.

Counsel next dealt with ground (2). He referred to the words used by the Learned Trial Judge and stated that he was objecting to the word 'must'. He submitted that it should have been 'may', because the word 'must' implies a duty on the jury to convict. He cited the case of *R. v. Cunningham* 1965 8 W.I.R. in support of his submission. We feel that the word complained of should be used in relation to the context in which the Learned Judge used these words and that they should be read along with the entire statement. What the Learned Trial Judge was here saying was that if the jury believed the defence, that was the end of the matter. If they were in doubt, that they should resolve it in favour of the appellant and acquit him; but if they felt sure, satisfied of his guilt to the extent that they were quite sure, then they must convict.

Now, we can see nothing wrong with the words, but in any event, if there was any error, to use the words in the *Cunningham* Case, "this error was not of such a nature as to cause a miscarriage of justice."

Learned Counsel next dealt with ground (4). And here he referred to the evidence in the case as a whole. He stated that the five witnesses who were referred to as denial witnesses by the judge all gave evidence that

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Astaphan Joseph did not work on the project during that fortnight, and that all it meant was that they did not see him at work. He submitted that the witnesses are being taken to understand Astaphan was working at the Coulibistrie Project when in fact he was working at the beach two miles away. And he further submitted that their evidence is unsatisfactory in this regard.

Now this really is a question of the weight to be attached to their evidence, and we feel that the jury may well have been using their local knowledge of things here. But in any event, there is the evidence of Astaphan Joseph himself. We take the view that there was an abundance of evidence on which the jury could have arrived at their verdict and we see nothing unsafe or unsatisfactory about it.

Counsel next referred to ground (5). This ground concerns sentence. Here he referred to the physical frailty of the appellant and to the fact that he was a first offender. And he went on to submit that on humanitarian grounds the Court should extend leniency to the appellant. Well I am afraid that this is not really a question for this Court.

He next submitted in regard to the sentence that the term of three years for a first offender is excessive. We do not agree. The sentence was less than one half of the maximum sentence which is seven years. And, further to this, it should be borne in mind that public funds were involved here.

In the final analysis, this Court is of the view that for the reasons stated, both the appeal against conviction and the appeal against sentence should fail and that accordingly this appeal should be dismissed and the conviction and sentence affirmed.

/N.A. Peterkin.....

(N.A. Peterkin)
JUSTICE OF APPEAL

(E.L. St. Bernard)
JUSTICE OF APPEAL

(Sir Maurice Davis)
CHIEF JUSTICE