(13)

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 15 of 1989

BETWEEN:

RONALD RICHARDSON
CYPRIAN JOSEPH - Appellants

and

THE QUEEN _ Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Mr. Kenneth Foster and Mr. Peter Foster with him for the Appellants
The Director of Public Prosecutions for the Crown

1989: May 17.

JUDGMENT

ROBOTHAM, C.J. orally delivered the following Judgment of the Court

The appellants, Ronald Richardson, Cyprian Joseph, Bernadette Cook and Franklyn Pierre were jointly convicted before the Magistrate's Court in Vieux Fort on 7th July 1988 for being in possession of cocaine. There were two charges against the appellant Richardson information 887 of 1988 and 1094 of 1988, arising out of the same set of circumstances.

At the hearing of this Appeal the Director of Public Prosecutions quite rightly conceded that there was no evidence before the Magistrate for her to have called on Bernadette Cook and Franklyn Pierre to answer the charge. In those circumstances the appeals of these two will have to be allowed and their convictions and sentences set aside. They will not be mentioned as far as the remainder of this appeal goes. We will concentrate on the appeal in so far as it relates to Richardson and Joseph only.

The appellant, Ronald Richardson is the owner and occupier of premises at Coco Dan in the Vieux Fort district. Cyprian Joseph is his paramour or his keeper and together they live and occupy this house along with their children. The appellant, Richardson told the Court that he carries on some form of business there selling bricks and lumber and steel and one or two items of household effects. Joseph actively assists him. The evidence for the Crown was that on the morning of the 7th July 1988, the Police from Vieux Fort went to the premises of the appellants armed with a search warrant under the Dangerous Drugs Law.

/The evidence....

The evidence of Constable Wilson, one of the police officers in the party was that as he approached he saw the appellant, Richardson running from the house he occupied with two plastic bags in his hand. He kept him under observation and he deposited these on a dump a short distance away from the house. Wilson was not the only person who saw the accused Richardson running from the house. Woman Constable Eudovic, who was also on the scene, although she may not have seen him actually emerge from the house, she saw him running from the direction of the door of the house with the bags and she also kept him under observation. She did not actually see him deposit the bags, but in a matter of seconds she saw him returning empty handed. Whilst this was going on the police were carrying out a search in the house and a sizable quantity of money in United States currency and Eastern Caribbean currency, plus coins in Bolivars and Francs, and a bucket with six hundred and twenty-five dollars in Eastern Caribbean coins was found in the room. Eleven rolls of aluminium foil, seven packs of baking soda, and two scales were also found. In fact the US money amounted to some twenty thousand, five hundred and ninety-five dollars. Jewellery was also found in the house.

After the search of the house was finished, the police went on to the dump to examine the bags that had been deposited there,/and therein they found packets with cocaine and some jewellery. A search was made of the dump and not far away another bag was found under a garbage can cover. When this was opened and searched it was also found to contain cocaine.

The appellants, Richardson and Joseph denied all knowledge of the existence of these bags. In their defence they said the dump was a common dump which everybody in the yard used. There was evidence that there were other people occupying this yard and both appellants denied knowledge of what was found on the dump. Richardson further denied having been seen by Constable Wilson running with two bags and he said that that evidence was fabricated, as well as the evidence of Eudovic. All these drugs were submitted to the Government Chemist, and when the Chemist examined them, one plastic bag contained 24 sealed brown envelopes and one unsealed envelope which were all found to contain a substance which on examination turned out to be cocaine. They were carefully wrapped in alluminium foil. The total weight of this was 239.7 grams. Another plastic bag had in it a white pillow case, and in this was a portion of solid white creamy substance, a total weight of 1.146 grams. This was also analysed and found to be cocaine. The third bag was a plastic bag in a multi-coloured pillow case, and this had in a substance creamish in colour weighing 179.09 grams, which was also found to be cocaine. In all the total weight of cocaine which was found on these premises was 1.561.16 grams which if you convert that into pounds roughly is about three and a quarter to three and a half pounds

/of cocaine.....

of cocaine.

There were two charges against the appellants. The first charge was laid against both appellants, Richardson and Joseph and was in relation to the bags which were found on the dump. Some six weeks after, another charge was made against Richardson in respect of the bags which he was seen carrying running with from the house.

Much was made of this by Counsel for the appellants. He submitted that, if in fact Wilson's evidence is correct that Richardson was seen running from the house with the bags why did the police officer in charge of the raid wait six weeks before having laid this charge. The police officer in his evidence said he had to be satisfied, and Counsel asked the questions why wasn't he satisfied at the time, and why did it have to take him six weeks to satisfy himself?

These were all matters which were raised before the Magistrate and it was entirely a matter for her to decide whether what was the effect if any, of having waited six weeks to bring these charges. The charges having brought however it amounts to this, that it was in one operation that all the drugs were found.

It is, significant that the plastic bags which Richardson was seen running from the house with, were deposited on the dump. They were found to have cocaine and also found on this dump not in the same spot, but nearby was another bag also with cocaine. There was jewellery found in one of these bags which had a chain in it with the words "WALL" written on it. The appellant, Richardson said that he was not known as "WALL", but the evidence of the police officer was that he knew that "WALL" was also one of the names by which Richardson was known. He was known as "WALLY", and he was known as "WALL".

The appellant Joseph handed over some jewellery to the police whilst the house was being searched. Her complicity in this matter arises from the fact that she lived with the appellant Richardson, she had children for him, she was in joint possession occupation and control of the house along with Richardson, and actively assisted him. The Crown was saying that in those circumstances she was in open possession of the house jointly with Richardson. The drugs in the quantities in which they were found were in the house. There is the irristible inference that what was found on the dump a short distance away from where Richardson deposited the bags he ran with from the house was also in possession of the appellant, Joseph. By her close association with the appellant Richardson she must be held to have been in joint possession and control with the appellant, Richardson, of all these drugs found in this police raid.

/Counsel...

Counsel for the appellants questioned why the drum cover was not produced in Court. I do not know that the drum cover would have taken the matter any much further. What is of importance is, was there evidence from which the appellants could be fixed with possession with what was found on the dump in addition to what he was seen running with from the house and which he also deposited on the dump. As I said it was open to the Magistrate to draw the inference that they were in the possession of the appellants, and one of the things which could have assisted her in coming to that conclusion is that indeed they were found on the same dump albeit in a different position but nonetheless nearby to where the bags that he ran with were deposited. In addition to that it was not shown to be a casual discard of the drugs, because they were carefully wrapped in pillow cases, and the pillow cases were in turn in plastic bags. There was also evidence that the appellant had some ferocious dogs on the premises. There was evidence that they thoroughly beat-up the trained police dog. It is an irresistable inference that with dogs like that roaming around, the drugs would have been quite safe in the position in which they were found on this dump. Be that as it may, the Magistrate found that both Cyprian Joseph and Richardson were in joint possession of these drugs. The argument before this Court was that the verdict is unsafe, unreasonable and cannot be supported as in regard to the evidence.

We have listened carefully to the arguments presented by Counsel for the appellants, and we have come to the conclusion that on the evidence that the Magistrate had there was ample evidence for her to have arrived at the conclusion which she did. In our view, both appellants, Richardson and Joseph were properly convicted of being in possession of these packets of the cocaine which was found on these premises. It is true that there were other people living in and around the area, but as I have said, I have already given reasons why we think that the cocaine found on the dump separate and apart from that which was deposited on the dump could also have been held by the Magistrate to have been in their joint possession. There was ample evidence before her that the appellant Joseph participated fully with the appellant Richardson in all his undertakings, that she lived in the same house with him, and that she had children for him also living there. In short they were in joint possession and occupation of the house and contents.

We are of the view that they were properly convicted. Counsel for the appellants has also argued that the monies and the gold found on the premises should not have been forfeited because they had no connection with the drugs which were found on the premises. Section 10(5) of the Dangerous Drugs (Amendment) Law No. 20 of 1975 reads:

/"When....

> "When any person has been convicted of an offence under this Ordinance, every article by means or in respect of which the offence was committed and monies which was found on any premises, vehicle, ship, boat, aeroplane or other conveyance of any description, seized and found to have been used in any manner in connection with the offence for which that person was convicted shall be forfeited....."

Reference was made to R v Cuthbertson and Others (1981) A.C. 470 where the wording of the relevant section is somewhat different. The wording of the section in the case of Cuthbertson as cited by Mr. Foster, relates to drugs "shown to the satisfaction to the Court to relate to the offence". We do not however feel that the jewellery which was found in the house can be the subject of forfeiture. However we are quite satisfied that the other items found in the house, namely, the scales, all the monies found in the house, and the jewellery found with the drugs in the dump plus the paraphanelia, are subject to forfeiture, and we so order.

We are satisfied that the accused were properly convicted, and that the money which was enumerated in the judgment of the Magistrate at page 105 of the judgment, namely $93,203 EC the equivalent of $20,595 US, the coins in the biscuit tin totalling $625, the three scales, the eleven rolls of aluminum foil, seven boxes of baking soda, the plastic container with test tubes, which was also found on the dump and which the accused himself said were used for the purpose of testing his urine, and jewellery found in the bag on the dump, should be forfeited. The jewellery found in the house will not be forfeited.

We now turn to the sentence. The sentence is wrong in law. The Dangerous Drugs Ordinance Cap. 55 as amended by The Dangerous Drugs (Amendment) Act No. 20 of 1975; gives the penalty in section 26 which reads:

> "26(1) Every person guilty of an offence against this Ordinance shall in respect of each offence:
>
> (i) if that offence is one contravening or failing to comply with the provisions of this Ordinance relating to the sale, distribution or dealing in any of the drugs to which this Ordinance applies; or
>
> (ii) if that offence is one of contravening or failing to comply with any regulations made under this Ordinance relating to the supply or procuring.....any of the drugs to which such regulations apply shall be liable
>
> (a) on summary conviction to a fine not exceeding four thousand dollars and to imprisonment for a term not exceeding one year."

/It was...

It was the penalty under this section which the Magistrate imposed. That is wrong, because that section only deals with conviction in respect of, sale,distribution or procuring, supplying or procuring for sale.

The section which deals with possession is contained in section 26(1)(iii)(a)

> "Except as hereinafter provided in any other case in respect of the Ordinance or the regulations be liable:
>
> (a) on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year....."

The limit which the Magistrate can impose is a fine of three thousand dollars or if the Magistrate is not disposed to impose a fine a sentence of twelve (12) months imprisonment without the option of a fine can be imposed. But there is no power to fine and imprison.

We therefore have to alter the sentences.

It cannot be said that the quantity of drugs found here was insignificant. Three pounds of cocaine in a community like Saint Lucia, found in one spot is a lot of cocaine, and when that is viewed alongside the paraphernalia which were found in the house - baking soda, the scale, aluminum foil, I do not think anyone could be in any doubt as to why these appellants were in possession of this cocaine. It certainly was not for personal use.

The sentence of this Court is:

The convictions of both appellants, Richardson and Joseph are affirmed and the sentences will be varied. In each case the Court imposes a straight term of imprisonment for a period of twelve (12) months hard labour. The items heretofore mentioned are ordered to be forfeited.

Richardson was sentenced on two counts but, having regard to the principle under which consecutive sentences are given, this being one raid, and the drugs having been found at the same time, a consecutive sentence is not imposed under circumstances such as these. The two sentences on Richardson of twelve (12) months hard labour one on information 887 and the other on 1074 will run concurrently.

L.L. ROBOTHAM,
Chief Justice