SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO: 7 OF 1999

BETWEEN:

CHARLOTTE HACKSHAW Appellant/Plaintiff

-AND-

THE QUEEN Respondent

BEFORE:

The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal (Ag.)

APPEARANCES:

Mr. Richard Williams for Appellant
Mr. Haymant Balroop (Director of Public Prosecutions) for Respondent

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1999: July 20

JUDGMENT

SATROHAN SINGH J.A.:

This Appellant was indicted for the offence of Rape but was convicted by the jury for the offence of attempting to procure a woman to become a common prostitute. This offence for which she was convicted did not appear on the indictment. It was also not an offence that was contemplated in the Schedule of Chapter 124 as being a lesser offence for which the Appellant could have been convicted on the charge of Rape.

In our view it was also not an offence for which the Appellant could have been convicted under the provisions of Section 112 (1) of the Cap. 125 because it was not an offence on a charge specifically preferring that offence.

In directing the Jury to consider this offence of Attempting To Procure, the Learned Trial Judge did not comply with certain requirements of the law. This law states that before he could leave an alternative offence or another offence not mentioned in the indictment for the consideration of the jury, the Judge ought to alert the Accused of his intention to do so at an appropriate time in order to give that accused an opportunity to meet that charge. See the decision of this Court in Antigua Criminal Appeal No. 2 of 1995 Joseph Shane Merchant v Queen. This was not done in this case. However, unlike Joseph Merchant, the alternative offences of Rape did not include that of attempting to procure a woman to become a common prostitute. In Merchant, the offence was Rape and the alternative offence was indecent assault which was part and parcel of the offence of rape.

For these reasons alone we have to quash the conviction. Additionally there is a non-direction by the Learned Trial Judge in his summing up as to the meaning of common prostitute. We consider this non-direction a misdirection as the question of what was a common prostitute was the nub of charge left for the jury for their consideration

Counsel for the Respondent thought the Court should apply the proviso and maintain the conviction because the evidence was overwhelming.

We share the view of the learned Director of Public Prosecutions that the evidence was there but in our judgment, based on the legal position aforementioned this Appellant was never put on trial for the offence of which she was convicted.

The procedure to found such a conviction was not followed by whoever drafted the indictment. The indictment should have included a second count for the offence of which the Appellant was convicted. Given the circumstances, we cannot even think of applying the proviso.

For these reasons, the Appeal is allowed. The conviction and sentence are set aside.

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SATROHAN SINGH
Justice of Appeal

I Concur

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ALBERT REDHEAD
Justice of Appeal

I Concur

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ALBERT MATTHEW
Justice of Appeal (Ag.)