



Record

of the provisions of this Law or of any Regulations made thereunder, in the possession or under the control of any person in any premises; or

.....  
he may grant a search warrant authorising any constable named in the warrant, at any time or times within one month from the date of the Warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any person found therein, and if there is reasonable ground for suspecting that an offence against this Law has been committed in relation to any such drugs which may be found in the premises or in the possession of any such persons.....  
to seize and detain those drugs.....

10  
20

Section 22 (2A) Every person who is guilty of the offence of being in possession of ganja shall, on summary conviction before a Resident Magistrate, in the case of a first conviction for such offence, be imprisoned with hard labour for a term not less than eighteen months and not exceeding three years and in the case of a second or subsequent conviction for such offence, be imprisoned with hard labour for a term not less than three years and not exceeding five years.

30

(This subsection was introduced into cap.90 by Section 3 (b) of Cap.10 of 1964, which subsection replaced an earlier amendment to Cap 90 contained in Section 2 of Cap.1 of 1961.)

Section 25. In any proceedings against any person for an offence against this law, it shall not be necessary to negative by any evidence any licence, authority or other matter of exception or defence, and the burden of proving any such matter shall be on the person seeking to avail himself thereof".

40

4. Evidence for the <sup>prosecution</sup> ~~protection~~ was given as follows:

(a) Detective Sergeant Leonard Campbell said that, armed with a search warrant and accompanied by Constable Grant and other policemen he went to a two-apartment building at 31 Hope Town Road at 5.30 a.m. on the 21st September 1968. He already knew the building and that the three accused lived there together. He knocked on the door and called out to the Appellant. He was let in and entered a room where he found Daisy Gordon alone lying on a bed. A door from this room opened into another and in the second room Daphney Thompson was in bed. He told Thompson to come into Gordon's room and watch the search. He then read the warrant and started to search. Under a table he found a blue brief case containing 24 packets wrapped in white paper, 21 in brown paper and a large carton wrapped in newspaper. He opened some of the packets and found they contained vegetable matter resembling ganja. He showed it to the two women and said it was ganja. Gordon said: "Me know nothing about it, sah". Thompson said: "A the first me see it". He then found a brown grip, and asked to whom it belonged. Gordon said "Is my grip, is only clothes I have in it". In the grip he found four white paper packets containing vegetable matter resembling ganja. He told Gordon it was ganja but she said nothing. He then took both women into the other room and searched there. In a corner of the room beside the bed was a shopping bag containing seven white paper and fifteen brown paper packets, and six parcels wrapped in newspaper. He opened some of the parcels and found they contained vegetable matter resembling ganja. He showed this to both women Gordon said nothing. Thompson, said: "Ah fe Shaddow sah is him bring it come here" The Appellant, who was known as Shaddow, was brought into the apartment and shown all the parcels. He told the Appellant that Thompson had said the Ganja belonged to him, but the Appellant made no statement. He arrested all three persons for possessing ganja. They were cautioned but said nothing. He

p.2  
p.2 p.23  
p.3 1 1  
p.2.1.33  
p.3.1 18  
p.3.1 21  
p.3.1.24  
p.3.1.29  
p.3.1.37  
p.3.1.43  
p.3.1.48

Record

p.20/21 Put the material found into two separate packets and took them to the Government Analyst. Later the Government Analyst returned to him three sealed parcels and, in his presence, signed two certificates. The certificates were admitted in evidence. He broke the seal of the three parcels and identified the contents as the packets and parcels he had found.

p.5 1.6 In cross-examination he said that when he arrived at the apartment, the door was opened by Gordon. She was lying on a double bed. The door to Thompson's room was shut. So were the windows. Thompson was not asleep; she had two babies in bed with her. He had seen about four other persons on the premises 10

p.5 1.18 (b) Constable Gladstone Grant said he was a member of the search party. His evidence confirmed that of Detective Sergeant Campbell, save that he said it was Daphney Thompson who opened the door and that it was Daisy Gordon who had the two children in bed with her. In cross-examination he said that upon entering Thompson was standing and Gordon was in bed. At least three policemen entered the house, which had two doors. There were four or five persons in the yard. 20

p.5 1.18  
p.5 1.24  
p.5 1.23

p.6 1.15

p.6 5. After submissions had been made, including a submission that there was no evidence against the Appellant, the Resident Magistrate ruled that there were cases for the Defendants to answer. The Appellant and the two women had been jointly charged in one information in connexion with the ganja found in the brief case and the shopping bag. In addition there was a separate information against Gordon in respect of the ganja in the grip. Each accused made unsworn statements, the Appellant saying: "I have nothing to say, I know nothing at all". The Resident Magistrate, without comment, convicted all three accused on the one information and also convicted Gordon on the second information. The Appellant had previous convictions, including one for possessing ganja. 30

p.7 1.1 40

p.7

6. The judgment of the Court of Appeal was read by Waddington, J.A. He surveyed the evidence and then dealt with discrepancies between what was said by the two police officers. In the view of the Court there was nothing really material in these discrepancies and hence nothing that would affect the decision of the Resident Magistrate. He then turned to the case against Daphney Thompson. In the view of the court the statement, "Ah fe Shaddow Sah, is him bring it come here", made by her when ganja was discovered in the shopping bag in her room, admitted of two inferences. The first was that she knew there was a shopping bag in her room but did not know its contents. The second was that she knew the bag contained gaja. Of these, the inference most favourable to Thompson ought to have been drawn. If it had been, then it could not be said that the case against her was established beyond reasonable doubt. Her conviction was unsafe and her appeal should be allowed.
7. As to the Appellant, there was some evidence of joint occupancy of the house. If the case rested on this alone, conviction would be unsafe, because such evidence was too tenuous to found a conviction for possession of ganja found in the house. The important evidence was the statement of Daphney Thompson, repeated by the police to the Appellant, and met by him with silence. This raised the question whether, in the circumstances the Appellant's silence could amount to an adoption by his demeanour of the truth of the statement Thompson had made. The answer to the question lay with the Resident Magistrate, as a jury. It appeared from the Resident Magistrate's verdict that he answered the question in the affirmative. The Court was unable to say the Resident Magistrate was wrong and they were therefore unable to say the conviction was wrong. The appeal of the Appellant must be dismissed.
8. It is respectfully submitted that the Court of Appeal were correct in their approach to, and assessment of the evidence, and in their reasoning and conclusion. If, contrary to this submission,

p.11 -17

p.13 1.27

p.15.1. 8

p.15 1. 19

p.15 1.25

p.15 1.26

p.15 1.33

p. 16.1.37

p.16 1. 44

p.17 1. 4

Record

the Court of Appeal erred in any respect it is respectfully submitted that there was sufficient evidence before the learned Resident Magistrate as to possession by the Appellant of ganja to warrant his implied conclusion that the case against the Appellant was established beyond reasonable doubt. In particular, and without prejudice to the generality of the last submission above, it is submitted there was sufficient evidence of possession to justify conviction without reliance upon the conduct of the Appellant (if, indeed, the learned Resident Magistrate did so rely) and that, on this point, the judgment of the Court of Appeal was unduly favourable to the Appellant. 10

9. In the premises it is respectfully submitted that the conviction of the Appellant was right and ought to be upheld, and this appeal dismissed for the following, among other

REASONS

20

- (1) BECAUSE the judgment of the Court of Appeal was right and ought to be affirmed
- (2) BECAUSE, if the Court of Appeal erred there was nevertheless sufficient evidence before the learned Resident Magistrate to justify the conviction.

GERALD DAVIES.

No.13 of 1970  
IN THE PRIVY COUNCIL  
ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

---

BETWEEN  
DENNIS HALL Appellant

-and-

THE QUEEN Respondent

---

CASE FOR THE RESPONDENT

---

CHARLES RUSSELL & CO.,  
Hale Court,  
21, Old Buildings,  
Lincoln's Inn,  
London W.C.2.