Privy Council Appeal No. 13 of 1970

Dennis Hall – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL FOR JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD NOVEMBER 1970

Present at the Hearing:
LORD DIPLOCK
LORD DEVLIN
VISCOUNT DILHORNE
[*Delivered by* LORD DIPLOCK]

The appellant, Dennis Hall, was charged before the Resident Magistrate for the Parish of St. Andrews, jointly with two other defendants, Daphne Thompson and Daisy Gordon, that they unlawfully had in their possession ganja.

The evidence against Dennis Hall was that in the early hours of the morning a search was made of a two-roomed building in the Parish of St. Andrews at which it was said the three defendants lived together. At the time of the search one room was occupied by Daisy Gordon and the other by Daphne Thompson. In Daisy Gordon's room packets of ganja were found in a brown grip and a blue brief case. Daisy Gordon admitted that the grip was hers, but denied all knowledge of the ganja found in it. Packets of ganja were also found in a shopping bag in Daphne Thompson's room. She said that the shopping bag had been brought there by the appellant.

The appellant was not on the premises when the search was in progress, but he was brought there shortly afterwards by another police officer. He was told by the officer who had conducted the search that Daphne Thompson had said that the ganja belonged to him. He made no comment upon this. He remained silent. All three defendants were then cautioned and none of them said anything.

At the conclusion of the Prosecution's evidence, it was submitted on behalf of the appellant that the evidence disclosed no case against him. The Resident Magistrate ruled that there was a case to answer. The defendants gave no evidence and called no witnesses. The appellant and Daphne Thompson made statements from the dock denying all knowledge of the matter and Daisy Gordon said that she wished to say nothing at all. The Resident Magistrate found all defendants guilty and sentenced the appellant to three years' hard labour.

All three defendants appealed to the Court of Appeal. The appeal of Daphne Thompson was allowed upon the grounds that it was not established beyond any reasonable doubt that she knew what was in the shopping bag and furthermore she had immediately disclaimed ownership of the bag. The appeals of Daisy Gordon and the appellant were dismissed. From this dismissal the appellant appeals *in forma pauperis* by special leave of their Lordships' Board.

The Court of Appeal had held that although there was some evidence of joint occupancy of the house " if the matter had rested on that alone the Court would be of the view that the conviction would be unsafe as that evidence would have been too tenuous on which to have founded a conviction for possession of the ganja found in the house ". They held, however, that the appellant's silence when told of the accusation made against him by Daphne Thompson amounted to an acknowledgement by him of the truth of the statement which Daphne Thompson had made. At the hearing before this Board Counsel for the Crown has sought to uphold the conviction, not only on the ground accepted by the Court of Appeal but also, in the alternative upon the ground which was rejected by the Court of Appeal, namely, that the evidence of the appellant's occupancy of the premises was sufficient to support the conviction. Their Lordships would not think it right to allow this latter point to be re-opened before this Board. It raises no point of law of general public interest and is dependent upon inferences to be drawn from local knowledge of living conditions in Jamaica with which the Court of Appeal is familiar and this Board is not. They will accordingly deal only with the question whether the appellant's silence in the circumstances outlined above constituted evidence upon which he could properly be convicted of the offence with which he was charged. This was the ground upon which special leave to appeal was granted by their Lordships.

In dealing with this question, the Court of Appeal cited the following paragraph from Archbold Criminal Pleading Evidence & Practice:

> " A statement made in the presence of an accused person, accusing him of a crime, upon an occasion which may be expected reasonably to call for some explanation or denial from him, is not evidence against him of the facts stated, save in so far as he accepts the statement so as to make it in effect his own. If he accepts the statement in part only, then to that extent alone does it become his statement. He may accept the statement by word or conduct, action or demeanour, and it is the function of the jury which tries the case to determine whether his words, action, conduct or demeanour at the time when the statement was made amount to an acceptance of it in whole or in part."

This statement in their Lordships' view states the law accurately. It is a citation from the speech of Lord Atkinson in *R. v. Christie* [1914] A.C. 545 at p. 554. But their Lordships do not consider that in the instant case the Court of Appeal applied it correctly. It is not suggested in the instant case that the appellant's acceptance of the suggestion of Daphne Thompson which was repeated to him by the police constable was shewn by word or by any positive conduct, action or demeanour. All that is relied upon is his mere silence.

It is a clear and widely known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. *A fortiori* he is under no obligation to comment when he is informed that someone else has accused him of an offence. It may be that in very exceptional circumstances an inference may be drawn from a failure to give an explanation or a disclaimer, but in their Lordships' view silence alone on being informed by a police officer that someone else has made an accusation against him cannot give rise to an inference that the person to whom this information is communicated accepts the truth of the accusation.

This is well established by many authorities such as *R. v. Whitehead* [1929] 1 K.B. 99 and *R. v. Keeling* [1942] 1 A.E.R. 507. Counsel has sought to distinguish these cases on the ground that in them the accused had already been cautioned and told in terms that he was not obliged

to reply. Reliance was placed on the earlier case of *R. v. Feigenbaum* [1919] 1 K.B. 431 where the accused's silence when told of the accusation made against him by some children was held to be capable of amounting to corroboration of their evidence. It was submitted that the distinction between *R. v. Feigenbaum* and the later cases was that no caution had been administered at the time at which the accused was informed of the accusation.

The correctness of the decision in *R. v. Feigenbaum* was doubted in *R. v. Keeling*. In their Lordships' view the distinction sought to be made is not a valid one and *R. v. Feigenbaum* ought not to be followed. The caution merely serves to remind the accused of a right which he already possesses at common law. The fact that in a particular case he has not been reminded of it is no ground for inferring that his silence was not in exercise of that right, but was an acknowledgement of the truth of the accusation.

It follows that in their Lordships' view there was no evidence upon which the Resident Magistrate was entitled to hold that the charge against the appellant was made out. Their Lordships have humbly advised Her Majesty that this appeal should be allowed and the appellant's conviction quashed.

311222—4 Dd. 178169 11/70

In the Privy Council

DENNIS HALL

v.

THE QUEEN

DELIVERED BY
LORD DIPLOCK

Printed by HER MAJESTY'S STATIONERY OFFICE
1970