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IN THE PRIVY COUNCIL

No. 50 of 1983

O N A P P E A L  
 FROM THE WEST INDIES  
 ASSOCIATED STATES SUPREME COURT (COURT OF APPEAL)

B E T W E E N :

PATRICK JOHN (1)

JULIAN DAVID (2)

MALCOLM REID (3)

Appellants

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

CASE FOR THE RESPONDENT

Record

1. In this Appeal from the West Indies Associated States Supreme Court (Court of Appeal) the principal issues are:-

- (i) whether Section 37(3) of the West Indies Associated States Supreme Court (Dominica) Act No. 10 of 1969, as amended by Section 4 of the West Indies Associated Supreme Court (Dominica) Amendment Act No. 16 of 1981 is contrary to section 8(5) of the Commonwealth of Dominica Constitution Order 1978, and therefore unconstitutional

null and void;

- (ii) whether the learned Trial Judge erred in refusing to admit evidence proving the hand-writing of Patrick John and Malcolm Reid;
- (iii) whether the learned Trial Judge erred in upholding submissions of "no case to answer" advanced by Counsel for the Appellants Patrick John, Malcolm Reid and Julian David;
- (iv) whether the Respondent's Appeal to the Court of Appeal was brought on grounds within Section 37(2) of the West Indies Associated States Supreme Court (Dominica) Act No.10 of 1969.

2. The evidence adduced by the State at the trial is fully summarised in the Judgment of the Court of Appeal and as necessary the Respondent will refer to it at the hearing of this Appeal. It is respectfully submitted that the Court of Appeal was right to conclude that in relation to the three Appellants "there was evidence against them on which a jury properly directed could convict". p. 147  
1.8

3. Section 8(5) of Commonwealth of Dominica Constitution Order 1978 (S.1. 1027 of 1978) provides:

"A person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall not again be tried

for that offence or for any other criminal offence of which he could have been convicted at the trial save upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal".

Section 37 of the West Indies Associated Supreme Court (Dominica) Act No. 10 of 1969 was amended in 1981 by Section 4 of the West Indies Associated Supreme Court (Dominica) Amendment Act No. 16 1981 as follows:

"37(2) Where during the trial of a person on indictment the Trial Judge decides on a point of law or evidence, the Director of Public Prosecutions, if dissatisfied with the Trial Judge's decision may appeal by way of special case

"37.-(3) The Court of Appeal in any such appeal by the Director of Public Prosecutions shall allow the appeal if it thinks that the decision was wrong in law and order a retrial and in any other case shall dismiss the appeal."

It is respectfully submitted that the amendment made by the 1981 Act is fully in accordance with the saving expressly contemplated by S.8(5) of the Constitution Order. Further that by providing for the Court's powers upon the hearing and determination of such an appeal the legislature was not usurping the judicial power of the Court of Appeal. On the contrary the words of sub-section (3) expressly recognise the independent judicial discretion to be exercised by the Court.

4. The learned Trial Judge refused to admit evidence

of the genuine handwriting of the Appellants, Patrick John and Malcolm Reid.

Section 19 of Evidence Act (CAP.64) provides that:

"Comparison of the disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses and such writings and the evidence of witnesses respecting the same may be submitted to the Court and Jury as evidence of the genuineness or otherwise of the writing in dispute".

The evidence of the "genuine handwriting" of Patrick John comprised a passport application form, which was to be produced by the Commissioner of Police of Dominica, who also held the office of Chief Immigration Officer. He stated that by reason of offices he had held he was familiar with the signature of the former Prime Minister, Patrick John. No reasons were given by the learned Trial Judge when he ruled that the writing had not been proved to his satisfaction but the submission for the Appellant appears to have been made on two grounds. Firstly that the Commissioner did not have any personal knowledge of the signing of the document by the Appellant. Secondly that the document was irrelevant to the issues in the case. It is respectfully submitted that neither was a good ground for refusing to admit the evidence.

p. 47  
p. 48  
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p. 50  
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p. 51  
1.4  
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The learned Trial Judge did not give his reasons when he ruled that evidence comprising a diary alleged to be in the handwriting

of the Appellant Malcolm Reid should not be admitted. Similar submissions to those advanced on behalf of Patrick John were advanced, and it is submitted that thereby the learned Judge, fell into error.

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1.15

5. As to the grounds upon which the Special Case was based it is respectfully submitted that the Appeal was within S.37(2) of Act No.10 of 1969 as amended for

- (1) it raised an issue on the Trial Judge's ruling on the admissibility of evidence;
- (2) it raised a point of law, namely that the Trial Judge had erred in concluding that there was no case fit to be left to the Jury.

6. The Appeal proceeded by way of Special Case to the Court of Appeal. The unanimous Judgment of the Court of Appeal was that: 122

- 1 (1) Section 37(3) of West Indies Associated States Supreme Court (Dominica) Act No.10 of 1969 as amended by the 1981 Act was not contrary to Section 8(5) of the Constitution;
- (2) the learned Trial Judge wrongfully excluded evidence relating to the handwriting of Patrick John and Malcolm Reid;

(3) the learned Trial Judge had erred in upholding a submission of no case in respect of Patrick John, Malcolm Reid, and Julian David; and

(4) that the Respondent's Appeal was properly grounded within Section 37(2) of the 1969 Act.

10. The Respondent respectfully submits that the Court of Appeal were correct for the reasons set out in the Judgment of the Court and submits that this Appeal should be dismissed for the following, among other

R E A S O N S

- (i) BECAUSE the Respondent's Appeal to the West Indies Associated States Supreme Court (Court of Appeal) was properly brought;
- (ii) BECAUSE the Amendment Act No. 16 of 1981 is not contrary to S.8(5) of the Commonwealth of Dominica Constitution Order 1978;
- (iii) BECAUSE the learned Trial Judge erred in wrongfully excluding evidence and in wrongfully upholding a submission of no case to answer on behalf of the Appellants;

(iv) BECAUSE the Court of Appeal properly set aside the Trial Judgment and ordered a retrial.

GEORGE NEWMAN

MARK STRACHAN

IN THE PRIVY COUNCIL

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B E T W E E N :

PATRICK JOHN (1)

JULIAN DAVID (2)

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Appellants

- and -

THE STATE

Respondent

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CASE FOR THE RESPONDENT

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