

IN THE SEYCHELLES COURT OF APPEAL

CLEMENT BRADBURN

1st Appellant

CALIXTE BRADBURN

2nd Appellant

v/s

THE REPUBLIC

Respondent

Criminal Appeal No. 6 of 1989

Mr Juliette for appellants

Mr Derjacques for Republic

JUDGMENT OF THE COURT

Each of the appellants was charged with one count of possession of dangerous drugs. Each was alleged to have in his possession 3 grams of cannabis.

At the Magistrate's Court they were tried together and in his judgement the Magistrate stated:

"They have been charged separately with each being in possession of 3 grams of cannabis. The evidence has established that they were in joint possession. This fact has caused no injustice or prejudice to the accused in my view"

The Magistrate found the appellants guilty of joint possession of 3 grams of cannabis and convicted and sentenced each of them to 3 years imprisonment.

On first appeal counsel for the appellants submitted that the trial magistrate had erred in holding that no prejudice or injustice had been caused in convicting the appellants of joint possession when they were charged separately. The first appellate Judge Seaton C.J. stated:

"The charge in the present case was one on which the learned Magistrate could not convict them of joint possession of 3 grams of cannabis. He was with respect, in error in doing so".

However, Seaton C.J. was of the view that this error had caused no prejudice to the appellants and was curable by virtue of the provisions of Sec. 331(a) of the Penal Code. He dismissed the appeal.

Mr Juliette for the appellants before us contended that Seaton C.J. had erred in invoking the provisions of Sec. 331(a) to dismiss the appeal. His argument was that since there was only one quantity of 3 grams of cannabis and each of the appellants was charged with its possession, the Magistrate's error was fundamental and would be incurable.

We think that the irregularity in this charge was curable and such irregularity could not possibly have caused any injustice or prejudice to the appellants. We do not agree that the error or irregularity was so basic or fundamental as to be incurable. The appeal is dismissed.

Dated this ^{26th}..... day of October 1989.

A. Munafz
..... (PRESIDENT)

W. J. J. J.
..... (JUSTICE OF APPEAL)

A. J. J.