

Vital v Republic

(2010) SLR 211

Elvis CHETTY for the appellant
C JAYARAJ, Principal State Counsel for the respondent

Judgment delivered on 13 August 2010

Before MacGregor P, Hodoul, Fernando JJ

This is an appeal against a conviction for the offence of trafficking in controlled drugs, contrary to section 5 of the Misuse of Drugs Act in accordance with the section 14(d) presumption in the said Act. As per the particulars of the charge laid before the Supreme Court the appellant was on 24 July 2008 found in possession of 46.3 grams of cannabis (herbal material).

There are 2 grounds of appeal, namely:

- (i) The trial judge erred on the evidence in not attaching sufficient weight to the fact that the police camera in the vicinity had not recorded any incident of the appellant throwing away any object, especially bearing in mind that the onus was on the prosecution to prove the case beyond a reasonable doubt.
- (ii) The trial judge erred on the evidence in attaching great weight to certain inconsistencies in the evidence of the defence witnesses, and yet the trial judge did not treat the inconsistencies in the prosecution case in similar manner.

According to PW 2, Cpl Steve Jupiter, on 24 July between 3.30 to 3.45, along with Inspector Marie, PW 3 Cpl J Samson and another WPC were patrolling at Castor Road in vehicle number S 1773 when they saw the appellant, a one-legged man by the side of the road about 8 feet from them, standing with the aid of one of his crutches. The other crutch was on the ground. Seeing the police approach him he had dropped a red plastic bag that was in his right hand to the ground. The bag had fallen near him and the ground there, was clear. PW 2 had picked up the plastic bag, opened it in front of the appellant and showed him the herbal material contained therein. The appellant was arrested and taken to the Central Police Station with the herbal material and the money that was seized from him. The herbal material was placed in a locker and on the following day taken to Dr Jakariya who confirmed it to be cannabis. There is no challenge to the chain of evidence or the analysis of the herbal material. There had been R 1175 consisting of notes and coins in denominations ranging from R 100 to R 1. Under cross-examination the witness had denied that DW Rosemonde was with the appellant at the time of his arrest.

According to PW 2 the appellant was arrested on the left side of the road leading from English River towards the church, opposite a shop. He had admitted that there was a police security camera installed in that area of the road, but not at the place where the appellant was standing.

PW 3, LCPL Samson, has corroborated the version of PW 2 on all material particulars. PW 3 at first was confused as to the side of the road the appellant was standing when they arrested him but later corrected himself to fall in line with the evidence of PW 2. Again there is a slight contradiction between the testimonies of PW 2 and PW 3 as to where PW 3 was seated in the vehicle when they saw the appellant. We see no inconsistencies in the testimonies of PW 2 and 3 for a court to doubt the veracity of their evidence. The trial court has decided to accept the prosecution evidence and we see no reason to disturb that finding of fact by the trial Judge who had the advantage of seeing the witnesses testify.

The appellant testifying before the Court has not challenged the evidence of the prosecution witnesses as regards his arrest at the time and place as testified by them, but denies that he was in possession of drugs as narrated by the prosecution witnesses. According to him this case was fabricated against him as he had filed a case against the police claiming damages for unlawful assault on him. He had said that the money seized from him was from the sale of fish. He had said that at the time of his arrest he was seated on an old pickup truck speaking to DW Rosemonde. He was drinking a Seybrew while Rosemonde was having a Guinness. DW Rosemonde had contradicted the appellant on both these matters by saying that the appellant was standing on the road at the time of his arrest and did not have a Seybrew in his hand. The trial Judge had rejected the defence evidence in view of its contradictory nature. Here again this is a finding of fact by the trial Judge, which we see no reason to disturb.

The appellant in his second ground of appeal is not denying the inconsistencies in the defence evidence nor is he complaining that the inconsistencies in the prosecution evidence are so material that a reasonable court could not have come to a finding of guilt against the appellant in view of those inconsistencies. His complaint is as regards the manner the trial Judge decided to treat the inconsistencies in the two versions. In our view the trial Judge's treatment of the two versions is not faulty as to warrant interference by this Court with his findings on facts.

We see no merit in ground 1 of the appeal as the trial Judge has dealt with the issue raised in ground 1 at length at pages 4 and 5 of his judgment. DW Mr E Quatre, the Commissioner of Police, had stated that security cameras can record events within a radius of 90 degrees but recordings would depend on the specific area being recorded, whether view is obstructed by buildings, trees and sometimes light. They have to be operated by hand and the operator has to rotate it. If there is anything of evidential value it would be retained, if not it gets automatically erased after one month. It must also be said that a recording would depend on which direction a camera is focused at a given moment especially because it rotates. We are in agreement with the trial Judge when he states:

It is clear that as the camera had not been focused and therefore had admittedly not captured the act of dropping the bag, it had been auto-

erased after a week and it is for this reason that the prosecution seeks to rely on the evidence of these two witnesses in respect of the detection and subsequent arrest.

The onus on the prosecution to prove a case beyond a reasonable doubt does not oblige them to lead evidence of the recordings of a police camera. They had every right to lead the evidence of PW 2 and 3 without recourse to the recordings of a police camera, even if the incident had been recorded and the trial Court was perfectly entitled to rely on the testimony of PW 2 and PW 3 to convict the appellant on the testimony of PW 2 and 3 alone. The defence had every right to request for the recordings of the police camera, within one month of the arrest of the appellant if the recordings would prove the testimony of PW 2 and 3 false. The record does not disclose that such a request was made. A refusal to comply with such a request without valid reason may have been a ground of complaint.

We therefore dismiss the appeal.

Record: Court of Appeal (Civil No 2 of 2010)