The Republic v Albert
(1997) SLR 27

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Laura ALCINDOR State Counsel for the Republic
Nicole TIRANT for the accused

Judgment delivered on 4th December, 1997 by:

PERERA J: The accused stands charged on two counts. Under count 1 he is charged with the offence of trafficking in a controlled drug contrary to section 5 read with section 26(l)(a) of the Misuse of Drugs Act (Cap 133) and punishable under section 29 of the said Act. The particulars of the offence, as stated in the charge are that the sccused on 7 October 1997 at Sans Souci, was trafficking in a controlled drug, namely 14 grams and 810 milligrams of cannabis resin, by doing an act preparatory to or for the purposes of selling, giving, transporting, sending, delivering or distributing the said controlled drug. Under count 2, he is charged under the same provisions. The particulars of the offence thereunder are that the accused on the same date and place as in count 1, was found to be in possession of 1 kilogram and 30 grams of cannabis resin, which gives rise to a rebuttable presumption of having possessed the controlled drug for the purpose of trafficking and/or was trafficking in the said drug by doing an act preparatory to or for the purposes of selling, giving, transporting, sending, delivering or distributing the said controlled drug.

The case for the prosecution was that around 7.45 pm on 7 October 1997, ASP Ronny Mousbe, upon receiving information, led a party of 10 police officers to the "Feba Estate" at Sans Souci where the accused was occupying a ground floor flat. The police party took positions in the land adjoining the flats in the dark. Two officers from that party testified in Court; they were PC Danny Appasamy (PW2) and PC Ange Michel (PW3).

According to PC Appasamy, when they were occupying a vantage position to view the entrance of the flat of the accused, he observed that the lights inside were on. ASP Mousbe then telephoned the accused's number from his mobile telephone, but received no reply. Hence the officers were directed to lie down, and await the arrival of the accused. PC Appasamy hid behind a bushy tree about 25 feet away from the entrance door to the flat, while PC Michel was lying on the ground about 15 feet away from that door. The distance between the two officers was about 10 feet. The Court observed those positions on a visit of the locus in quo and was satisfied that the two officers would have had an unobstructed view of anyone entering the flat by that door, which was the only convenient entrance as the rest of the house is about 5 to 6feet above ground level.

PC Appasamy stated that after about three hours (around 11pm), he heard the sound of a car which came to the compound of a row of four flats, the last of which was occupied by the accused. At the visit of the locus in quo the Court observed that the accused's flat

was numbered as "No. 13" and that an open garage used by all the occupants of the flats was about 50 metres from the entrance to the accused's apartment. The accused in his evidence claimed that the place was very dark and that the distance from the garage to his house was about 200 meters. However, after the visit of the locus in quo, counsel for the accused suggested that the distance was about 50 meters. PC Appasamy testified that there was sufficient light in the area. The Court observed that there were lights on poles to illuminate the roads leading to the flats and adjoining houses in that estate and that there were six garden lights facing the entrances to the four flats. Whether all those lights were functioning that night is not in evidence, apart from the evidence of PC Appasamy that there was sufficient light in the area.

Soon after the car was parked in the said garage, PC Appasamy saw a woman coming towards the accused's flat opening the door and entering the flat which was already lit. About 23 minutes later, the accused followed her and entered the apartment. PC Appasamy testified that he identified the woman as Marie Celine Quatre whom he "knew very well" and the man as "Raniza", the accused. PC Michel (PW3) went in first and met the accused near the door and explained that the police officers wanted to search for drugs. PW3 told PC Appasamy to search the waist bag around the accused's waist. Finding some black substance, PC Appasamy asked the Accused what it was, and he replied "sa i bann stim" (that is steam). He then removed the waist bag, the belt which was worn through the loops of a pair of jeans. He put the bag on a table and in the presence of the accused, ASP Mousbe, PC Michel and PC Dufrene took out 25 pieces of black substance from the first compartment of the waist bag. In another compartment closed with a zip fastener he found several Seychelles currency notes which he counted in their presence, amounting to R4,141.05. From the larger compartment of the waist bag he removed a mobile phone and a black wallet. Marie Celine Quatre, who is admittedly the concubine of the accused and is living in that apartment with him and a child 7 months old, started to cry and the accused told her "pa bezwen gele sa ki zot war dan sa lakaz pou mwan" (don't cry, what's in the house is mine).

On the directions of ASP Mousbe, the mobile phone and the black wallet were handed over to Marie Celine Quatre. He then took custody of the 25 pieces of black substance and the money which he replaced in the waist bag.

On the instructions of ASP Mousbe, PC Michel commenced searching the apartment. He first searched the kitchen, which is the first room as one entered from outside. There were pantry cupboards, an electric cooker and a washing machine. The cupboards have no locks but are pressed shut. PC Michel testified that he searched the kitchen thoroughly and found no cannabis. He then proceeded to the sitting room, where he searched the chairs, a book rack and a desk with three drawers, which had no locks. Connecting the sitting room to the single bedroom of the apartment is what one may call "a small corridor" about 3 1/2 feet long and 3 1/2 feet broad. There stood a wooden built-in wardrobe which had a top shelf with two doors without locks. The bottom portion which rested at floor level with no gap underneath had four shelves. This portion also had two doors without locks. PC Michel testified that searching the shelves from the top,

he found a white plastic bag concealed under some ironed clothes in the bottom shelf. He stated that if he did not lift those clothes he would not have noticed the bag. There were other plastic bags in the wardrobe which contained babies "pampers". PC Michel testified that he showed the plastic bag to the accused and asked him "what is this?" and he replied "sa kilo hashish pa pou mwan" ("that kilogram of hashish does not belong to me").

PC Michel stated that that plastic bag contained a rectangular block of black substance about 30 cm long and 15 cm wide and about 1 inch thick. He further stated that on the block was a gold coloured seal with a design that looked like the head of a bird, and that one of the edges of that block was chipped off. This rectangular block and the plastic bag were then kept in custody by PC Michel thereafter.

There is a piece of evidence elicited from PC Appasamy which needs to be stated at this stage. He testified that while PC Michel was searching the apartment, Marie Celine Quatre wanted to go back to the car to fetch the small child who was sleeping inside. Then ASP Mousbe ordered one of the officers to accompany her.

The case for the defence is that the rectangular block of cannabis resin was introduced by the police officers before he entered the apartment and that while Marie Celine Quatre went in to change her clothes, as they were going out to eat a "sandwich" at the Beau Vallon Bay Hotel that night, he stayed back in the car with the sleeping child. He therefore claimed that he did not know what had happened after Marie Celine Quatre entered the apartment until the officers came up to the car and handcuffed him. I shall deal with this matter in greater detail in considering the defence in the case.

As regards the exhibits produced in the case, both PC Appasamy and PC Michel testified that the exhibits were in their custody overnight in their lockers until they were taken to Dr Philip Gobine, the Government analyst, for analysis. Dr Gobine in his testimony stated the procedure he adopted in receiving the exhibits from the respective police officers and the handing over of the reports with the exhibits and the residue after analysis. As regards the 25 pieces of black substance. the possession of which is charged under count 1, he certified that "the resinous material" was cannabis resin (Exh. P4). The sizes of the pieces ranged from 2cm to 4.6cm. The weight was 14gm and 810mg. As regards the rectangular block, the possession of which is charged under count 2, he certified that "the resinous material is cannabis resin". It was 24.5cm in length and 13.5 cm in width, and weighed 1kg 30gm (Exh. P3). Dr Gobine identified the seals that he affixed and his signature on the four corners of the envelopes in which he enclosed the cannabis resin after analysis before opening them in Court.

The Court is satisfied that the chain of evidence regarding the production of the exhibits had been maintained. In her submissions to the Court however, counsel for the accused invited the Court to consider that Dr Gobine did not testify regarding the gold coloured design of either a bird or the hood of a cobra appearing on the rectangular block of cannabis resin produced in the case. She submitted that Dr Gobine would not have failed to observe such a significant feature. The inference that was sought to be

drawn was that what Dr Gobine analysed was not what has been produced in court. The following excerpts from his cross-examination would illustrate the nature of his testimony as regards matters falling outside the scope of scientific analysis.

> Q: Did you notice when you say that this is a rectangular block, did you notice that a big chunk of it was missing?
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> A: Yes, I pointed it out to the officer. When I say rectangular block, I am not talking in precise terms because even when you say this is rectangular, scientifically it may not be precise. Somebody may say that there is a little dent here, a little scratch there.
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> Q: You were asked to try and be precise as possible in describing this particular item before it was opened in court. You said that that piece missing is noticeable; it is not something that you would miss out?
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> A: You are implying that it is noticeable, what I am talking of is from memory, it was a rectangular block. I cannot go into fine details and say there were little whatever on the block, it was a rectangular block. If anybody here looks at the block, it is a rectangular block, yes there is a little piece missing, but that was upon my receiving the block. That was the way it was, so I just measured it as a rectangular block.

Counsel who examined the block of cannabis resin after it was admitted as an exhibit, ought to have cross-examined Dr Gobine as to whether he noted the gold seal in particular. No such question was put to him. Hence he answered only the precise questions as to the shape, colour and weight of the substance which alone were material to his analysis. There is no doubt whatsoever that what was analysed by Dr Gobine was inserted in a brown envelope by him, sealed and his signature placed on the four corners. The seals were opened only after Dr Gobine was satisfied that his signature had not been tampered with. There was therefore no doubt that what was produced in court as the exhibit was what was analysed by Dr Gobine as cannabis resin in his report (Exh.P3). Hence the omission of Dr Gobine to mention the gold seal had no real significance. I am also satisfied that the 25 pieces of cannabis resin produced with the report Exh. 4 are the same drugs that were allegedly obtained from the possession of the accused.

The defence was one of total denial of the charges and an allegation of drugs being introduced by the police officers. The accused who testified on oath stated that he was a fisherman by profession. Explaining his movements on 7 October 1997, he stated that he left for his mother's house at Plaisance by bus and was there from about 6.30 am to about 11.15 pm. Marie Celine Quatre joined him at Plaisance around 10.30 am. She came by car. The police officers found the lights of the house on around 8 pm when they arrived. It is not conceivable that Marie Celine put on the lights at 10.30 am before she went to join the accused. Hence it is possible that they went out much later in the

evening. Be that as it may, the accused stated that having fished and snorkled, he was with his mother till about 10.30 pm. He then decided to go to the Pizzeria at Beau Vallon for a pizza. But when he came there with his concubine and child, it was closed; they then decided to go to the Beau Vallon Bay Hotel "for a sandwich". But as Marie Celine's clothes were not suitable to enter the hotel, they went all the way to Sans Souci to change her clothes and return. He stayed in the car with the sleeping child which was about 50 metres away from where the car was parked in the open garage. I have already described the lighting condition in that area. At the locus in quo PC Michel and PC Appasamy remembered having seen another car and a pickup in the front of the accused's parked car. The Court observed that a person sitting in the front passenger seat, where the accused claimed he was, could observe Marie Celine going down a few concrete steps towards the entrance of their flat. Hence, if as was claimed by the Accused, PC Michel and PC Appasamy had entered the apartment after Marie Celine did, while he sat in the car, there was a strong likelihood that he would have seen the two officers and at least five more officers converging outside his apartment. That would have given him an opportunity to get away. The accused however testified that two or three minutes after Marie Celine went, she was escorted back by about five police officers. One of them put a pistol on his head and informed him that they were going to search for drugs. They took him out of the car and handcuffed him. They took the mobile phone and a black wallet from his pocket. They searched the car and took him, Marie Celine and the child to the apartment. When he came to the apartment he saw two officers inside the house and some others outside. One of them, Ange Michel, showed a plastic bag and asked him "what is this?" and he replied "let me see" and after seeing he said "that is not mine". Michel thereafter started to search the living room, the bedroom and the wardrobe from where they claimed they had found the rectangular block of cannabis resin in the white plastic bag.

The accused further testified that when PC Michel, who was doing all the searching, opened the first drawer of the desk in the living room, he found the waist bag which has been produced as an exhibit in the case. He denied that it was ever round his waist that night. He stated that he had R12000 in that bag, of which R2000 was inside the unlocked drawer of the desk in the living room, as he had no bank account. The accused also stated that an agreement of sale was also in the waist bag. That document (Exh. DI) was shown to PC Appasamy and PC Michel during their testimonies. Both officers denied having ever seen it before. The accused testified that Isha Rose the purchaser on the agreement took him to a lawyer's office at State House Avenue around 2.30 pm on 6 October 1997. There two women told them to wait in a room till they prepared the document. The office was later identified as the Chambers of Mr Kieran Shah, Attorney-at-Law. He stated that both of them signed the document in that office.

One Rosy Pool from Mr Shah's Chambers was called by the defence to testify regarding the execution of the agreement of sale. In her evidence-in-chief she stated that the accused came to see Mr Shah regarding the sale of a boat. She further stated that she did not know the other person, but that his name is in the document. It is significant that

the accused in his evidence stated that it was the other person who took him to a lawyer's office. Questioned by his own counsel in his examination-in-chief he stated

> "Q: Did you see any lawyer?
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> A: We saw two women and they told us to wait in a room and they prepared everything."

Ms Pool further testified that she prepared the draft which was approved by Mr Shah. The sale price was R10,000. She stated that both parties signed the document in her presence and identified the signatures in Exh. Dl. She stated, however, that she did not see the parties exchanging money. She was paid R400 for the work. However on being cross examined she said that she saw money being exchanged. Further on in the cross-examination she admitted that since the transaction involved the exchange of money she assumed that money would have passed. She concluded her evidence by finally admitting that all that she could state with certainty was that the document was signed and that she was paid R400 for drafting and typing it.

The accused testified that the waist bag, which he claimed was removed from the drawer of the desk contained only R12000 in cash and the agreement of sale, but nothing else. PC Appasamy however stated that he removed all the contents of the waist bag which included 25 pieces of a black substance, currency notes, a mobile phone and a black wallet. As regards the currency notes, he stated that he counted all the money, amounting to RR4,141.05, in the presence of the accused in the house. In his examination-in-chief the accused stated -

> Q: Did you see your copy of this document when the police counted the money at your house?
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> A: I did not observe the police counting the money at that time as you know when I came into the house and they showed me a package, I was very excited. They were looking at my pouch, I was not thinking of money or the paper at that time. I was thinking of the problem that I would be in.
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> Q: What happened after the police found this money? Did they say anything to you?
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> A: They told me that they are taking the money because they had already seen illegal things in my house that can cost money and that they must take the money as an exhibit.

The accused further testified that after he was taken to the police station in a police van he was shown the items alleged to have been recovered from him once again. He stated that it was then that he noticed that his money was missing and that "like magic", money had turned into 25 little pieces of hashish. He further stated that he did not notice

the sale document at that time. It was sought to be established that this document Exh. D1 produced in Court was the second original copy which was handed over to the buyer of the boat, Isha Rose.

The accused admitted that he had been searched by police officers for suspected possession of drugs before while he was living in Plaisance and had been under surveillance. He stated that nothing was detected on him or at his residence. He stated that he did not smoke, or sell hashish or marijuana and denied that he told Marie Celine Quatre in the presence of the police officers that everything in the house belonged to him. He also denied that he was wearing the waist bag that night and that he ever stated "that is steam" as claimed by PC Appasamy.

As regards count 1, the prosecution relied on section 2(c) of the Misuse of Drugs Act (Cap. 133) to establish trafficking contrary to section 5 thereof as the presumption in section 14 does not apply, the quantity being less than 25 grams. Hence the burden lay on them to prove that the accused was trafficking in 14 grams and 810 milligrams of cannabis resin in the form of 25 pieces of varying sizes, by doing an act preparatory to or for the purpose of selling, giving, transporting, sending, delivering or distributing. Section 2(c) of Cap 133 is similar to section 4A(a)(c) of the previous Dangerous Drugs Act. The Court of Appeal in interpreting that subsection in the case of *Philip Cedras v R* (unreported) Criminal Appeal 11/1988 stated:-

> Possession of a dangerous drug is an act albeit a continuous act involving the physical custody or control of the drugs. If a person is in possession of a dangerous drug for the purpose of trafficking, he is evidently doing an act for the purpose of trafficking and such act is clearly caught by section 4A(1)(c).

The issue that arises for consideration under this count is whether the prosecution has proved beyond a reasonable doubt that the waist bag was removed from the waist of the accused and that it contained among other things 25 pieces of cannabis resin. The version of the accused that the waist bag with R12,000 was kept inside an unlocked drawer of a desk in the living room is not plausible. There was another wardrobe in the bedroom. As the bedroom door could be locked, it was a safer place to keep money. Further there was no necessity for the police officers to take the pouch as an exhibit if it had only cash, and steal part of it. They could have stolen the whole amount and denied the existence of the pouch altogether. If they had intended to "plant" the drugs, as claimed by the accused, they could have restricted themselves to the rectangular block of cannabis resin. They would not have opened themselves to an allegation of stealing, especially if there was a document in the nature of Exhibit D 1, a copy of which could have been produced even if it was destroyed. The claim that the pouch had R12000 and not R4141.05 was a red herring drawn to discredit the evidence of PC Appasamy and to create a doubt that he may have introduced the 25 pieces of cannabis resin on the way to the police station. The agreement to sell dated 6^{t} October 1997 appears to be another fabrication for the same purpose. Rosy Pool contradicted the accused and stated that she did not know the name of the buyer, while the accused stated that it was Isha Rose the buyer who took him to the lawyer's office. Ms Pool

stated that she saw both parties sign the document. However exhibit D 1 shows that although the name of the purchaser is given as Isha Rose in the caption of the agreement, the document was been signed by one "Z.I. AADI." Neither Ms Pool nor the accused testified as to this discrepancy. Both claimed that it was signed by the purchaser who, according to the accused, was Isha Rose who took him to the lawyer's office. It is pertinent that in the absence of any evidence, counsel for theaccused in her submissions stated that the boat was bought "by the father in the name of his son." There was no such evidence in the case.

Ms Pool therefore lied when she categorically stated that both parties to the agreement signed in her presence. She was nervous and excited when testifying and made contradicting statements. It is patently clear that although the document may have been drafted and typed by her, it was not signed by one Z.I. AAIDA and the accused in her presence. According to the prosecution witnesses and the accused himself, no complaint was made that part of the money in the waist bag was missing. The document therefore appears to have been prepared under suspicious circumstances, and hence I place no reliance on its contents. I am satisfied that the waist bag contained only R4141.05 as testified by PC Appasamy.

There is no reason to doubt the evidence of both PC Appasamy and PC Michel that the waist bag was being worn by the accused that night and that there were 25 pieces of cannabis resin which the accused stated to be his "steam". I accept the evidence of both these officers on the aspect of possession and knowledge on the part of the accused. The said quantity of cannabis resin was therefore in the possession of the accused with complete knowledge of the substance. The accused testified inter alia that he did not smoke cannabis. If that is so, by being in possession he was doing an act for the purpose of trafficking. Further, although there was no direct evidence of selling, the presence of money with the cannabis resin in the pouch was a significant factor which indicated that the cannabis resin was being sold. The accused could not satisfactorily explain how he could have possessed a sum of R4141.05 that night as his earnings as a fisherman was about R500 to 600 per day. As was observed by Morland J in the case of *R v Morris* [1995] 2 Cr App R 69 at 75:

> ...evidence of large amounts of money in the possession of a defendant or an extravagant lifestyle on his part, prima facie explicable only if derived from drug dealing, is admissible in cases of possession of drugs with intent to supply if it is of probative significance to an issue in the case.

Such a consideration is however permitted only once possession and knowledge have been established, as in the instant case, and the only element needed to be established is trafficking of the controlled drug.

In the case of *R v Gordon[* 1995] 2 Cr App R 61, large sums of money were found on the accused who was found in possession of cocaine. It was submitted by counsel in that case that drug traffickers usually explain the presence of large amounts of cash in the house on the basis that they did not trust the banks. In the instant case too the

accused stated that he had no bank account. Yet he testified that he paid R1500 per month as rent. He had three fishing boats which he stated were worth around R50,000. What Morland J in the *Morris* case (supra) meant by "probative significance to an issue in the case" was that such evidence made the intention of the accused to supply those drugs more or less probable.

On the basis of the finding that the accused was in possession of the pouch which contained the cannabis resin and the money, the reasonable inference to be drawn in the absence of an explanation was that the money constituted the sale proceeds of that day.

It is in this sense that an amount of R4141.05 found in the possession of the accused together with a quantity of cannabis resin around 11.30 pm that night becomes relevant as being probative to the issue of trafficking under Count 1. I am therefore satisfied beyond a reasonable doubt that the ccused was knowingly in possession of 14 grams and 810 miligrams of cannabis resin for the purpose of trafficking as charged under count 1. Accordingly I find him guilty on count 1 as charged.

As regards count 2 the prosecution relies on the presumption contained in section 14(d) of Cap 133 that -

> A person who is proved or presumed to have had in his possession more than
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> ….
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> (d) 25 grams of cannabis or cannabis resin shall, until he proves the contrary, be presumed to have had the controlled drug in his possession for the purpose of trafficking in the controlled drug contrary to section 5.

In the instant case, the prosecution relies on the 2nd limb of that section, namely "a person ... presumed to have had in his possession." For this purpose, section 15(2) states that "the fact that a person never had physical possession of a controlled drug shall not be sufficient to rebut a presumption under this section."

Admittedly, the accused did not have physical possession of the rectangular block of cannabis resin weighing 1 kilogram 30 grams, which has been produced in the case after analysis. It is the case for the prosecution that this block was found by PC Michel while searching a wardrobe in the sitting-room area. The defence version is that the police officers introduced the block after Marie Celine Quatre had entered but before he was brought to the house. PC Michel testified that he was instructed by ASP Mousbe to enter the house only if the accused was in. Hence he did not enter when Marie Celine Quatre entered. While awaiting further instructions, the accused entered. It was then that he and PC Appasamy entered, and first searched the waist bag the accused was wearing. PC Michel and PC Appasamy were followed by ASP Mousbe and PC Dufrene. As stated earlier, the accused could have seen them entering the compound of the

apartments from the adjoining land where they were hiding. The version of the prosecution witnesses that they entered only after the accused entered is more probable in the circumstances of the case. Counsel for the accused invited the Court to consider that a child of such tender years would not have been left alone in the parked car even for a brief moment. That is a subjective consideration. The car park is in an open area served with several lights. The distance to the house was about 50 metres. The accused himself stated that he and Marie Celine Quatre were to go to Beau Vallon Bay Hotel for a "sandwich" after she had changed her clothes. I do not find the behaviour of the accused to be unrealistic when he left the sleeping child, who, he may have considered should not be disturbed, and joined Marie Celine for a short time. Hence I reject the defence of the accused that the said block of cannabis resin was introduced or "planted" by the police officers, who had no motive or opportunity to do so.

Accordingly the prosecution had to establish that the accused should be presumed to have had the drugs in his possession. Under section 15. absence of physical possession is insufficient to rebut the presumption. On the application of counsel for the accused, the plastic bag containing the block of cannabis resin was tested for finger and palm prints in an attempt to rule out handling by the accused. However no prints of anyone were found as the bag did not yield prints due to it being old and crumpled. The accused testified that the apartment was rented by him at a monthly rental of R1500. Hence as tenant, he was entitled to hold the keys of the premises. Counsel for the accused submitted that even if the accused was entitled to hold the keys, yet at the relevant time, they were with Marie Celine, and hence legally it could not be said that one who holds the key has control over the house and its contents. This contention is untenable. She further submitted that where there was evidence that two persons were living together in a house over which both had control, it could not be presumed that one alone had custody and control of the drugs. The fact that drugs were found in a house or room solely occupied by two persons living together would not per se raise an inference of joint enterprise. In the case of *R v Downes* [1984] Crim LR 552, a flat occupied by a couple living together was searched by the police. They found a block of cannabis resin weighing 27 grams and 13 packets of a similar substance weighing 3.6 grams each. They also found a box containing cash, notebooks, scales and other documents. The woman was jointly charged with possessing drugs with intent to supply. She admitted that the box and some of the cash belonged to her, but denied the rest. She was however convicted as charged. In appeal the conviction was quashed on the basis that "unless two persons in joint possession of controlled drugs were engaged in a joint venture to supply drugs to others, the mere fact that one knew of the other's intention to supply them, but had no intention to supply them himself, did not constitute the necessary intent for the purposes of the offence."

In another case *R v Bland* [1988] Crim LR41, the qppellant had been living with her co-accused in one room of a house. The police found traces of drugs in that room. She was charged with possession with intent to supply. She denied any knowledge of the presence of the drugs and said she could not believe that her partner had either possessed or supplied drugs. The case against her rested solely on the fact that she was living with him at a time when he was undoubtedly dealing drugs. The Court of

Appeal, quashing her conviction, held that the fact that she had lived together with the co-accused in the same room was not sufficient evidence from which the jury could infer that she exercised custody and control. The only inference that could be drawn was that she had knowledge, but that alone was insufficient to establish custody or control. Hence even if both the accused and Marie Celine Quatre were jointly charged, the charge being both several and joint, the accused could have been convicted independently. The accused maintained that the house was well protected by burglar bars. There was therefore no possibility of anyone else entering. It was he who stated to Marie Celine in the presence of the police officers that everything in the house belongs to him. He may have intended to exculpate her. Hence in such circumstances there may not have been sufficient evidence for the prosecution to charge her merely for the reason that she lived with him. It does not therefore avail the accused to rely on the non-prosecution of Marie Celine Quatre to cast a doubt as to his guilt, and to evade liability.

Counsel for the accused further contended that count 2 was bad for duplicity. It was submitted that while in the statement of offence the count is based on trafficking, in the particulars of offence the words "and or" have been used thereby relying on the presumption under section 14 and trafficking under section 2(a) of the Act. She submitted that the statement of offence and the particulars must be read together. Simply stated, duplicity means "no one count of the indictment should charge the defendant with having committed two or more separate offences." Count 2 contains a charge under section 5 for trafficking in a controlled drug. As the quantity is more than 25 grams, the prosecution relied on the rebuttable presumption in section 14. The accused in such circumstances is not being charged for two offences. The particulars only state the various ways the offence of trafficking may be committed, so that the accused may prepare his defence accordingly. Hence there is no duplicity in count 2 as known to law.

I am satisfied beyond a reasonable doubt that the block of cannabis resin was found inside the wardrobe in the course of the search made by PC Michel, and was not introduced as claimed by the accused. The accused admitted that PC Michel searched the entire house. If as claimed by the accused, the cannabis resin block was introduced by the police there would not have been any necessity to go through a “sham” search as the only persons present there, apart from the police officers, were the accused and Marie Celine Quatre. The evidence of PC Appasamy and PC Michel corroborated on material particulars. The minor discrepancies highlighted by counsel for the accused did in no way affect the veracity of their testimonies, nor were they of sufficient significance to doubt their evidence. Hence the accused, having failed to rebut the presumption on a balance of probabilities, should be presumed to have had the controlled drug in his possession for the purpose of trafficking.

Accordingly I find the accused guilty of the offence of trafficking as charged in count 2 as well.

Record: Criminal Side No 45 of 1997