

IN THE JUDICIAL COMMITTEE

No. 43 of 1984

OF THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF MAURITIUS

BETWEEN:

SOURIADEO DAMREE

Appellant

-and-

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from a judgment of the Supreme Court of Mauritius (Glover C.J. & Leung Shing J) dated the 27th February 1984 dismissing the Appellant's appeal against the conviction and sentence passed on him by Magistrates of the Intermediate Court of Mauritius on 29th July 1983.

p.45-47

p.13 & 14

2. The Appellant was convicted of the following offences by the Intermediate Court:

- (i) larceny night breaking (contrary to s 301 & 306 of Cap. 195); namely that he stole 77 rolls of cloth on the 22nd October 1981 by breaking into a shop during the night; p.14 L 39
- (ii) possession of ten necklaces and one jersey (contrary to s 40 & 301 of Cap. 195), and p.15 L 3
- (iii) effecting public mischief (contrary to s 298 of Cap. 195 as added by s2 of Ord 31 of 46); namely that he knowingly made a false statement concerning the imaginary theft of a yellow Toyota motor car registration number AM 896. p.15 L 11

3. The Appellant was sentenced to the following concurrent periods of imprisonment: p.15

- (a) 8 years penal servitude for the larceny night breaking charge,
- (b) 2 years imprisonment for the possession charge, and
- (c) 1 years imprisonment for the public mischief charge.

The Intermediate Court also ordered that the Appellant should remain under Police supervision for a period of

two years following his release from prison, and should pay costs of Rs. 150; in default of payment the Appellant should undergo a further sentence of 15 days imprisonment.

p.15 L 16

4. The issue in this appeal is whether the Intermediate Court had sufficient reliable evidence before them upon which they could convict the Appellant, and in particular whether a conviction based on P.C. Desmarais' evidence of identification of the Appellant was safe and satisfactory.

5. The charges arose out of the following events:

(a) At about 2am on the 22nd October 1981 P.C. Desmarais and two other Police officers surprised four suspects as they were coming out of a shop in La Baraque Road, Riviere des Anguille and loading rolls of linen into a motor car.

p.7 L 2

(b) The shop had been broken into and 77 rolls of cloth which were the subject of the larceny night breaking charge had been stolen.

p.10 L 1

(c) The motor car outside the shop was subsequently identified as a yellow Toyota which the Appellant had borrowed from one Adam Atchia on the 19th October. The number plates of the motor car had been

p.4 L 39

changed from AM 896, to AY 965; the original number plates were in the rear of the motor car. Under the back seat of the motor car ten necklaces and a jersey were found; they were the subject of the possession charge.

p.4 L 35

(d) P.C. Desmarais' evidence was that while chasing three of the suspects, one of them turned, removed a knife from his jacket and threatened him with it. Another of the suspects said to his assailant 'Ministre baize li' (Ministre strike him).

p.7 L 11

(e) P.C. Desmarais identified the Appellant as his assailant and picked him out in an identification parade held at Sovillac Police Station on the 29th October 1981.

p.27 L 13

(f) On the 22nd October the Appellant reported the theft of the borrowed yellow Toyota, claiming that it had been stolen from outside his father's house on the night of the 21/22 October. This was the subject of the public mischief charge. His statement is Document C.

p.39

p.26

6. The Appellant pleaded not guilty and maintained the Defence that he had not been present at the shop in la

p.12 L 6

Baraque Road but had been asleep with his father in his father's house. He claimed that the motor car had been stolen from outside his father's house during the night of the 21/22nd October.

p.33 L 9

7. In convicting the Appellant the learned magistrates made the following findings of fact;

(a) They accepted P.C. Desmarais' evidence as being true;

p.14 L 13

(b) They accepted that one of the suspects called P.C. Desmarais' assailant 'Ministre' and that this was the Appellant's nickname.

p.14 L 28

(c) They accepted that P.C. Desmarais had correctly identified the Appellant as his assailant, and that he had been able to identify him in the light cast by a nearby filling station.

p.14 L 28

(d) They accepted that all four suspects were carrying the linen to the car, and that the Appellant was one of those four suspects.

p.14 L 16

p.14 L 35

(e) They rejected the Appellant's evidence as untrue and fabricated, and impliedly found that the motor car had not been stolen and remained under the Appellant's control.

p.15 L 11

(f) They found that the Appellant knew that his statement given to the police was false. p.15 L 5

8. The Appellant appealed to the Supreme Court of Mauritius complaining principally that there was insufficient evidence connecting him with the offences of which he was convicted and that the identification evidence was "so weak and unreliable" that the learned magistrates should have had reasonable doubts as to such identification. pp.16-17

9. The Supreme Court dismissed the Appellant's appeal. In relation to the identification evidence they found that: p.45-47

(a) There was sufficient evidence before the learned magistrates that the Appellant was acting in concert with the other suspects, and was exercising control over the car and its contents, and p.47 L 1-15

(b) the learned magistrates had not erred in their application of the evidence or otherwise misdirected themselves.

10. The Respondent respectfully submits that:

(a) The Intermediate Court's decision turned on their evaluation of the reliability of the witnesses appearing before them, and

and the quality of the prosecution's identification evidence. Their findings were findings of fact which according to general principles should not be interfered with unless the learned magistrates clearly misconstrued the evidence or otherwise misdirected themselves;

- (b) The Intermediate Court did not misconstrue the evidence or otherwise misdirect themselves; there was ample evidence before the learned magistrates to oblige them to convict the Appellant;

- (c) In particular, P.C. Desmarais' identification evidence was of good quality and was supported by other matters which pointed decisively to the Appellant's guilt. The Respondent will rely inter alia on:
 - (i) The use of the Appellant's nickname by one of the other suspects; p.7 L 11

 - (ii) The Appellant's connection with the car which was central to the offences, and p.4 L 39

 - (iii) The Appellant's alibi which was found to be fabricated; p.15 L 11

This supporting material was sufficient to make the learned magistrates sure that P.C. Desmarais had not made a mistake in identifying the Appellant. A conviction based even on poor quality identification evidence in such circumstances is recognised as being in accordance with principle and proper (R v Turnbull (1976) 63 Cr App Rep 132);

(d) For the reasons aforesaid, the judgment of the Supreme Court was in accordance with principle and correct.

11. On the 22nd March 1984 the Supreme Court of Mauritius made an order granting the Appellant leave to appeal to the Judicial Committee of the Privy Council. The Respondent respectfully submits that this Appeal should be dismissed with costs for the following among other

REASONS

1. BECAUSE there was sufficient evidence before the Intermediate Court to convict the Appellant on all three counts,

2. BECAUSE the judgment of the Supreme Court of Mauritius was correct and ought to be upheld.

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