

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Mag. App NO. 125 OF 2001**

**LOUDHO BHAGALOO**

**APPELLANT**

**AND**

**P.C. NICHOLAS VIALVA**

**RESPONDENT**

**PANEL**

M.A. de la Bastide, C.J.

L. Jones, J.A.

**APPEARANCES:**

**MR. I. BROOKS** appeared on behalf of the **APPELLANT**

**MS. S. CHOTE** appeared on behalf of the **RESPONDENT**

**DATE DELIVERED**

26<sup>th</sup> October 2001

## JUDGMENT

Delivered by M.A. de la Bastide, C.J.

The appellant was one of three men who were convicted of two offences, being in possession of marijuana for the purpose of trafficking and cultivating marijuana. The three of them were found by the police some four miles into the forest in Plum Mitán working in a marijuana field. The appellant had a spray can on his back and was spraying the marijuana plants. The other two men were working with cutlasses. When rain started to fall, they retired into a nearby camp. It was then and there that the police party moved in and arrested them.

There was a bucket found in the camp with marijuana seeds and the evidence was that there were some twenty thousand marijuana trees which the police destroyed, having taken some of them to be tested.

The Forensic Science Centre certified that the seeds were indeed marijuana seeds and the plants were marijuana plants. The Magistrate found, as I have said, all three guilty. There was a half-hearted attempt to pursue an appeal against conviction by this appellant, but counsel did not persist in that and limited his efforts to persuading us to reduce the sentence.

Now, the sentences which the Magistrate imposed were as follows:

For the offence of being in possession for the purpose of trafficking, a fine of five thousand dollars was imposed on all three accused. On the other offence of cultivating marijuana, the other two accused were, marvellous to relate, reprimanded and discharged, and the appellant was ordered to pay a fine of \$10,000 or two years imprisonment. We find the Magistrate's failure to imprison all three of these accused astounding, while the reprimand and discharge is almost unbelievable.

When the police in their efforts to stamp out the traffic in illicit drugs, make this type of foray into the forest and find men engaged in the extensive cultivation of marijuana, it must be very discouraging and disillusioning for them when they bring the guilty parties to court to find that the Magistrate reprimands and discharges the guilty ones on one charge and imposes a fine of five thousand dollars on the other.

The Magistrate, to compound matters, has sought in his reasons to justify the disparity in his treatment of the accused by saying this:

“I would note here that after the appellant/defendant and the other persons were found guilty, the Court was of the view that there were (sic) no remorse shown by the appellant/defendant, and it was the appellant/defendant who masterminded or who led the party in cultivation of the marijuana, hence the other two defendants were reprimanded and discharged.”

Well, firstly, the appellant showed no more or less remorse than the other two accused, and secondly, there was absolutely nothing in the evidence to indicate that he was the mastermind of the project to cultivate marijuana. There was simply nothing to support this finding by the Magistrate. We were asked by counsel for the appellant to reduce the sentence passed on him on the basis that there ought not to be a disparity between the punishment which he received and that which the other two received. Although he did not actually express it, presumably, counsel was asking for a reprimand and discharge for him too. We would not be party to such an aberration. Instead we have asked counsel to show cause why the sentence passed on the appellant ought not to be varied to one of imprisonment.

Counsel has very frankly in answer to a question by the Court, conceded that this offence would justify imprisonment. Normally, we would have had no hesitation in imposing it and varying the sentence accordingly. We are, however, conscious that there is a principle that like cases should be treated alike, and that means in the context of this case that persons who are convicted of the same offence ought not to receive different punishments unless there are circumstances which justify making a distinction between their cases. As we have said, there is no such justification for making a distinction in this case.

While therefore we are not prepared to reduce the sentence passed on the appellant in the name of equal treatment, we are concerned that if we substitute a sentence of imprisonment on him, this will have the effect of increasing the disparity between his sentence and that passed on his co-accused. It is for that reason and that reason alone, that we do not vary the sentence to one of imprisonment. I express the hope that the aberration which was committed in this case will not be repeated. The appeal is dismissed. The convictions and sentences are affirmed.