REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL
(TOBAGO)

MAG.APPEAL No. 32 of 1999

BETWEEN

LENNOX SANDY APPELLANT

AND

NIXIE QUASHIE RESPONDENT

CORAM:

L. Jones, J.A.

R. Nelson, J.A.

APPEARANCES:

Mr. C. Gift for the Appellant.

Mr. G. Benjamin for the Respondent.

DATED:

30TH NOVEMBER, 2001.

JUDGMENT

JONES, J.A.

This appeal arises out of a private complaint brought by the respondent against the appellant in which the appellant was charged with unlawfully and maliciously rooting up and destroying 216 stools of dasheen valued at $216.00. The offence was alleged to have been committed on the 17th day of July 1992. On the 29th of January 1997 the Magistrate sitting at the Scarborough Magistrate's Court found the appellant guilty. He reprimanded and discharged him and ordered him to pay to the respondent compensation in the sum of $216.00 or in default one (1) week simple imprisonment. He was also ordered to pay costs in the sum of $2,000.00. Against this decision the appellant appealed.

It is of some concern to us that a matter of this nature should be engaging the attention of the Court and more than that some nine (9) years after the date of the offence and four (4) years after conviction. The case raised neither complex nor difficult legal questions. The issues are primarily questions of fact.

The respondent testified that sometime prior to the 17th of July 1992 he had planted some dasheen plants in his back yard. On the 17th July 1992 he had seen the appellant root up the plants and destroyed them. There were some 216 holes of dasheen valued at one dollar each. One Mr. Cordner who was brought in to determine the loss arrived at this valuation.

This was the extent of the examination in chief of the respondent. It appeared also that soon after the incident, the respondent visited the offices of Mr. Gift, attorney now appearing for the appellant and had sought his advice on how to go about the matter, which advice he received. The significance of this event will appear later.

The cross examination of the respondent was rather protracted but revealed more details about the dispute. He testified that the plants were on his land “in his backyard,” later changed to, “next to his backyard” about 10 feet from his house and on land sloping upwards.

Continuing in his evidence he stated that the dasheen was planted in a canal or drain at the side of the road which road ran on the left of his house and was part of his property. He had dug the canal to prevent water which comes down the hill from running under his house. This canal is some 300 feet in length and drains into what he described as the public road canal.

Mr. Felix Cordner, who did the valuation of the crop said that the dasheen was planted in a canal going up the hill and the respondent had pointed them out to him. We must confess that even after reviewing this evidence the true picture was not apparent. Mr. Gift sought to assist us by sketching the area and indicating relevant spots by placing certain markings. Mr. Benjamin, attorney for the respondent objected to the location of some of the markings. There being no consensus we did not see it fit to allow the document into evidence. We were informed that pictures were tendered into evidence which would have assisted but these were not now part of the proceedings. What emerged, however, and

accepted by Mr. Benjamin, was that the respondent and appellant were not living on adjoining lots but that the appellant lived some distance away up the hill away from where the respondent said he had planted the dasheen. Furthermore some of the dasheen was not planted on the respondent's land but on the roadway itself, which because of the terrain was always flooded, allowing the residents to traverse only a portion of it.

The appellant testified and at the outset denied that he had uprooted and destroyed 216 stools of the respondent's dasheen. He claimed that even before the respondent came to reside in the area, he and other residents constructed the road. Water runs from up the hill but there is no dug out drain in the area. What we gather him to be saying is that because of the flow of water it forms a canal on the road itself. He said that since 1964 he had been planting dasheen on the left side of the road going up the hill. He claimed that the dasheen he uprooted belonged to him and he removed them as some of the neighbours complained that the dasheen leaves were soiling their clothes as they walked along the roadway. He denied that the respondent had any dasheen planted on the roadway.

The appellant's daughter testified on his behalf and stated that the dasheen was planted by her father and she was unaware that the respondent had planted any dasheen in the area.

Support was also had from Mr. Leonard King who said he has been living in the area for over forty years. He said that all the dasheen on the road belongs to the appellant and is on the left hand side in going up the hill. He is unaware

that the respondent has any dasheen planted there. Also supporting the appellant was Mr. Anthony Cowan who said that he assisted in planting dasheen for the appellant on the roadway on the left side of the road going up. He had never known the respondent to plant dasheen in that area. One other witness James Spencer also lent support to the appellant's claim that the dasheen in the area belonged to him.

As we indicated the issue was one of fact but the learned magistrate was required to grapple with what we consider to be the unsatisfactory evidence on both sides, and to focus on the issues which confronted him. He found for the respondent and convicted the appellant. In his reasons the learned magistrate stated that the question for his decision was on whose land was the dasheen and if it were not the defendant's, whether permission had been granted to him to plant it. With that we respectfully disagree. The real question was whether when the appellant uprooted the dasheen he knew that it belonged to the respondent. The learned magistrate also found to use his words "the land under review was that of Mr. Quashie and not the defendant and further that the dasheen bush was planted by Quashie and not by the defendant". While we accept as Mr. Benjamin contended that a Court of Appeal will not lightly reverse the findings of fact of the Magistrate, this Court will do so where it is shown on the evidence that the basis for the finding is flawed. As we have noted the evidence in the case is far from satisfactory but it appears that there was agreement on both sides that the dasheen was in fact planted on a portion of the roadway. The findings of the learned magistrate was therefore not supported by the evidence. This Court can

only rely on the evidence as set out in the proceedings before it and it was evident during the hearing that both attorneys were seeking to place an interpretation on the evidence that was not apparent on the face of the record itself.

Furthermore we note that although the learned magistrate had expressly disallowed any questions on the meeting between the respondent and Mr. Gift, nevertheless, in his reasons he treated as significant the fact that evidence was given that the appellant had spoken to attorney for the defence seeking his advice which was allegedly given.

We hold that the learned magistrate was wrong to attach significance to that meeting and it appears to have influenced him in his preference for the case of the respondent.

In all the circumstances we are unable to support the decision of the learned magistrate and we accordingly allow the appeal and quash the conviction and sentence. We make no order as to costs.

L. Jones,
Justice of Appeal.

R. Nelson,
Justice of Appeal.