

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CrA. No. 94 of 1999

BETWEEN

ALDWYN PAUL

APPELLANT

AND

THE STATE

RESPONDENT

CORAM:

R. HAMEL-SMITH, J.A.

L. JONES, J.A.

A. LUCKY, J.A.

APPEARANCES:

MS JOAN CHARLES AND MR RYAN CAMERON

APPEARED ON BEHALF OF THE APPELLANT

MR DEVAN RAMPERSAD

APPEARED ON BEHALF OF THE FIRST RESPONDENT

DATE DELIVERED: 14th June 2002

REASONS

Delivered by Lucky J.A.

The appellant was convicted of causing the making of a valuable security by false pretenses and appeals against his conviction and sentence. On 14th May 2002 we dismissed his appeal and advised that we would give our reasons on a date to be fixed. We do so now.

The prosecution led evidence that the appellant made out a cash purchase receipt reflecting that Marva Joseph had sold a quantity of rice to the Central Marketing Agency (CMA). The CMA through its accountant then issued a cheque in favour of Marva Joseph which the appellant collected and deposited to a joint account in the names Marva Joseph and Aldwyn Paul. At that time Marva and the appellant had a 'common law' relationship. The relationship ended some time after.

Marva Joseph testified that she did not sell any rice to the CMA and that the endorsement on the reverse side of the cheque was not hers. Robert Fawcett, a handwriting expert, found the signature on the cheque was not that of Marva Joseph but that of the appellant and the signature on the receipt as that of the vendor was not of Marva Joseph but was also that of the appellant.

In his defence the appellant said he was the manager of the CMA's Agency at the San Fernando depot. He also bought rice from farmers

and sold it to the depot. He denied that he wrote Marva Joseph's name on the receipt as vendor and neither did he endorse her name on the back of the cheque.

The issue for the jury was whether the appellant with intent to defraud caused the CMA to issue the cheque as a result of his false pretence that Marva Joseph had sold rice to the agency. The jury were convinced beyond a doubt that Marva Joseph, whose evidence with respect to the documents was supported by the handwriting expert, Mr Fawcett, was speaking the truth and they rejected that of the appellant.

The appellant filed three grounds of appeal. The first is that the learned trial judge failed to put the appellant's defence fairly and adequately to the jury. The second is that the learned trial judge's summing up was unbalanced in that it was heavily tilted in favour of the prosecution; and the third ground is that the learned trial judge failed to ensure a fair trial of the appellant when she allowed the case to go to the jury although:-

- (a) the prosecution failed to prove an essential element of the offence that the Central Marketing Agency issued a cheque for paddy rice that had not been received and had thereby acted to its detriment and suffered loss and;
- (b) the prosecution also failed to prove that the appellant intended the CMA to suffer loss by paying for an item it did not receive.

The appellant filed two supplemental grounds. **Ground one** is that the learned trial judge should have stayed or quashed the indictment on the ground that the prosecution of the matter amounted to an abuse or misuse of the process of the Court having regard to the inexcusable and or inordinate delay occasioned to the appellant.

Ground two, is that the conviction was not safe or satisfactory in that the jury was not made aware of the fact that the credibility of witnesses called on behalf of the prosecution was in doubt because firstly all of the said witnesses save the handwriting expert had given evidence against the appellant in a previous trial for an identical charge of causing or making of a valuable security by false pretenses, in respect of which the appellant had been acquitted; and, secondly that at the first trial of the offence in this indictment before the Honourable Mr Justice Narine the jury could not agree on a verdict and a retrial was ordered.

What appears to us is that there are, in reality, five grounds of appeal. We think it would be convenient to consider the supplemental grounds before the grounds which were originally filed.

Ground one of the supplemental grounds relates to the inexcusable and or inordinate delay occasioned to the appellant. The appellant was arrested and charged for this offence in July 1983. The Preliminary Inquiry commenced in January 1995 and was determined in April 1996 when he was committed to stand trial for the said offence.

On the 5th of October, 1999 the trial commenced before Narine J and the jury. It was determined on the 22nd of October 1999 on which date the jury failed to agree on a verdict and a retrial was ordered. On the 11th November 1999 the re-trial commenced before Weekes J and the jury. On the 22nd of November 1999 the appellant was found guilty and ordered to pay twelve thousand dollars (\$12,000.00) or serve two years imprisonment with hard labour.

Counsel submitted that the continuation of this prosecution against the appellant was an abuse and or misuse of process of the Court having regard to what she complains was an inexcusable and or inordinate delay. The trial in these circumstances was unfair because the first trial was not heard expeditiously and the inordinate delay in bringing him to trial was prejudicial because witnesses may have relied on their recollection of evidence of what they had given at the Preliminary Inquiry. Counsel referred us to the dicta in *Attorney General's reference (No. 1 of 1990)*, (1992) Q.B. 630 at page 644 A-B and *Tan vs Cameron* (1992) 2AC 205. Counsel also referred to the observations of *Lord Templeman* in *Bell vs the DPP* (1985) 1 AC 937 at pg 950 C-E.

Counsel submitted that applying the principles enunciated in the aforementioned cases, the prosecution of the matter ought to have been stayed by the trial judge. Counsel argued that the circumstances in this case are exceptional because he was suspended from his job from the date on which he was charged, that he suffered pre-trial trauma and anxiety and the period of sixteen years between arrest and

trial is much too long. Further, the delay in this case is unjustified and a stay ought to have been granted.

In accordance with due process, there was a Preliminary Inquiry and after committal the case was heard at the earliest opportunity. The real delay arose between the laying of the charge in 1983 and the Preliminary Inquiry. There is no evidence to suggest that he complained of any delay, either between that stage or between his committal and trial. His defence was a complete denial of the facts and those facts were based mainly on certain documents and opinions of fact. It was by no means a complicated case and the delay could hardly have caused any prejudice to the appellant. I think it was made quite clear in *Tokai vs the DPP 48 W.I Reports at 376*, that a person's Constitutional right or a question of delay has to be considered in the light of all the circumstances. There is nothing to show that this case was not placed on the trial list within a reasonable time. Bearing in mind the number of cases which were pending it was heard in accordance with its turn on the list. We do not think there was any abuse of process in these circumstances.

Having considered the relevant cases and applying the dicta to the facts of this case we find no merit in this ground.

With respect to *Ground two*, learned attorney argued that there was a trial before Mr Justice Kenny Persad and at that trial the very same witnesses who had testified at the trial of the appellant were the same and at that trial before Persad J who removed the case from the jury

and discharged the accused. Now there is a difference between the charge at that trial and this trial. We do not think there is any connection between the two offences. Each was for a similar but a separate offence and further at the trial before Persad J. the handwriting expert, Mr Fawcett, did not testify and his evidence at the subsequent trial obviously filled the void that existed in the first.

Learned attorney complained that the notes of evidence of the transcripts of the previous trials were not made available to the appellant and it was his right to have them. In support of her arguments she cited *Ann Marie Boodram vs the State, Privy Council Appeal #65 of 2000* in which *Lord Steyn* delivering the judgment to the Board said among other things “*the duty rests on the court system to ensure that on a retrial counsel for the defence is provided with a transcript of the first trial or relevant part of it*”. Reference was also made to *Reid vs the Queen (1990) AC 363*.

It must be noted that the appellant was tried and convicted in accordance with due process. In fact, Dr Richards was his attorney at the three trials, before Mr Justice Persad, Mr Justice Narine and Madam Justice Weekes. Dr Richards made no request for notes of evidence. Had he found that it was necessary to have them he would certainly have applied to the Registrar. In any event he would have been aware of all the facts and circumstances of the case and there is nothing on record to show that he was not aware that it was a retrial.

For the foregoing reasons we also find no merit in this ground.

Ground one

With respect to the first of the original grounds of appeal, Counsel complained that the trial judge failed to put the appellant's defence fairly and adequately to the jury. We have reviewed the summation of the learned trial judge and throughout the summation both sides were adequately given to the jury, we think the trial judge was fair to the appellant. It was simply a matter of fact for them. She made it quite clear that if they found that he did not sign "Marva Joseph" on the reverse side of the cheque and he did not deposit it to their joint account he should be acquitted. These she said were were questions for them. The learned trial judge told the jury that they had to decide who was speaking the truth. They should consider the evidence of Marva Joseph and Mr Fawcett who said that the signatures "Marva Joseph" on the documents were not those of Marva Joseph; and, to consider the evidence of the appellant who said he did not sign them. The handwriting expert indicated quite clearly that the signatures on those documents were those of the appellant, but the judge cautioned the jury that they should be careful in assessing his testimony which was in the form of a deposition and was not tested by cross-examination. We think she was fair to both sides.

We also find no merit in this ground.

With respect to **Ground two** that the learned trial judge's summing up was unbalanced in that it was heavily tilted in favour of the prosecution we find no merit in this ground because the trial judge

adequately put both defence and prosecution to the jury leaving it to them to decide where the truth lies.

In **Ground three** Counsel complained that the prosecution did not prove that the appellant intended the CMA to suffer loss by paying for an item it did not receive and secondly that they failed to prove an essential element of the offence, namely that a cheque was issued for paddy rice that had not been received and the CMA acted to its detriment. The judge dealt with the essential elements of the offence in the following way:-

Now, an intention to defraud may be inferred from the facts of a case, and where money is obtained by pretences that are false, then an intention to defraud may be readily inferred. So that if a person gets money by making pretences, saying things, and doing things which that person knows are untrue, then it may be reasonably inferred from that that the person had an intention to defraud. So it is for you to look at the circumstances of the case and see whether you are satisfied that the accused made pretences which he knew were false, and if you so find you will look to see whether you can reasonably infer that he intended to cause monetary injury to the C.M.A. at the time that he did so. So it is a matter entirely for you whether you find that the accused acted with intent to defraud.

The second thing is that the accused must be proven by the Prosecution to have fraudulently caused the C.M.A. to make a valuable security. And one acts fraudulently, one acts in a fraudulent manner where one acts dishonestly, where one engages in conduct deliberately intending to deceive or mislead. So that the State must satisfy you that the accused acted dishonestly, that the accused engaged in conduct which was deliberately intended to deceive or mislead the C.M.A. in believing that it owed one Marva Joseph a sum of money for the sale of rice.

The third thing that the State must prove to you is that what the Central Marketing Agency made was a valuable security.

The question here with respect to this ground is a straightforward matter of fact. The CMA issued a cheque for paddy rice. Counsel complained that there is no evidence that rice had not been received and there is no evidence that it acted to its detriment and suffered loss. There is however concrete evidence from Marva Joseph that she did not sell any rice to the CMA and a cheque was issued for rice purportedly sold to the CMA by Marva Joseph and there is documentary evidence to support it. Marva said that she did not sign as vendor and she did not sign the reverse side of the cheque neither did she receive one. The clear inference from this evidence is that the CMA never received any rice from Marva Joseph and the appellant had pocketed the money obtained by this false pretence. It seems clear to us that having explained quite sincerely and explicitly what the prosecution must prove and having warned the jury how they should analyse the evidence of the handwriting expert which was vital to the case, the judge then dealt with the case for the prosecution and the defence leaving the question of fact for them to determine.

In these circumstances we find no merit in this ground.

For the foregoing reasons we dismissed the appeal and confirmed the conviction. After hearing learned attorney's plea in mitigation we varied the fine to \$8,000.00 time allowed, 3 months in default 2 years hard labour.

A. Lucky
Justice of Appeal

R. Hamel-Smith
Justice of Appeal

L. Jones
Justice of Appeal