

Solicitor General

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IN THE CAYMAN ISLANDS COURT OF APPEAL  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CICA CRIMINAL NO. 44/91

BEFORE: THE HONOURABLE THE PRESIDENT MR. JUSTICE EDWARD ZACCA, OJ  
THE HONOURABLE MR. JUSTICE KENNETH C. HENRY, JA  
THE HONOURABLE MR. JUSTICE JAMES S. KERR, ACTING JA

PAUL GOULDBOURNE v. REGINA

Miss Sheridan Brooks of Brooks & Brooks for the Appellant  
Miss Lorna Dilbert of Solicitor General's Chambers for the Crown

APRIL 10 & 16, 1992 & 12th August 1992

JUDGMENT

On February 27, 1991 the Appellant was convicted in the Magistrate's Court for the offence of employment of another person without a gainful occupation licence contrary to section 30(2) of the Cayman Protection Law, 1984 and fined \$1,000 or 3 months imprisonment. His appeal to the Grand Court having been dismissed on November 21, 1991 he now appeals to this Court against his conviction and sentence.

The prosecution's case rested largely on the evidence of Judith Campbell who on September 24, 1990 had pleaded guilty to the offence of engaging in a gainful occupation contrary to section 30(1) of the Cayman Protection Law, 1984 ('the Law'). Her evidence indicated that the gainful occupation in question was as the Appellant's employee. She was therefore an accomplice in so far as the Appellant's offence is concerned. Section 30 of the Law provides as follows:

30(1) Whoever engages in any gainful occupation in contravention of any of the foregoing provisions of this Part or fails to comply with any condition or limitation contained in any licence is guilty of an offence: PROVIDED, however, that where the holder of a gainful occupation licence

has during the time when such licence is in force applied to the Board for a new licence on the same terms and conditions as the existing licence and for a period to commence immediately upon the expiration of the existing licence, or for an extension of the existing licence then, if such application has been refused by the Board and an appeal has been made under section 11 to the Governor in Council against such refusal, the applicant shall not be guilty of an offence under this subsection by engaging in such gainful occupation as he had heretofore been allowed to do, notwithstanding that the original licence had expired, from the time when such original licence expires until the determination of the appeal has been notified to him.

(2) Whoever employs another person in such circumstances that the employment of such person is in contravention of any of the foregoing provisions of this Part or of any condition or limitation contained in any licence is guilty of an offence:

PROVIDED that it shall be a good defence for a person charged with an offence under this subsection to prove that he had made reasonable enquiries to determine whether such employment was in contravention of any of the foregoing provisions of this Part, and had no reasonable grounds for believing, and did not in fact believe, that such employment was in contravention of such provisions.

Counsel for the Appellant submitted that there was no evidence which was capable of amounting to corroboration of Miss Campbell's evidence, that in the absence of corroboration it was dangerous for the Magistrate to act on her evidence and there was no indication in his judgment that he had warned himself of that danger or looked for that corroboration and in these circumstances the Appellant's conviction in the Magistrate's Court ought not to have been upheld in the Grand Court.

It is important to bear in mind that this is not an appeal from the Magistrate's judgment but from the judgment of the Grand Court which dealt with the appeal from the Magistrate's Court. In hearing that appeal the Grand Court is a Court of rehearing. Although the Magistrate in his judgment made no mention of the question of corroboration, the Chief Justice in his judgment specifically found that:

'In this case there was evidence which, if accepted as true, constituted evidence of a corroborative nature. The evidence in question was that of the immigration officer, Rodney Parchment.'

Although the Magistrate did not mention specifically the evidence of Rodney Parchment he

'accepted the evidence of the prosecution's witnesses as true, notably that of the witness Judith Campbell.'

Mr. Parchment was the only other prosecution witness apart from Miss Campbell. The Magistrate must therefore have accepted his evidence. In the circumstances the following dictum of Wooding CJ in Bissessar v. Jordan (1965) 8 WIR 315 at page 318 seems appropriate:

'In reviewing the decisions of magistrates we are a court of rehearing, so that we are entitled to review the evidence in the light of the magistrate's assessment of its credibility and to arrive at a conclusion for ourselves on such corroborative evidence as there is. Moreover, it is to be observed that the dictum upon which such reliance was placed is restricted to cases in which there is no corroborative evidence at all and in which, therefore, it should be made to appear that the consequent risk of convicting has been clearly kept in mind. But where, as here, there is corroborative evidence and the magistrate or a judge sitting without a jury pronounces that he accepts it as true, the dictum in our opinion has no application whatever.'

Counsel for the Appellant submitted that the evidence of Mr. Parchment could not amount to corroboration because it did not implicate the Appellant in the offence. (The King v. Baskerville (1918) 2 KB 658.) We do not agree. Mr. Parchment's evidence is that on September 20, 1990 he "visited a business open to the public under the registration of Regina's Beauty Salon." There he saw one Iona Jackson sitting in one of the chairs in the establishment reading a magazine while Miss Campbell was behind the desk using the telephone and writing. Miss Campbell in evidence said that when the Immigration Officer came she was writing particulars of the work she had done. Mr. Parchment tendered in evidence an interview with the Appellant in the course of which the Appellant, while denying that he was the owner of the Regina's Beauty Salon, admitted that he was "in the process of renting it" and also admitted that "Judith was just there, just buying time until I got back and talk to her because I couldn't take her to West Bay with me." The other lady left with Miss Campbell was according to the Appellant's statement in the interview, left "to watch the place."

In our view the only reasonable inference to be drawn from Mr. Parchment's evidence if it was accepted was that Miss Campbell was in the beauty salon as an employee of the Appellant, and Mr. Parchment's evidence therefore implicated the Appellant and amounted to corroboration of Miss Campbell's evidence. That evidence clearly justified the conviction as the Chief Justice found.

For these reasons the appeal is dismissed and the conviction and sentence affirmed.