

IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL NO.1 OF 1970

BEFORE:

The Hon. Mr. Justice Eccleston, Presiding  
The Hon. Mr. Justice Luckhoo, J.A.  
The Hon. Mr. Justice Smith, J.A.

R E G I N A vs. PEARL H. JAMES  
JOSEPH RAMPASSARD  
GARNETT MURRAY

Mr. N. Hill for the Crown  
Mr. C. Ratray, Q.C., for Pearl James  
Mr. H. Edwards, Q.C., for Joseph Rampassard  
Mr. W. Spaulding for Garnett Murray

29th October, 1970

LUCKHOO, J.A.:

The appellants Pearl James and Joseph Rampassard were charged jointly on an information alleging that they had in their possession ganja, contrary to s.7(c) of the Dangerous Drugs Law, Cap. 32 of the Laws of the Cayman Islands. They were also charged jointly on an information alleging that they unlawfully brought into the Cayman Islands a blue travelling bag and one man's jacket containing ganja, contrary to s.6 of Cap. 32 of the Laws of the Cayman Islands. The appellant Garnett Murray was charged separately on an information alleging that he had in his possession ganja, contrary to s.7(c) of Cap. 32 of the Laws of the Cayman Islands.

The appellants were convicted on these informations, James and Rampassard and Murray were each sentenced to imprisonment for eighteen months for possessing ganja and James and Rampassard were each fined \$200, in default six months imprisonment, for bringing

ganja into.....

ganja into the Cayman Islands. They have appealed against their convictions and sentences.

The case for the prosecution was to the effect that Pearl James and her uncle, Joseph Rampassard, boarded a plane in Jamaica bound for Grand Cayman and that they took with them a quantity of ganja in a blue travelling bag and in a man's jacket. They also had with them a white suitcase. On arrival at Grand Cayman they disembarked and proceeded to the Customs area. They did not tender the blue travelling bag, the man's jacket nor the white suitcase for examination by Customs, but, instead, caused the appellant, Garnett Murray, to place these articles in a motor car which was parked outside of the airport building.

Sergeant of Police, Louis Prince, gave evidence to the effect that having received certain information he spoke to the appellant, Rampassard. He told him that he had been informed that a man and a woman had entered the Island and while going through Immigration a portion of their baggage had been taken from them and diverted from Customs. Prince said that he found the baggages in a white Falcon car parked in the vicinity of the fire station at the terminal car park. He said also that Rampassard in admitting that the baggages belonged to him, added that in case anything was found in the baggages he was innocent, that he did not know anything about them. Later he spoke with the appellant, James, about the baggages and asked her if any of them belonged to her. She replied, "Yes, the travelling bag and the white suitcase are mine, the jacket is my uncle's."

Upon the baggages being opened and searched by Prince, packages containing substances which turned out, on examination, to be ganja, were found in the blue travelling bag and a substance which also turned out to be ganja was found concealed in the inner lining of the jacket. The white travelling bag did not contain any ganja. There was also found in the blue travelling bag a piece of paper bearing the name "Garnett Murray" and the address "Georgetown, Grand Cayman."

/Atlee Evans.....

Atlee Evans, a fireman at the airport, gave evidence to the effect that he saw the appellant Murray place the travelling bag in the Falcon car.

The appellant James subsequently made a voluntary statement to the police which amounted to a confession in that she admitted that she took the ganja which was found in the baggages to the Cayman Islands. In that statement she said that it was at the instigation of the appellant Murray that she had done so. The appellant Rampassard also made a voluntary statement to the police in which he said that he had accompanied the appellant James, at her request, to the Cayman Islands. After checking in at Immigration James had the jacket and the bag and he had the white suitcase and it was at James' request that he had handed the jacket and the white suitcase to the appellant Murray. The appellants did not give evidence in their defence.

The learned judge of the Grand Court in convicting the appellants had this to say:

"I find that the defendants were engaged in the common purpose of bringing ganja into these Islands; James and Rampassard as the carriers from Jamaica and Murray as the recipient in Grand Cayman.

Possession involves the ability to control an article or the right to control it also a knowledge of what that article is. Especially from the quantity of the vegetable matter and the way it was concealed I find that all defendants had knowledge that it was ganja.

Each one was in possession. As regards Murray, I find that Fireman Evans saw him put a travelling bag in the white Falcon car and I find that that bag was Exhibit D. Murray was seen to talk with James. Exhibit D (the piece of white paper with Garnett's name on it) is admissible evidence against Murray since he and James were engaged in a common purpose."

The only ground of appeal which was argued before us today on behalf of the appellant Pearl James is that relating to sentence. Mr. Rattray submitted that the sentence in relation to the possession of ganja (eighteen months imprisonment) was manifestly excessive. He

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urged that James was a married woman, thirty years of age, who had no previous conviction. She has six children between the ages of four and a half and fifteen years (four girls and two boys) residing in Jamaica. He further urged that in the Cayman Islands there is no mandatory sentence in relation to the offence of this nature, unlike the position in Jamaica, and that having regard to the fact that James at the first opportunity admitted her guilt and showed contrition the court should be moved to set aside the term of imprisonment imposed and instead to impose a penalty which would not be likely to have a disastrous effect on the children who were not a party to the crime.

We have given careful consideration to the plea made by Mr. Rattray on behalf of the appellant James but we must point out that this was a case where, on the appellant's own statement, the appellant went into this transaction with her eyes wide open. She took a chance and she was caught and she should not now complain that a sentence of imprisonment has been imposed upon her. In the circumstances of the case we cannot say that the sentence imposed by the learned judge was manifestly excessive or unduly severe and the appeal against both conviction and sentence in relation to the appellant James must be dismissed.

On behalf of the appellant Rampassard Mr. Horace Edwards has sought to urge that the evidence against Rampassard really indicated a mere handling of the articles containing ganja as distinct from possession or control in Rampassard. We indicated during the course of Mr. Edwards' submissions that having regard to the evidence it was clear that the learned trial judge came to the right conclusion in respect of Rampassard that he was in joint possession or control of the articles containing ganja knowing that those articles contained ganja. Mr. Edwards then submitted that insofar as Rampassard was concerned he was not blameworthy to the same extent as was James and that in all of the circumstances of the case the sentence of eighteen months imprisonment imposed on Rampassard was manifestly excessive.

We do not think that there is any merit in this submission and the appeal of Rampassard both against conviction and sentence must be dismissed.

In relation to the appellant Murray, Mr. Norman Hill for the Crown frankly conceded that unless the Court could say that it might reasonably be inferred from the evidence that the appellant Murray had knowledge that the articles, the baggages or any of them, contained ganja, the conviction against Murray could not stand. The extract from the judgment to which reference has already been made appears to indicate that the learned trial judge did not sufficiently distinguish the admissible evidence in the case against Murray from the totality of the evidence which was led in relation to the three accused. It appears that he took into consideration as against Murray certain of the matters contained in the statements of the other appellants. Mr. Hill has also frankly conceded that standing by itself the piece of paper found in one bag, Exhibit D, with Garnett's name and address written on it was not sufficient to enable the Court to draw the inference that the appellant Murray well knew what was contained in the baggages.

We are of the view that the admissible evidence tendered against Murray was quite insufficient to form the conclusion that Murray must have known that the baggages contained ganja. For that reason the conviction against Murray cannot stand. The appeal of Murray is, therefore, allowed and the conviction and sentence against Murray are set aside.