BOURNE v. EDWARDS

[SUPREME COURT - FULL COURT (Stoby, C.J. and Filed, J.)

April 24, 1959]

[1958 - 60] 2 Barb. L.R. 73

Criminal law *- Larceny - Value of stolen article - Proof of value - Jurisdiction - Magistrates'Jurisdiction and Procedure Act, 1956, s. 35(1).*

Facts: The appellant Doris Bourne was convicted by a magistrate for stealing a shoe valued$8.00. No evidence was given of the value of the shoe. In the formal order of conviction $8.00was inserted as its value.

Held: (i) The evidence established that it was an article of value and a fit subject of larceny;

(ii) having regard to the proviso to section 135(1) of the Magistrates Jurisdiction and ProcedureAct, 1956, objection not having been taken before the magistrate, it was not competent, onappeal, to take objection to his jurisdiction.

Appeal dismissed.

Case referred to:

R. v. Morris (1840) 9 C.P.P. 349.

Statutes referred to:

(1) Larceny Act, 1916 (U.K.).

(2) Grand Sessions and Criminal Law (Procedure) Act, 1891, s. 3.

(3) Supreme Court of Judicature Act, 1956.

(4) Indictments Act, 1915 (U.K.).

(5) Magistrates Jurisdiction and Procedure Act, 1956, s. 3591).

Mr. D.H.L. Ward for the appellant.

Mr. G.E. Wellington for the respondent. [73]

JUDGMENT OF THE COURT: The appellant was charged before a magistrate of District Awith stealing on January 15, 1958, one shoe value $8.00, one brown leather purse valued $4.00containing $9.60 the property of Orville Lovell.

Before the magistrate it was established that Lovell was standing on the road near Maxwell Hillwhen the appellant struck her. As a result of this blow a struggle ensued during which Lovell'sshoe came off. Thereupon the appellant picked up the shoe and ran away with it. Efforts topersuade the appellant to return the shoe proved fruitless and she was subsequently charged withlarceny.

Although evidence of the value of the article not stolen was given, no evidence of the value of thestolen shoe was given. The magistrate convicted the appellant of larceny of a shoe and in theformal order of conviction inserted $8.00 as its value.

At the hearing of the appeal counsel for the appellant abandoned the grounds of appeal filed andapplied for leave to add another ground namely "that the decision." On this amendment beinggranted counsel submitted that there was no evidence of value of the shoe and it was therefore notcompetent for the Magistrate to convict of larceny.

He referred us to the following passage in Paley On Summary Convictions, p. 279, which dealswith the requisites of the order to be drawn up after a summary conviction. The passage is:

> "The most essential requisite in the description of the offence is that it contains in expressterms every ingredient which is required by statute."

In Barbados the law relating to larceny is the common law of England but as has been pointed outrepeatedly the Larceny Act, 1916 [U.K.], made no change in the law by merely consolidated itwithout imposing anything new. This being so it may be useful to refer to the relevant portion ofthe statutory definition of larceny.

> "A person steals who ... takes and carries away anything capable of being stolen ..."

At common law one of the ingredients necessary to make a thing capable of being stolen was, thatit must have value. An article without value was not capable of being stolen but it mattered nothow little the value once it was worth something in money to the owner. This principle wasenshrined in s.1 (3) of the Larceny Act, 1916 [U.K.], which states:

"Every thing which has value and is the property of any person shall be capable of beingstolen."

In a case in 1840 this question of value in a charge for larceny was discussed. The case is R. v.Morris (1840), 9 C.P.P. 349. The prisoner was indicted for feloniously receiving on December 11,1840, of a certain evil-disposed person nine pieces of paper valued two shillings of the goods ofJohn Bentley and others, well knowing them to have been stolen. No evidence was given of thevalue of the paper [74] and at the close of the case for the prosecution it was submitted on behalfof the prisoner that there was not any case to go to the jury. Counsel said:

"The prisoner is charged with stealing (sic) nine pieces of paper. Only one of them is tracedto his possession and that is not of any value so as to sustain an indictment. It must be ofsome value of some coin known to the law."

The following discussion then took place.

Baron Parke: "It may be a very small value still it is worth something. You say that it mustbe of some assignable value - of the value of some coin. Shew me an authority for thatposition."

Adolphus: "The practice has been uniform on that subject. There must, I submit, be a valueassignable."

Baron Parke: "There is no doubt it must be of some value and it is of some value. But it isquite new to me that it must be of the value of some coined money - of a farthing at least."

After further argument Baron Parke agreed that evidence of value should be given and a witnessgave the value of the paper at a farthing and a half. Baron Parke then said:

"It has cost more than a farthing. Therefore the point does not arise. But I must beunderstood for one as not considering that it was necessary to shew that the article must beof some known coin. It must be of some value, no doubt ... I have not been able to find anycase in support of the argument for the defence not has the prisoner's counsel been able toproduce any."

In our view the test which the magistrate had to apply was "Is a shoe an article capable of beingstolen?" That question he had to answer in the affirmative. There was no evidence that a shoe wasone of the articles within the class incapable of being stolen at common law such as an articleattaching to the realty and so on. The mere claim to it by the nominal complainant added to thefact that it is an article of footwear established that to the individual concerned it was an article ofvalue and a fit subject of larceny.

We agree that careless prosecutions ought not to be encouraged and we agree too that courtsought not to be placed in a position of drawing inferences from evidence where positive evidenceon a subject is available but we are satisfied that the circumstantial evidence justified themagistrate in coming to the conclusion that the shoe had sufficient economic value to belarcenable.

During the course of the argument counsel for the appellant said that if the [75] appellant hadbeen charged on an indictment then by virtue of the Indictments Act, 1915 [U.K.], which by virtueof s. 3 of the Grand Sessions and Criminal Law (Procedure) Act, 1891, as inserted by theSupreme Court of Judicature Act, 1956, governs criminal trials in Barbados there would be nonecessity to give evidence of value if from the evidence the inference could be drawn that thearticle could be the subject of larceny. This being so the submission really is that the Magistratehad no jurisdiction to determine this matter.

Section 35(1) of the Magistrates' Jurisdiction and Procedure Act, 1956, permits an offendercharged with larceny of goods not exceeding $50 in value to be tried by a Magistrate. This meansthat the Magistrate has no jurisdiction to deal with an offence where the amount involved is over$50. Section 135(1) of the same Act provides that a ground of appeal may be that the Magistratehad no jurisdiction in the case.

A proviso to this subsection is that it shall not be competent for the Full Court of the SupremeCourt to entertain such an appeal unless objection had been formally taken at some time duringthe progress of the case and before the pronouncing of the conviction. No such objection wastaken at the time and in our view it is not competent for us to consider a ground of appeal whichreally involves the jurisdiction of a Magistrate.

We must not be understood as deciding that where a magistrate clearly acts without or in excessof his jurisdiction there is no way of having such a decision reviewed by the Supreme Court but onthe facts of this case on the face of the complaint the magistrate had jurisdiction and if it wasdesired to content that he had no jurisdiction then objection should have been taken in the courtbelow in which case the magistrate could have declined jurisdiction or clarified the matter bycalling for evidence as was done in 1840 in R. v. Morris.

For the above reasons the appeal is dismissed. There will be no order as to costs. [76]