

The Queen v Satour [2000] NTSC 67

PARTIES: THE QUEEN
v
SATOUR, STEVEN PAUL

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: SCC 9811211

DELIVERED: 22 August 2000

HEARING DATES: 9 August 2000

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

CRIMINAL LAW

Practice and procedure – application for stay of proceedings – whether procedure adopted by Director of Public Prosecutions amounts to abuse of process or lead to unfair trial.

Criminal Code Act 1983 (NT)

Hunter v The Chief Constable of West Midlands (1981) 3 All ER 727 at 729, applied.

Williams v Spautz (1992) 174 CLR 509 and 519, applied.

Barton v The Queen (1980) 147 CLR 75 at 95-96, applied.

Jago v The District Court (1989) 168 CLR 23 and 47, applied

REPRESENTATION:

Counsel:

Appellant: Mr S Collins

Respondent: Mr R Noble

Solicitors:

Appellant: NTLAC

Respondent: DPP

Judgment category classification: B

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Satour [2000] NTSC 67
No. 9811211

BETWEEN:

THE QUEEN
Appellant

AND:

STEVEN PAUL SATOUR
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 22 August 2000)

- [1] These are the reasons for my order refusing to stay further proceedings upon the indictments preferred against the accused. The original indictment charged him jointly with two others, Kelly and Shillingsworth, for unlawfully causing grievous harm. The trial was to commence on 9 August. Shortly prior to that date the Director of Public Prosecutions agreed that he would accept a plea of guilty by each of the other accused to a charge of one unlawful assault. Counsel for the Crown sought to file fresh indictments charging each of the three accused with the original offence and the further offence of unlawful assault with circumstances of aggravation, namely that the victim suffered bodily harm and was unable to defend himself.

- [2] The Crown position was that the deposition showed that all of the accused had assaulted the victim during a series of events. The other two accused were prepared to enter their pleas of guilty on that basis. The accused's position was that he had taken no part in any assault. It was undoubted that the victim suffered grievous harm.
- [3] Counsel for the accused advanced argument in support of the application to stay the proceedings against his client upon various grounds. It was put that given the harm occasioned to the victim, the Crown position was inconsistent, a plea being acceptable to a charge for which no harm was alleged and the accused being faced with the charge of causing grievous harm. If the Crown case was that all accused were involved in the attack upon the victim, they should all be charged with the same offence, and that offence should represent the fact that the victim suffered grievous harm. The provisions of s 10 of the *Criminal Code* assisted the Crown in the presentation of its case against all three.
- [4] During the course of being interviewed by the police, the events, as told to the police by Kelly, were put to the accused and he responded. Counsel for the accused said that that evidence would not be admissible if the three stood jointly charged, but it would be admissible if the matter proceeded separately against his client. That evidence would also serve to buttress the evidence of Kelly if he gave evidence in the Crown case against the accused. It was anticipated that both Kelly and Shillingsworth would undertake to give evidence in the Crown case upon their plea.

[5] A further argument was addressed with reference to the words of Lord Diplock in *Hunter v The Chief Constable of West Midlands* (1981) 3 All ER 727 at 729:

“My Lords, this is a case about abuse of process of the High Court. It concerns the inherent power which any Court of Justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people.”

[6] It was suggested that the procedure being adopted by the Director would bring the administration of justice into disrepute among right thinking people who would question why Kelly and Shillingsworth were to be removed from the consequences of the acts against the victim. Reference was also made to the duty of a Court to protect itself against abuse of process, by ensuring that its processes are fairly used by the State and citizen alike (per Mason CJ, Dawson, Toohey and McHugh JJ in *Williams v Spautz* (1992) 174 CLR 509; *Barton v The Queen* (1980) 147 CLR 75 at pp 95 – 96; *Jago v The District Court* (1989) 168 CLR 23.

[7] It was put that the joint charge on the first indictment was the correct way for the Director to proceed, and it was not right that the indictment be preferred to accommodate the plea offered by Kelly and Shillingsworth leaving the accused to face the much more serious charge carrying a maximum penalty of 14 years as opposed to one year for the others. In summary, the procedures being adopted amounted to an abuse of process or

the prosecution of a criminal proceeding which would result in a trial, which would be unfair.

- [8] As to abuse of process, I was not satisfied that the indictment of the accused on the two charges was not to initiate the process of a trial to “hear and determine finally whether the accused has engaged in conduct which amounts to an offence ...” per Brennan J in *Jago* at p 47. It was only intended to serve that purpose and is capable of serving that purpose. That the Director has chosen to treat the other accused differently does not mean that proceeding against the accused as intended amounted to an abuse of process in that sense. Nor is the accused facing a trial in which the Court is without the means of ensuring it is fair (*William v Spautz* at 519). It is not unusual for an accomplice to give evidence in the Crown case (the Director accepts that Kelly and Shillingsworth are to be treated as such) and the law as to a Judge’s duty to warn the jury in the absence of corroboration is plain.
- [9] The accused may feel that Kelly and Shillingsworth have a benefit not available to him, and thus that in some way he is being treated unfairly, but that does not amount to a valid reason to invoke the Court’s power to stay the proceedings against him.
