BECHU

v.

REGINAM

[COURT OF APPEAL, 1963 (Finlay V.P., Marsack J.A., Hammett J.A.), 1st, 19th July]

Criminal Jurisdiction

Criminal law—selling arms not being licensed dealer—need to plead and prove " by way of trade or business "—Arms and Ammunition Ordinance, 1961 s. 10 (1) (iii).

Criminal law—police trap—arms and ammunition—possession of without licence—corroboration of police witnesses unnecessary—Arms and Ammunition Ordinance 1961 ss. 4 (1) (*a*) (ii) and 4 (2) (*a*) (ii).

Criminal law—evidence—corroboration.

It is an essential ingredient of a charge under s. 10 (1) (iii) of the Arms and Ammunition Ordinance, 1961, of selling an arm not being a licensed dealer, that the sale proved shall be " by way of trade or business ". Conviction quashed where these words did not appear in the indictment and the evidence disclosed an isolated sale only.

Police witnesses cannot be regarded as accomplices merely by reason of the fact that they took part in a police trap set for the appellant.

Cases referred to and applied:

J. M. Shankaran v. R. (1963) 9 F.L.R. 12: *R. v. Mullins* 3 Cox C.C. 526; (1848) 12 J.P. 776: *R. v. Bickley* (1909) 2 Cr. App. R. 53; 73 J.P. 239: *Smith v. O'Donovan* (1909) 28 N.Z.L.R. 94.

Where offences arose from the same set of circumstances and the appellant was sixty-two years of age the ends of justice were considered to be met by concurrent and not consecutive sentences.

Appeal against conviction and sentence.

Falvey for the appellant.

Palmer for the Crown.

The facts appear from the judgment.

Judgment of the court [19th July, 1963]—

This is an appeal against conviction on three counts under the Arms and Ammunition Ordinance, 1961, and against the sentences imposed in respect of each conviction.

Appellant was on the 16th January, 1963, convicted of the following offences:

(1) Being in possession of an arm without a licence contrary to section 4 (1) (*a*) (ii);

(2) Being in possession of ammunition without a licence contrary to section 4 (2) (*a*) (ii);

(3) Not being a licensed dealer did sell an arm contrary to section 10 (1) (iii).

The sentences imposed were four years' imprisonment in respect of the first count, two years' imprisonment in respect of the second count, and one year's imprisonment in respect of the third count, the sentences to be consecutive.

For the sake of convenience we will deal first with the third conviction, that of sale without a licence. Section 10 (1) (iii) of the Arms and Ammunition Ordinance, 1961, reads as follows:—

> " 10.—(1) Subject to the provisions of this section no person other than a licensed arms dealer or his servants in the ordinary course of business of such licensed arms dealer shall, by way of trade or business—
>
> .....
>
> (iii) sell, transfer or expose for sale any arm or ammunition."

It was contended on behalf of appellant that an essential ingredient of the offence was missing, in that there was no evidence proving that the sale was " by way of trade or business". These words appear in the section but not in the indictment or in the conviction. There is nothing in the evidence to show that the sale made by appellant was made by way of trade or business. It was conceded by counsel for the Crown, in our opinion rightly, that the evidence shows an isolated sale only; and the element of repetition which is contemplated by the wording of the section and is necessary to constitute a sale by way of trade or business is totally absent here. That being so, we are of opinion that one of the factors essential to a conviction under section 10 (1) (iii) is missing and the conviction, therefore, cannot stand. The conviction on the third count and the sentence imposed in respect of it are accordingly quashed.

With regard to convictions on the first and second counts, it was argued for appellant that there were discrepancies in the evidence of the police officers who were witnesses for the prosecution, and that on account of these discrepancies their evidence should have been rejected. It was further submitted that those witnesses were, in law, accomplices, in that they had arranged with the witness Chandar Bali to act as an agent provocateur in purchasing from appellant the shot-gun which is the subject of the charge.

As to the first of these grounds we can find no merit in appellant's contention. Such discrepancies as appeared in the evidence of the respective witnesses for the prosecution were minor only, and the Judge and the assessors were entitled, as they did, to regard them as in no way sufficient to cast doubts on the credibility of the witnesses concerned. Despite these minor discrepancies their evidence was, in general, consistent and could lead to only one conclusion, namely, the guilt of appellant.

With regard to the second ground, we are satisfied that Chandar Bali and the police witnesses cannot be regarded as accomplices merely from the fact that they took part in a police trap set for appellant. Authorities on this subject were collated and carefully considered by the Chief Justice in *James Madhavan Shankaran v. R.* (1963) 9 F.L.R. 12. After reviewing the authorities the learned Chief Justice concludes:

> " It appears clear therefore that an informer who takes part in a police trap is not an accomplice and his evidence, although subject to close scrutiny, does not require to be corroborated."

This statement of the law is in conformity with recognised authority, shown by such cases as *R. v. Mullins* 3 Cox C.C. 526, *R. v. Bickley* 2 Cr. App. R. 53, and the New Zealand case of *Smith v. O'Donovan* (1909) 28 N.Z.L.R. 94, and we accept it as directly applicable to the instant case. In the result we find

that the evidence of the witnesses concerned did not require corroboration, and that there was no misdirection by the learned trial Judge in failing to direct himself and the assessors that it was dangerous to convict appellant on their evidence without material corroboration.

In any event we are of opinion that even if corroboration were necessary it is adequately supplied by Subramani's evidence which was accepted by the learned trial Judge as entirely reliable. This provides all the corroboration that would be necessary if we held, which we do not, that corroboration was required. The appeal against conviction on the first and second counts is accordingly dismissed.

There remains for consideration the appeal against sentence. We are reluctant to interfere with the sentences imposed by the learned trial Judge, who has clearly given full consideration to the matters requiring to be taken into account and, in particular, to the prevalence of the crime of murder, with a shot-gun as the weapon used, in the district to which appellant belongs. In view of the fact, however, that the offences, though distinct in themselves, arose from the same set of circumstances, and in view of the fact that appellant is 62 years of age, with a practically clean record, we think that the ends of justice would be served by making the sentences concurrent instead of consecutive. There will accordingly be an order that the sentences imposed on the convictions sustained be served concurrently.

Appeal against conviction under s. 10 (1) (iii) and appeal against sentence allowed.

Appeal against convictions under ss. 4 (1) (*a*) (ii) and 4 (2) (*a*) (ii) dismissed.

Solicitors for the appellant: *Koya & Co.*

Solicitor-General for the Crown.