

84/76

SUPREME COURT OF VICTORIA

CAVALLARO v CALLANAN & GILL

Dunn J

9 August 1976

CRIMINAL LAW – SELLING INDIAN HEMP – PROOF OF DRUG BY ADMISSION AND INFERENCE: POISONS ACT 1962, S32.

Evidence of record of debts owed for sale of drugs allowed. The applicant was convicted of two counts of selling Indian Hemp on different dates – 27th February 1976 and 19th March 1976. The evidence of the informants was undisputed since the applicant did not give evidence. The material sold was not seized and therefore not analysed. Whether or not there was any evidence of what material it was depended on inference from other evidence and admissions made by the applicant. The review grounds were:

- (a) there was no evidence to base a finding that the substance sold was Indian Hemp (as defined in s26(1)); and
- (b) evidence of interrogation of the applicant regarding entries in his note book of money owing to him should not have been admitted. Upon Order Nisi to review—

HELD: Order Nisi discharged.

1. The defendant admitted that what he sold to the informant was hash, which he also knew as 'Dope, Indian Hemp, Cannabis'. Further, blocks of Indian Hemp were found in the defendant's flat. There were admissions made by the defendant to the informant that he was very familiar with Indian Hemp, that he bought it for resale, and sold it. He also admitted smoking it. There was ample evidence from which the Magistrate could be satisfied that the defendant was dealing in the same type of drug and had knowledge and experience of it to justify a Court acting on his admissions.

Anglim & Cooke v Thomas [1974] VicRp 45; (1974) VR 363; and
Hardy v Gillette [1976] VicRp 36; (1976) VR 392 at p396, applied.

2. In relation to the evidence in respect of entries in the defendant's note book, this was clearly relevant to the extent of his knowledge of and trading in the drug, a material matter when it came to the weight to be attached to his admissions. It was also relevant to the charges of selling. For these reasons no sufficiently arguable case had been made out to justify the grant of orders nisi to review.

DUNN J: As to (a) – There was evidence that on 27th February 1976 the applicant was seen by one of the informants at the Greyhound Hotel St. Kilda. He saw two people have a conversation with the applicant give him paper money and receive from him two silver blocks. The same informant purchased two silver blocks from the applicant at the same hotel on 19th March 1976. An analyst's certificate was tendered in evidence which proved that those two blocks contained Indian Hemp. The applicant admitted that what he sold to the informant was hash, which he also knew as 'Dope, Indian Hemp, Cannabis'. Further blocks of Indian Hemp were found in the applicant's flat. There were admissions made by the applicant to the informant that he was very familiar with Indian Hemp, that he bought it for resale, and sold it. He also admitted smoking it. There was ample evidence from which the learned Stipendiary Magistrate could be satisfied that the applicant was dealing in the same type of drug and had knowledge and experience of it to justify a Court acting on his admissions – *Anglim & Cooke v Thomas* [1974] VicRp 45; (1974) VR 363; *Hardy v Gillette* [1976] VicRp 36; (1976) VR 392 at p396.

It is clear that in the *Poisons Act* 1962 Indian Hemp and Cannabis are used as names for the same material. That was accepted by Anderson J in *Hardy v Gillette* (*supra*) at p396. Consequently when it appears in an analyst's certificate admitted in evidence pursuant to s56(1) of the *Poisons Act* that the material analysed was Cannabis (Indian Hemp) a drug of addiction under Schedule Eight of the *Poisons Act* 1962 that means Indian Hemp as defined in s26(1) of that Act.

In the result for the sale on the 27th February 1976 there was evidence both by admission and necessary inference that the material sold was Indian Hemp as defined in s26(1) of the *Poisons Act*.

The evidence in respect of the charge relating to the 18th March 1976 consists of an admission made by the applicant. In the light of the rest of the evidence, the learned Stipendiary Magistrate was entitled to act on it, there being no contradiction of it.

As to (b) – The evidence objected to related to the questions to and answers of the applicant concerning entries in his note book of money owing to him. The substance of it is that the applicant admitted the entries related to moneys owing – or which had been owing to him for the sale of drugs. The only evidence of his dealing in drugs concerned Indian Hemp. This was clearly relevant to the extent of his knowledge of and trading in the drug, a material matter when it comes to the weight to be attached to his admissions. It would also be relevant to the charges of sell – see *R v Rance* (1976) Crim LR 311. For these reasons, in my opinion, no sufficiently arguable case has been made out to justify the grant of orders nisi to review, The appeals will accordingly be dismissed.
