THE EVIDENTIARY STANDARDS IN CRIMINAL AND EXTRADITION PROCEEDINGS

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1. Introduction

The principle of a prima facie case is one of the substantive principles of extradition law. It is supposed to protect the freedom of the proposed extraditee against extradition proceedings which could be initiated by any foreign country with whom the United Kingdom has entered into general or special extradition arrangements. 1 The decision of the House of Lords in the Alves case 2 was mainly concerned with the operation of the principle.

This article aims to highlight the impact of the decision of the House of Lords on extradition law; to determine the nature of the evidentiary standard which the principle of prima facie case requires, and to establish whether or not the evidentiary standard in extradition proceedings should be equivalent to the standard in domestic criminal proceedings.

In 1989, the Swedish government applied for the extradition of the respondent (Mr. Alves) from the United Kingdom on charges relating to the importation of cannabis into Sweden on the basis of unoathed and uncorroborated evidence given by his accomplice (Mr. Price) 3 in a Swedish court. This was the only evidence which was

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3 As regards the definition of the term “corroboration”, see P. Murphy, A Practical Approach to Evidence, Blackstone Press Ltd., 4th ed., 1992, 504: “The word ‘corroboration’ connotes support of confirmation, and indicates, in relation to the law of evidence, that certain evidence (the evidence to be corroborated) is confirmed in its tenor and effect by other admissible and independent evidence (the corroborating evidence).
adduced by the requesting state before the Magistrate Court at Bow Street. On April 1985, Mr. Price was sentenced to seven years imprisonment for offences relating to the distribution in Sweden of a substantial quantity of cannabis imported from abroad. In September 1989, while serving his sentence, Mr. Price appeared before a Senior District judge in proceedings for the remand in abSENTia of the respondent, and was examined by the Swedish District Prosecutor. Mr. Price was aware of his duty to tell the truth, however, he was not allowed to give evidence on oath in accordance with Swedish law. This evidence ran to 21 pages and consisted of the questions of the prosecutor and Mr. Price’s answers. Throughout the evidence, Mr. Price identified the respondent (Alves) from a photograph and implicated him as the man who had informed him of the consignment of cannabis in Sweden, and had asked him and Ryan (who had also been convicted and sentenced to seven years imprisonment) to deliver it to customers in Sweden. He described in detail, his conversations with the respondent from whom he received instructions and to whom he was answerable during his dealings. In early April 1990, Mr. Price was released from prison after serving five years of his sentence. On 6 April 1990, at Dover, he was arrested for possessing cannabis, was subsequently sentenced to six months’ imprisonment, and on 1 June 1990, he was released from prison in this country.

On 16 August 1990, Mr. Price appeared before the Magistrates Court at Bow Street, and repudiated his evidence previously given before the Swedish Court in so far as it implicated the respondent. He alleged that this evidence was obtained by pressure exerted upon him by the Swedish and Norwegian police. The magistrate decided to commit the respondent. However, the Divisional Court discharged the committal order on the grounds that Mr. Price was an accomplice who had retracted his Swedish evidence. The House of Lords allowed the appeal and held that retraction in this country of uncorroborated evidence previously given in the requesting state’s court by an accomplice, would not discredit such evidence and does not deprive the magistrate of any power to commit on the basis of such evidence. 4


4 Alves, supra n.2 at 788, paras. (c) and (d).