

IN THE COURT OF APPEAL

GRENADA

Criminal Appeal No. 4 of 1972

Between: FRANCIS SIMON Appellant
and
THE QUEEN Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Ag.)

H.R. Scipio for Appellant
D. Lambert, D.P.P. for Respondent

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1973, January 24
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JUDGMENT

The judgment of the Court was delivered by:-
CECIL LEWIS, C.J. (Ag.)

The appellant was convicted on October 21, 1972, and sentenced to death for the murder on December 28 1970, of one Thomas John who will hereinafter be referred to as the deceased. He now appeals against his conviction by leave of a single judge. The evidence for the prosecution which is for the most part of a circumstantial nature reveals that the appellant and the deceased were well known to each other and that a distance of about 200 feet or so separated their respective dwellings.

The deceased lived with one Lena Noel in a wooden house at Florida. She herself owned a two-storeyed building, which had six rooms. The two rooms on the ground floor were untenanted, and of the four in the upper storey, one was rented by the appellant and the other three were used for storing dried cocoa. The appellant had been renting this room from Lena Noel for a period which Lena Noel said was about two years before December 28, 1970.

On the morning of December 28, 1970, a little after seven o'clock, Lena Noel and the deceased together with two
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couples went to pick cocoa at lands at Barbay owned by the deceased. They returned home around 5 p.m., and put the cocoa in a "sweater" on the premises where the appellant lived. The appellant admitted that he saw when the deceased came there that afternoon with his workmen. The deceased and his workmen returned to the deceased's house and were given some refreshment after which they left for their respective homes. The deceased himself left his home around 6 p.m. and Lena Noel never saw him again until about 10 p.m. that night when she saw his body at the Florida Junction. His face was all chopped up. Dr. Wilfred Otway was called to the spot where the body of the deceased was found. He said he knows this place by the name of Florida. It has been variously described by witnesses in the evidence at Florida Junction or the junction and is so called because it is where three roads meet, viz the Barbay Road, the Corbeau Town Road, and the Florida Road. The doctor arrived around 10 p.m. and found a man lying in the middle of the three roads which end in a cul de sac. He examined the man and found him to be dead. This man was the deceased. He was lying on his back with his head towards the middle of the road, face upwards. There were many severe lacerations on his face and blood on the ground. He performed a post mortem on the body the following morning at the General Hospital in the presence of two police officers. He said the body was that of an elderly man over sixty years, and he had severe lacerations of the face and head. There were about thirteen lacerations. There was a severe laceration at the back of the skull sufficiently deep to cut into the bone and it was about 2" long by 2" wide. "It was full bone depth - that is right into the skull" and it revealed the brain tissue. Then there were a series of severe lacerations starting from the forehead and running parallel to each other, and going down from the forehead to the chin. These lacerations cut right through to the bone into the eyes, into the

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/jaw, into the teeth, through the nose, through the upper jaw, severing the teeth. There was also a very severe one at the side of the face. There were a couple of minor lacerations on the chest, neck and back. In his opinion, death was due to shock as a result of these wounds. Any one of about six of the lacerations except the minor ones could have caused death by shock. The doctor was further of the opinion that the wounds were inflicted by a sharp, heavy instrument wielded by a strong person, that is to say, it required a lot of force to cause such wounds. He thought a cutlass might have been used.

The Crown's case was that the wounds were inflicted by the appellant on the deceased and that he died as a result of those wounds. In the course of the appellant's activities on December 28, he saw the deceased on at least two occasions. The first was when he, the appellant returned from St. George's and was leaving a bus at the junction. He said he saw the deceased and his labourers in a landrover at the junction and a witness for the Crown called Conrad Campbell said that he saw the appellant leaving the bus at the same junction and at the same time. This was around 5 p.m. The second occasion was when the deceased and his labourers went to the premises where the appellant lived and put the cocoa in a sweater.

Around 7.30 or 7.45 p.m. that night, the appellant was seen in the shop of one Georgina Joseph where there was an incident between himself and a man called Conrad Campbell. Georgina Joseph and Conrad Campbell gave evidence to the effect that the appellant came in to the shop that night, and threw a piece of lead at Campbell. Campbell escaped and the appellant left the shop, and he afterwards came back and apologised to Georgina Joseph for his behaviour.

It was significant that on that occasion when the appellant was in Georgina Joseph's shop she saw him dressed in clothes which he later in his statement at the trial admitted that he was wearing that night. Georgina Joseph said that when he came to her shop "he was wearing a yellow jersey, long water boots, /dark

dark coloured beret, dark coloured pants. I could see", she said, "that he was wearing another jersey under the other. I could see the sleeve". When the appellant made an unsworn statement in the court below he said that on the night in question he took his cutlass, his jola and his torchlight and left home at half past eight. Now there was abundant evidence by the witness for the Crown that the appellant, on that night, had a cutlass, a jola and a torchlight. He also said that when he was carried to the police station, the police made him take off his pants, his tall boots and his shorts, and they took his cutlass and his long sleeved yellow jersey and his black beret which he had with him. All these were garments which one witness or another for the Crown had seen the appellant wearing that night.

The witness Merrydale Brander, saw the appellant outside in the road. The witness was by St. Paul's house with a man called Ulric. He saw the appellant by Miss Joseph's shop around 7.30 p.m. and this was obviously shortly after he had either entered or was leaving the shop. As the appellant passed himself and Ulric he said to them "take it easy boys". Shortly afterwards the witness, Brander, left Ulric and was going to his home. As he was passing the appellant's house the appellant called out to him., and said "Brander, wait man." They had a conversation, and in the course of that conversation the appellant told him that he intended to kill certain persons, viz Raymond, Simon, Perkins, James and Osborn St. Paul, and also Thomas John, the deceased, and he added that the Government won't get him to try, nor would the police be able to bring him up and down. He said, at that stage when the accused was speaking to him, he had a cutlass, a searchlight, a "waterproof" on his feet, a green jersey, and a green beret and that the appellant left him and walked in the direction of the Florida crossroad. When the appellant walked away from him he saw that he was in a rage,
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was upset. He also said that when he passed him on the first occasion when he was speaking to Ulric, he noticed that the accused was upset. He had never seen him, the appellant so angry before, and he, the witness was terribly afraid. The appellant struck his cutlass on the ground three times and "it made fire". He could not tell any reason why the accused was so upset. Around 8 p.m. Gerald Charles and Lennox Perotte saw the appellant. Three of them, Gerald Charles, Gentle Alexis and Lennox Perotte were standing at a shop below the balcony of one Mr. St. Paul's shop which is situate on the P^{le}sance - Corbeau Town road at the time. Charles and Perrotte were witnesses for the Crown. The joint effect of their evidence was that around 8.20 or 8.30 p.m. the appellant came from the Corbeau Town junction, and was seen to return from that junction and go back along the Corbeau Town road. At about five minutes afterwards, the deceased came along the Florida road, went along the Corbeau Town road in the same direction in which the appellant had gone. The appellant came back, went down the Florida road to the junction, and after about eight or ten minutes, the appellant returned walking rather quickly along the Florida road. Both of these witnesses state that beside the appellant and the deceased they saw no one else pass and go in the direction of the junction that night. The witness, Gerald Charles, when he saw the appellant that night, said he was carrying a cutlass in one hand and was dressed "in a bluish trowsers, greyish shirt, a tall rubber boot, a beret on his head and a fine bag on his shoulder." Perrotte said that on the first occasion when he saw the appellant "he had a cutlass in his left hand and a searchlight" and when he returned from the direction of Corbeau Town he had the cutlass in his hand, the searchlight and a jola on his left side.

Soon after the accused had passed back from the direction in which he had gone, Perrotte said he heard a bawling from the direction of the Corbeau Town road. The

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Crown's case is that the offence was committed on the Corbeau Town road, somewhere near to a bridge. When Perrotte heard the bawling from the Corbeau Town direction the appellant had already passed down and passed back. He heard it about a minute or two after the appellant had passed back. Ambrose Peters was lying in bed and heard a sound like someone chopping. It last for about twelve seconds. He opened his window and he saw someone coming in the dark with a lighted cigarette. Approaching the window, he said to the person "good night" and his evidence is that that person was the appellant and that he answered "good night". When he spoke to the person, the person was at a distance from him about equivalent to the distance between the witness box and the jurors' box in this Court. The appellant had something in his left hand, which was a cutlass and he asked him what "getting on over the bridge there" and he said nothing. It has been submitted by counsel for the appellant that this did not amount to recognition by the witness of the appellant because he said he recognised the appellant by his voice and he had never heard him speak in that ^{tone of} voice before. But the witness clearly knew the appellant. He had known him for about five years, he had heard him speak before, and on that particular night although he spoke in a rough tone of voice, that did not mean that he did not recognise his voice. In any event he showed the jury how far he was from the appellant when he claimed to have recognised him and this was a matter on which the jury could draw their own conclusions as to whether or not the witness was sufficiently close to the appellant to recognise him.

Another witness, Olive Munro says that during the night she was in her house which was situate about 50 feet from a bridge on the Corbeau Town Road. Around eight or nine p.m. as she was lying down in bed she heard a chop and the voice of a man bawling out "O God." She heard the chopping and counted the chops - 1,2,3, until she reached about 6. She
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called out to her sister Sylvia Alexis who lives about 15 feet from her in the same yard, and she got up and began to dress. In the meantime, her daughter, Grace Munro got up and went outside. She went out after her daughter, she saw Grace when she went to the bridge, and also saw when a man spotted a light on a body. There was red blood on the ground near to the man, and the man's face was chopped up. Her daughter Grace Munro, also called Grace Perkins, who lived in Corbeau Town Road in the same house with her mother, went out when she heard someone bawling. The person bawled "O God". She described certain sounds which she heard "as when butcher chopping up meat, I heard it sounding like that at the back of our house." After she heard the chopping she heard the person bawl. The chopping continued, the person bawled "O God" again. The chopping still continued, and she got up and went to her aunt Sylvia's yard, and while speaking to her she saw Simon, the appellant, passing on Corbeau Town Road going towards Florida junction. She then went and spoke to Gerald Charles, and the two of them went in the direction from whence the sound of chopping and bawling had been coming. She gave Gerald Charles her flashlight, and ~~that~~ when they got down to the Corbeau Town Road, Gerald flashed the light and she saw a human being on the ground with blood all over his face. She left and ran away bawling. She said she heard about five to ten chops. She also said that she recognised the appellant Simon passing because she had a flashlight in her hand and she flashed the light on him. He was walking very fast, had a cutlass in his hand, a jola on his side, a beret on his head, and water boots on his feet. He was also wearing dark clothing. He was coming from the Corbeau Town Road and travelling towards the Florida main road. When she spotted the light on him, she was between five to eight feet from him.

On this evidence the case for the Crown went to the jury and the jury convicted. There has been no suggestion that the trial judge misdirected the jury either on the facts
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or on the law. What has been urged before the Court this morning is that the verdict is unreasonable and cannot be supported having regard to the evidence. It was submitted by counsel for the appellant that the main question on the appeal was the identification of the appellant and he referred in this context to the evidence of Ambrose Peters and Grace Munro, and to a lesser extent to that of Gerald Charles and Lennox Perrotte. He submitted that certain links in the chain of identification were missing and that being so the Crown had not put forward a case to satisfy the jury beyond reasonable doubt as to the guilt of the accused as its case was incomplete.

In the opinion of this Court there was abundant evidence on which the jury could come to the conclusion that the appellant was the man who had committed the offence. He was identified by several witnesses, not only by voice and appearance but also by the clothes he was wearing. He made a very significant statement to the police when arrested. The police officer, Philbert Christopher said that when he charged the appellant and asked him "what have you to say about Thomas John?", he replied "Officer, I don't know nothing about Thomas John; watch me cutlass, watch me clothes". At that stage, there is no evidence to show that he had been told how John Thomas had been killed, with what instrument, or whether he had been killed in such a way as would leave any blood stains or blood spots on the clothes of the person killing him. That is a piece of evidence the significance of which could not have escaped the jury.

In all the circumstances there was sufficient evidence to leave to the jury. The Crown has never suggested that its case was based on other than circumstantial evidence but it was evidence on which the jury were properly directed. They came to the conclusion that the appellant was the man who had committed the offence,

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and they convicted him. In the opinion of the court, this decision was one which could reasonably be founded on the evidence before the jury, and the appeal is accordingly dismissed.

P. Cecil Lewis
ACTING CHIEF JUSTICE