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IN THE COURT OF APPEAL

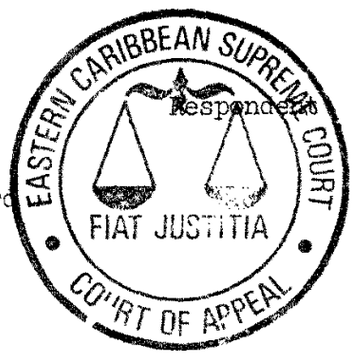
ST. VINCENT

CRIMINAL APPEAL NO.2 of 1975

BETWEEN: ALLAN LEWIS Appellant

AND

THE QUEEN Respondent



Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

V. Cuffy for appellant.
C. Dougan, Acting D.P.P. for respondent.

1975, May 22 & 23 July 1

J U D G M E N T

PETERKIN J.A. delivered the judgment of the Court:-

The appellant was convicted on 14th February 1975 of the murder of Clydene Williams and sentenced to death by hanging, and has now appealed.

The facts and circumstances are as follows:- The deceased Clydene Williams, was the lawful wife of John Williams of Cedars but lived with the appellant as his common law wife. At about 5 a.m. on 12th June 1974, she had been seen by her daughter Irene Edwards on her way to the garden of the appellant at Questelles, Biabou. Leopold De Caul accompanied her to the garden where she dug some potatoes. While she was digging potatoes the appellant arrived. The appellant gave some potatoes to De Caul and told him to go home. De Caul then left, leaving the two of them alone in the garden. She was seen by Horace Cupid at about 5.45 a.m. digging potatoes in the garden. At that time the appellant was standing about 4 feet away from her. At about 7 a.m. one Felix De Caul, who owned the adjoining lands, saw her lying on her stomach with her head turned downwards, and on closer examination he found that she was dead. He reported the matter to the Biabou Police Station. At about 7.30 to 8 a.m., Samuel Walter was reaping bananas on his lands at Massey, when the appellant, who appeared to him to be frightened, approached him and told him that he was in trouble and gave him a message to give to his child.

Sergeant Nicholas Dougan of the Biabou Police Station who

investigated the report went to the garden at about 8.30 a.m. On arrival he saw the body of Clydene Williams lying on the ground with a wound on the right side of her neck. There was a cutlass about 3 to 4 feet away from the body which he took and later handed to Inspector Bascombe. The body was lying about 20 to 30 feet from where some potatoes had been dug.

Dr. Rao, who performed the post-mortem examination on the body of Clydene Williams, stated that there was an incised wound about 5 inches long and 3½ inches deep on the right side of the neck extending from a point about ½ inch beyond the midline of the neck posteriorly at the level of the second cervical spine running downwards and forwards to a point 2 inches from the midline anteriorly. It severed the large blood vessels of the head and the neck on the right side, the muscles of the neck on the right side, and a portion of the vertebrae on the right side, and the spinal cord at the level of the second cervical spine. There was no evidence of any abnormality or injury to any other organs of the body. The doctor further stated that the cause of death was due to shock and haemorrhage caused by the spinal injury and that, judged from the nature of the injury, it could have been inflicted by one blow with a sharp instrument not less than 5 inches long.

Inspector Bascombe and others went in search of the appellant. They found him at about 3 p.m. on the New Prospect side of the Lauders mountain. As they approached, the appellant got up from some bushes and ran down the mountain side. He was pursued but lost sight of and about 10 minutes later was seen by the Inspector near to a river at the bottom of the hill. The Inspector's evidence continues -

> "I was alone then. Accused had a pint in his hand and as I jumped from bushes and with reach of him he raised up with the pint. I levelled my revolver at him and he dropped the pint. I tried to hold accused who shouted 'Oh God, now I dead'. His right hand moved under his shirt to the left side of his pants waist. I struck at him with a stick. He ducked towards me and the blow caught him in the head. He went sideways against a stone and I saw he was cut on the head. I held him and held what turned out to be a cutlass he had in his waist. By now the other Constables found me.

I searched the accused. In his left pants pocket I found a brown paper parcel wrapped containing a brown powder I know to be called Aldrin. I took the Aldrin into my possession. Accused said to me 'Inspector, pressure make me kill um'. I cautioned him. He replied what he said and went on 'The woman eat me out and now me money done she dont want do nothing gee me, you see the aldrin, me bin going poison myself but me change me mind and say me wid gee up meself not at Biabou. Me would a go over Mesopotamia tonight." "

After arrest, the appellant was cautioned. He was asked which of the cutlasses he had used. He replied, "not that one here. Me throw um way right at the place dey". He was then asked whether he wished to make a statement and replied, "yes". James Bramble, a Justice of the Peace was summoned, and the appellant later made the following statement and signed it in his presence -

"Me and the lady Clydene had a argument. We argue until we began to fight then we been arguing about the potatoes. She said she finish with me and I asked her how she could dig out all the potatoes. One engagement I go to take off the bag from the head of she and so we began to wrestle. She get cut but I didn't know she wound a die. She got cut by my cutlass I been digging with. I dont remember how the cutlass come to cut she. That's all. I have read the above statement. I have been told I can add, alter or correct anything I wish. This statement is true. I have made it of my own free will."

At the trial the appellant challenged the statement on the ground that it was not voluntary. The issue, however, was determined by the trial judge who admitted it in evidence as being a voluntary statement.

In his defence the appellant elected to make an unsworn statement from the dock. He then gave the following account of the incident -

"I despatched Morris with his potatoes and went to pull some tannia slips. When I returned Williams had about 11/12 of the potatoes in her bag and the remainder was left on the ground for me. I took them up and told her they were not

enough because they belong to both of us and since we decide to separate I should have a fair portion and both of us began to argue and I attempt to pull the bag from her head. She held on it and we began to wrestle for the bag and in the wrestling I had my cutlass in my hand. She struck me on my hand, right hand with her cutlass and I took my left hand and I went to plan her with the cutlass and I saw her fell on the ground and blood came from her mouth."

The grounds of appeal are:-

"1. Appeal against conviction on a question of law in that evidence was wrongly admitted at the trial.

Reference (a) Page 20, para 1 of the Notes of Evidence of the trial

(b) Page 44 of the Notes of Evidence of the trial

2.(a) Appeal against conviction on ground of appeal which involves a question of law in that the jury was misdirected by an omission of the trial judge in his directions to them on the alleged confession of the appellant.

Reference: Page 13 lines 5-16 of trial judge's summing up.

Particulars

"That statement, members of the jury, as you have heard the accused say was not a voluntary statement, but the Court in your absence heard evidence and the Court found that it was a voluntary statement, and that statement is before you and you will treat it like any other bit of evidence; you will give it such weight and consideration as you think it deserves. If you think it should not be considered then you need not consider it; if you think it should be fully considered then you will consider it fully, you will treat it like any other bit of evidence which is here before you and give it such weight as you think it deserves."

2.(b) Appeal against conviction on a point of law in that the jury was misdirected on the degree or standard of proof to be met by the prosecution, in that directions on this issue had the likely effect of confusing the jury.

Particulars of alleged misdirection: Page 2, para 2 of the summing up of the trial judge

"Every accused person who comes here into this Court is deemed to be innocent, so if after you have deliberated there is any reasonable doubt, that is to say, a real substantial doubt, as to the guilt of the accused, then it will be your duty to acquit the accused"."

On ground 1, counsel submitted that the alleged oral admissions should not have been admitted because from the moment the officer came into physical contact with the appellant there was violence which induced fear in the appellant thereby vitiating all that was said by the appellant. He then submitted that if this evidence was excluded there would not be sufficient evidence to warrant a conviction. He referred the Court to what he alleged were the offending passages in the summing up.

In our view reference to the evidence of Inspector Bascombe cited above shows that the oral admission of the appellant was entirely unsolicited. It is true that the appellant had been struck, but this was necessary to prevent him at that stage from drawing the cutlass which he had concealed in his waist. No force whatever was used to put the appellant in fear so as to induce him to make any admission and as soon as the admission was made the appellant was cautioned. After the caution, the appellant then volunteered the further information that he had intended to kill himself by taking the poison which was found on him. In our opinion the evidence was relevant and admissible. It was then for the jury to say what credence and weight they attached to it after taking all the circumstances into account.

On ground 2(a), counsel argued that first the written statement to the Police should not have been admitted, and secondly that when admitted by the trial judge it was still for him to direct the jury that it was for them to say whether the statement was voluntary or not. In support of the first limb of his submission counsel cited the case of Nirmal v. The Queen (1972) Crim. L.R. 226 P.C. This case shows that, although unusual it is within the competence of an Appeal Court to reverse the decision of a trial judge who had held a trial within a trial and admitted a statement as being voluntary. We are of the view

however, that in the circumstances of the instant case, the statement was rightly admitted. In any event, it does not vary to any great extent from the statement by the appellant at the trial.

We do not agree with the second limb of counsel's submission. The law is that the admissibility of a statement, which includes the question whether or not it was made voluntarily, is a matter for the judge. But once it has been admitted, as is the case with all other evidence it is for the jury to say what weight and what value they attach to it. Its probative value or effect are matters entirely for the jury. (Vide Pearline Durrant v The Queen, Criminal Appeal No.7 of 1968, St. Vincent Court of Appeal West Indies Associated States, 24th February 1969).

In our opinion, the direction to the jury as to how they should deal with the written statement was fair and adequate, and it was left to them to say what weight and what value they attached to it.

On ground 2(b), counsel submitted that the direction of the trial judge to the jury on the degree and standard of proof required in a criminal case was such as to have the likely effect of confusing them. He referred the Court to the passage recited above under the head "Particulars" in this ground of appeal and argued that to use the words "a real substantial doubt" was to state the degree of doubt as being too high, and was not the same standard as a reasonable doubt. He further submitted that this double standard was likely to confuse the jury.

In his summing up the judge directed the jury -

> "The second important direction concerns the burden of proof. In every criminal prosecution it is the duty of the Crown to prove the guilt of the accused beyond a reasonable doubt. The Crown must prove to you every ingredient of the crime. Every accused person who comes here into this Court is deemed to be innocent, so if after you have deliberated, there is any reasonable doubt, that is to say, a real substantial doubt, in your mind, as to the guilt of the accused then it will become your duty to acquit the accused. Before you can convict the accused, you must be satisfied of his guilt to the extent that you feel sure."

Our view is that the judge here was not leaving to the jury two standards of proof but was rather explaining to the jury what in his view was meant

by a reasonable doubt. The effect of the above direction upon any reasonable jury would be to leave them in no doubt that they must not return a verdict against the appellant unless they felt sure and that the onus of proof was at all times on the prosecution and not on the defence.

Finally, before asking the jury to consider their verdict, the trial judge directed them as follows -

> "If you find that there was no evidence of malice aforethought, no intention to kill or to do grievous bodily harm or you are in reasonable doubt thereof, then you will return a verdict of guilty of manslaughter. If you are satisfied or you are left in reasonable doubt as to whether there was sufficient provocation to reduce the killing from murder to manslaughter then you will return a verdict of guilty of manslaughter. If you are satisfied that the killing was unlawful but you are left in reasonable doubt as to whether the act of the accused amounted to murder or to manslaughter then you will resolve that doubt in favour of the accused and return the verdict of guilty of manslaughter. If you find that the deceased woman received the wound by misadventure or by accident and there was no original intention on the part of the accused or you are in doubt about that aspect then you will acquit the accused. If you find that the accused acted in self defence or you are in reasonable doubt as to whether he did so act then you will likewise acquit the accused."

Taking the summing up as a whole we feel that the jury were not confused on the question of the standard of proof.

Accordingly this appeal is dismissed, and the conviction and sentence affirmed.

N. PETERKIN
JUSTICE OF APPEAL

MAURICE DAVIS
CHIEF JUSTICE

E.L. ST. BERNARD
JUSTICE OF APPEAL