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ST. KITTS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 1 of 1984

BETWEEN:

SIMEON IBLE - Appellant

and

THE QUEEN - Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Byron (Acting)

Appearances: Henry Browne for the Appellant
E. Ferdinand and G. Nisbett for the Crown.

1985: Feb. 18, 21.

JUDGMENT

ROBOTHAM, C.J. delivered the Judgment of the Court:

This appellant was convicted on 14th June, 1984, for the murder of Helena Saunders and was sentenced to death.

The facts of the case are not in dispute. The appellant was a neighbour of the deceased. There was no positive evidence of any previous hostility between the appellant and the deceased. On June 27, 1983 at about 10.15 a.m. the deceased was in her yard washing when the appellant entered the yard and started pulling her. He was armed with a machette, and a piece of pipe, and he had also a trowel in his hand. He threw the deceased to the ground and whilst sitting on her back, was seen to be stabbing her all over her head with the trowel. He desisted after an alarm was made, and whilst neighbours were cleaning the blood off the deceased who was then still alive, the appellant returned to the yard. The neighbours fled on seeing that the appellant was armed with a 3 foot length piece of pipe. The appellant approached the deceased as she lay on the ground and hit her several times with the pipe.

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The only evidence suggestive of any hostility on the part of the accused towards the deceased came from Evelyn Saunders the sister of the deceased. She said in her evidence that the appellant whilst never speaking to anyone in the home where she lived with the deceased and others, yet he was always abusing them. Further, Angella Saunders, a cousin of the deceased said that whilst the deceased was washing on that morning, the appellant was seen peeping through the bush fence armed with the machette, and she heard him say "he aint fraid of Helena".

Dr. Ian Jacobs who performed the post mortem examination found that the deceased was about 34 weeks pregnant. She had in particular a large wound at the right side of the head with extensive skull fracture. A piece of the skull bone 4 x 3 centimeters was missing and the brain was badly damaged with some of the brain tissue being found near the surface of the wound. Death was due to head injury with extensive damage to the brain tissue inflicted with considerable force, by a weapon such as the piece of pipe which was seen in the hands of the appellant.

It is a significant feature of the trial that there was no challenge to the Crown's case as Counsel for the appellant had not been successful in getting the appellant to communicate with him. The only witness for the defence was Dr. Arthur Lake a medical practitioner since 1937, who told told the Court that he had been engaged in the field of psychiatry for 20 years.

Prior to the trial, the issue of the appellant's fitness to plead was taken. Dr. Lake gave evidence on this preliminary issue and the jury after deliberations found him fit to plead.

The appellant having been convicted of murder, now appeals to this Court on three grounds:

(1) The learned trial Judge erred in law in that he failed to direct the jury that if they

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believed the evidence of the witness for the defence Dr. Lake that the accused was of an unstable mental condition at the material time that they were duty bound to return a verdict of not guilty by reason of insanity.

(2) Having regard to the evidence of Dr. Lake the learned Judge erred in law in failing to direct the jury on the distinction between disease of the mind and disease of the brain.

(3) The verdict is unreasonable and unsafe having regard to all the evidence.

Dr. Lake, the only witness for the defence, testified that he first examined the appellant in December, 1979, and concluded then that he was suffering from a mental disorder which he diagnosed as paranoid schizophrenia. He had treated him almost continuously at the clinic since that date and last saw him on August 30, 1983, some two months after he committed the act. On that date he gave a medical certificate from which he was allowed to refresh his memory at the trial. It stated that he saw the appellant "on 1st June, 1982 and subsequently afterwards when he suffered from acute schizophrenia with violent paranoid delusions. I am of the opinion that the said Simeon Ible is mentally ill and not responsible for his behaviour". In answer to the Judge, he said by way of explanation of what appeared in his certificate:

> "When I say that the accused is not responsible for his behaviour I was speaking in general terms and not with respect to any specific occasion. These schizophronics are not always at one state of mental control so that they can be apparently rational at one moment and at the other times they appear to be incoherent and irrational."

That was the substance of his examination in chief. In cross-examination by the Director of Public Prosecutions he said:-

"The accused....

> "The accused is not irrational at all times. When he is rational he would be responsible for his actions and he would know what he is doing."

At this stage the cross-examination of the appellant was concluded and the record shows that the Court then read some relevant aspects of the evidence to the Doctor and he was asked to say assuming that the evidence was true, whether in his opinion such evidence would indicate insanity or not on the part of the accused. The Doctor's answer was:-

> "I am of the opinion that that evidence indicates sanity and I say this because the evidence showed that he was calculating in his behaviour and that he was in control of his behaviour."

He was re-examined by Counsel for the defence. The record does not record the question but the answer as recorded is:

> "The picture does not give one the impression that the accused did not have control of what he was doing. I would say the action of the accused was that of a sane man. I say so because of the picture presented on the evidence."

It was in that state of the evidence that the Judge then proceeded to give his directions to the jury. He gave them specific directions on the defence of Insanity adhering strictly to the guidelines laid down in what is so well known as the McNaughten rules. He was at pains to tell them that although the burden of establishing the defence of insanity is on the accused that burden is discharged on a balance of probabilities, and that if they thought it was more probable than not that the accused was legally insane at the time, then they "must return" the special verdict because insanity is what is known as a special verdict.

The Judge reminded the jury fully of the evidence of Dr. Lake, and properly directed them on how they were to treat the evidence of an expert witness. Then he proceeded to tell them:-

> "You will have to resolve the issue; you will have to determine as a matter of fact whether

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> at the time this incident occurred the accused was sane or insane in the terms of the law as I have directed you..... The verdicts open to you are:-
>
> (1) Guilty of Murder. You can can only come to this verdict if the Crown has so satisfied you that you feel sure of the guilt of the accused.
>
> (2) The other verdict open to you is a special verdict which is based on Insanity and that would be "not guilty by reason of Insanity."

Turning to ground 1 of the grounds of appeal, Dr. Lake never gave as his opinion that the appellant was of an unstable mental condition "at the material time". Counsel conceded this. Although the medical certificate from which he refreshed his memory did state that the accused was mentally ill and not responsible for his behaviour, he qualified that in answer to the Court when he said he was speaking in general terms and not with respect to any specific occasion.

In any event the Judge although he did not use to the jury the words Counsel would have liked him to use, he did tell them that they must return the special verdict if they thought it more probable than not that the appellant was legally insane. We are of the view that the directions given by the Judge on the issue of Insanity and where lay the burden of proof, were quite proper and adequate in the light of the available evidence which was before the Court and ground one therefore fails. The third ground of appeal must fail with the first as the evidence which the jury had before them, particularly the evidence of Dr. Lake if not adverse to the defence, was certainly not of the most helpful nature. It is clear by the verdict of the jury that they were unable to accept that the defence had discharged the burden of proving on a balance of probabilities that the appellant was insane at the time within the meaning of the McNaughten rules. The authorities are quite clear that proof of insanity short of what was laid down in the answers of the Judges in McNaughten's case will not suffice. There can be no

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merit therefore in Counsel's second ground of appeal that the trial Judge erred in failing to direct the jury on the distinction between disease of the mind and disease of the brain. As was said in the case of R v K[illegible] 1956 - 3 All. E.R. 249 - 253 I, the condition of the brain is irrelevant. The appeal is dismissed and the conviction and sentence is affirmed.

Before finally parting with this appeal, once again the Court must comment on the fact that yet another Island within the jurisdiction of this Court has not yet got around to bring into being legislation which would enable an appellant such as this one, to have availed himself of the defence of diminished responsibility.

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal

C.M.D. BYRON,
Justice of Appeal (Acting)