ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 13 OF 1996

BETWEEN:

LORRISTON CORNWALL — APPELLANT

v

THE QUEEN — RESPONDENT

Before: The Hon. Mr. C. M. Dennis Byron — Chief Justice (Ag)
The Hon. Mr. Satrohan Singh — Justice of Appeal
The Hon. Mr. Albert Matthew — Justice of Appeal (Ag)

Appearances: Mr. Gerald Watt for the Appellant
Mr. Cosbert Cumberbatch, DPP for the Respondent

[June 9, 10; July 7, 1997]

Criminal Law - Murder conviction - Death sentence - Circumstantial evidence - Defence of an alibi - Accused called no witnesses - Admissibility of certain writings into evidence - Whether jury's verdict rendered unsafe and unsatisfactory by weak circumstantial evidence - The strength of that evidence - Dissatisfaction with judge's summing up. Appeal dismissed.

JUDGMENT

SATROHAN SINGH J.A.

Patricia Farrell (the deceased) and the appellant had an intimate relationship that lasted some nine years. On July 13, 1984 they first had sexual intercourse with each other on the appellant's land where he worked and on which he planted "food". That sexual relationship continued until Friday July 23, 1993. It then deteriorated, and was terminated by the appellant on September 3, 1993, as a result of the appellant's belief that the deceased had sexual intercourse with one Blasford Challenger, a man older than himself. During this nine year period of intimacy, the appellant gave the deceased $200 per week and provided food for her three children of whom he was not the father. After the relationship crumbled in September, 1993, the appellant indulged in certain writings of his in a notebook and on certain placards. These writings not only evidenced the deep hurt and jealousy experienced by the appellant at his belief in the deceased' infidelity, but they also showed that the appellant still had strong good feelings for the deceased. After the "break up" and before Patricia Farrell died, the appellant even proposed marriage to her but, according to the appellant, she said she needed time to consider his proposal.

On March 12, 1994, at about 9 p.m., the dead nude body of Patricia Farrell was found in a rubbish dump in a place called "the garden" covered with bushes and vines and a galvanized bath tub. Her vagina was "awash" with spermatozoa deposited therein less than 12 to 14 hours before her death. The pathologist Dr. Simon gave the cause of death as strangulation associated with sexual intercourse. On Monday March 18, 1996, a jury of nine, convicted the appellant of the murder of Patricia Farrell and **Benjamin J** pronounced upon him the sentence of death.

No one actually saw this appellant kill Patricia Farrell. The entire case for the prosecution rested on circumstantial evidence. The defence of the appellant was that of an alibi, that at the time and place where and when Patricia Farrell was killed, he was somewhere else. This was disclosed in the statement given to the police by the appellant. At the trial the appellant gave no evidence. He exercised his legal right to remain silent. He called no witnesses.

The appellant appeals to this Court from this conviction. The main thrust of his appeal, centred itself around the admissibility of the aforementioned notes and placards made by the appellant after the "break up" of the relationship and before the death of Patricia Farrell. The appellant also contended that the verdict of the jury was unsafe and unsatisfactory because of weak circumstantial evidence adduced by the prosecution. There was also a challenge to certain aspects of the Judge's summing up.

THE CIRCUMSTANTIAL EVIDENCE:

The evidence relied on by the prosecution, showed, that the body of the deceased, was discovered in an area at Burke's estate Antigua, called "the Garden" about 9 p.m. on March 12, 1994. The police had to go 120 feet in the bushes to reach the body. In this area, a road separates the appellant's farm from "the garden' and the appellant's house is in close proximity to his farm and "the garden". There is a pasture on the south side of the garden. The deceased was last seen alive in the area between 12 midday and 1 p.m. on March 12, 1994.

The appellant's defence was that he was in that area before 10 a.m. that day and between 5 - 6 p.m. but not between 10 a.m. and 5 p.m. However, at least two witnesses for the prosecution placed the appellant in the area between midday and 1:30 p.m. on the fatal day. Shirley Challenger saw him coming out of his farm around midday, and his first cousin Petronella James, saw him in the area of the garden between 1 and 1:30 p.m. So the evidence of the prosecution if accepted, placed both the appellant and the deceased in the relevant area at approximately the same time. Karen Edwards, one of the deceased' daughter, saw the appellant coming out of the said area which is also the salvage dump, around 3 p.m. after she had finished washing her hair.

The body of the deceased when found, was nude. None of her clothing was ever retrieved. The following day at around 8:30 a.m., the police found freshly burnt debris at the appellant's farm. In that debris was a safety pin, identified by its unusually bent appearance by Joyle Edwards, the daughter of the deceased, as belonging to the deceased and which she saw her mother wearing on a shirt the day before her death. Karen Edwards testified that she also saw that pin on her mother on the tee shirt which had a missing button which her mother wore when her mother left home on that fatal Saturday March 12, 1994. The appellant said he had no knowledge of this burning but that in October, 1993 he had burnt three panties belonging to the deceased.

In the appellant's farm was a freshly dug hole 3' x 3 1/2' with a 36" diameter, admitted by the appellant to have been dug by him on the said March 12, 1994. The digging tools were still in the hole when the police made the discovery, allowing for an inference that the hole was not completely dug. The appellant said that he was digging the hole for the purpose of catching water. He admitted that he already had another water hole on his said farm.

The post mortem exam of the deceased revealed sexual intercourse with her within 12 - 14 hours of her death. A DNA profile was obtained from semen found in her vagina. The profile obtained matched that of the appellant. According to the forensic scientist Geoffrey Maxwell Roe of England, "there was a good visual match of the profile from Cornwall and the profile of the semen in Farrell's vagina ..... my final opinion on the DNA profile match is that it provides very strong support for the allegation that Cornwall had sexual intercourse with Farrell and the presence of the large amount of semen and complete spermatozoa provide strong support for the assertion that the sexual intercourse occurred no more than 12 hours before the death of Farrell." The appellant denied any sexual interference with the deceased on that day and the inference to be drawn from his statement to the police was that he stopped having sex with deceased since July, 1993.

The circumstantial evidence was also concerned with the writings of the appellant aforementioned. These writings show the deep hurt and jealousy experienced by the appellant as a result of his belief of infidelity on the part of the deceased towards him with Blasford Challenger. They show that during the time of their relationship, the appellant maintained the deceased and fed her three children by giving her some $200 per week. Despite this she "still let Blasford Challenger fuck her over at the school and he say is more than one time". The writings show that on October 19th, 1993 (after the "break up") the deceased on her knees denied to the appellant that she had sex with Challenger. She then took drinking water from him and at her request he gave her $100. They also show that on February 6, 1994, because the deceased took his $100 and did not tell Challenger that he (the appellant) had given her the $100, that the appellant demanded that she should return the stove (that he apparently had given her) to him that very day by putting it outside of her fence. The writings also show that the appellant recognised that he was not married to the deceased and therefore she was a free person to do as she wished. There is also evidence from his statement to the police, that the appellant proposed marriage to the deceased in February, 1994 and the deceased answered that she had to think about it. These bits of evidence reveal a love/hurt/vexed feeling in the appellant for the deceased. He loved her to the point where he wanted to marry her but he was hurt and was vexed with her for what he believed she did with Blasford Challenger.

In sum therefore, the circumstantial evidence relied on by the prosecution, if accepted, established these facts: (1) it placed the deceased and the appellant in the area near where her nude dead body was found, at the time when she was last seen alive, allowing for the inference of opportunity (2) it showed that a safety pin that the deceased wore when she left home that day was found in freshly burnt debris at the appellant's nearby farm, allowing for an inference that the burnt debris were the deceased' missing clothes and that they were freshly burnt by the appellant (3) it also showed a supposedly unfinished freshly dug hole 3' x 3 1/2' x 36 "in diameter in the appellant's farm, allowing for an inference that the appellant intended concealing the deceased dead body therein if the appellant's explanation of a second water hole was disbelieved (4) it showed DNA tests which evidenced a profile match of the semen found to have been deposited not more than 12 - 14 hours in the deceased vagina before her death, with that of the appellant, proving that the appellant had sexual intercourse with the deceased that day within 12 hours of her death and disproving the appellant's statement to the contrary (5) it showed the love/hurt writings and jealous feelings of the appellant after the "break up" (6) it showed the admitted burning of the deceased panties by the appellant, demonstrating a hostile reaction towards her

infidelity and (7) it showed that the appellant allegedly lied to the police that he was not in the area at the requisite time.

It is my considered opinion that on this evidence if accepted, the Crown had established a very strong case of Murder against the appellant. The circumstantial evidence pointed directly to the appellant and to nothing or no one else. I propose now to consider, whether the writings of deceased which learned Counsel Mr. Watt referred to as the thrust of the appeal, should have been omitted from the evidence.

THE WRITINGS: THEIR ADMISSIBILITY:

Learned Counsel for the appellant, after mature thought, conceded the

relevance of the aforementioned writings. He however contended, that in the exercise of the judge's judicial discretion they should have been excluded as being more prejudicial than probative.

The law is more or less settled that relevant evidence which is technically admissible, should, in the discretion of the trial judge in a criminal matter, be excluded, if its prejudicial influence on the minds of the jury would probably be out of proportion to its true evidential value. [**Scott v. R (1989) 1 AC 1242: R v. Sang (1979) 2 A.E.R. 1228]**

This is a matter where proof of the appellant's guilt was founded on circumstantial evidence only. Because of the alleged cause of the crime (i.e. a love triangle), the prosecution sought to prove the offence by producing evidence showing the birth of the relationship between the appellant and the deceased, its pleasures during its existence and its turmoils afterwards until the death of Farrell. It is for this reason that learned counsel for the appellant quite properly saw and conceded relevance in the writings of the appellant. However, I do not agree with his opinion that they were not of a necessary probative value.

In my considered opinion, evidence of these writings was one of the links in the chain of circumstances without which, it could have been argued, there would have been a lacuna in the evidence. The jury were entitled to have before them the full picture of the chain of events that led up to the death of Farrell in order to do justice to the matter. The writings were probative of the mind of the appellant after the termination of the relationship. Frankly speaking I do not discern from them, the serious prejudice alluded to by Mr. Watt. Indeed, the writings show that despite the hurt and jealousy experienced by the appellant he was still kind to the deceased when he gave her drinking water and the $100: They do not show a desire for revenge as submitted by Mr. Watt. Their mention of the appellant's desire at retrieval of the stove and his use of the graphic word "Fuck" when speaking of the deceased infidelity, could not without

more be interpreted as anything else but a demonstration of his hurt and a reaction to his own temper. In the context of the writings, I do not recognise hatred therein especially when regard is had to his subsequent proposal of marriage. For these reasons I do not agree with the submission of learned Counsel for the appellant that their prejudicial effect outweighed their probative value. There is therefore no merit in this ground of appeal.

CHALLENGE TO THE SUMMING-UP

Mr. Watt for the appellant challenged the learned Judge's summing up on two aspects only. Firstly, that in dealing with the aforementioned writings of the appellant, the judge omitted to remind the jury that the writings, apart from showing hurt in the appellant, also showed that in October or November, 1993, the appellant gave the deceased drinking water and $100: Also, that the appellant in his interview with the police mentioned his proposal of marriage to the appellant. Secondly, in dealing with the burnt debris, when the judge told the jury "is it possible that the conclusion can be drawn that someone else made a fire on the accused' farm during his absence?" Mr. Watt submitted that the judge should have gone the extra mile and remind the jury that "people pass there".

I consider these omissions de minimis and taintless on the proper carriage of justice. In the first case, if the jury needed to be reminded of that aspect of the writings, and the appellant's proposal of marriage which was in his statement, they would have asked for them as they were available for their perusal. In the second case, implicit in the question posed by the judge to the jury is the invitation for them to recognise that other people do pass the appellant's farm. I do not recognise any form of miscarriage in these minimal omissions. This ground of appeal also fails.

VERDICT UNSAFE AND UNSATISFACTORY

Learned Counsel for the appellant then invited this Court to allow this appeal on the ground that the verdict of the jury was unsafe and unsatisfactory. In support thereof, Mr. Watt submitted that the circumstantial evidence relied on by the

prosecution was palpably weak. There is no merit in this submission. As

earlier mentioned, I consider the evidence led by the prosecution to be very strong and that it had established a very cogent and compelling case of Murder against the appellant. The evidence led, when narrowly examined, was conclusive. Inferentially, it pointed directly to the accused guilt and showed no co-existing circumstances which tended to weaken or destroy that inference. And, except for the miniscule factual omissions in the summing up already mentioned, I consider the

Judge's summation to the jury to be of excellent quality when dealing with all aspects of the law that emerged in this matter. I have no lurking doubt in my mind as to the accuracy of the Jury's verdict. This ground of appeal also fails.

CONCLUSION

For all these reasons, I conclude that there is no merit in this appeal. The appeal is dismissed. The conviction and sentence are affirmed.

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SATROHAN SINGH
Justice of Appeal

I concur

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C. M. DENNIS BRYON
Chief Justice (Ag.)

I agree that this appeal should be dismissed and the conviction and sentence affirmed.

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A. MATTHEW
Justice of Appeal (Ag.)