GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEALS NOS. 2 & 3 OF 1998

BETWEEN:

ANDRE BENNETT

APPELLANTS

AUGUSTUS JOHN

and

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 Redhead Justice of Appeal

Appearances: Mr. Raymond Anthony for the first named Appellant
Mr Anselm Clouden for the second named Appellant
Mr. Malcolm Holdip DPP for the Respondent

July 13, 27, 1998

JUDGMENT

SINGH, J.A.

On April 2, 1998 the appellants were convicted by a mixed jury of twelve of the murder of Myrtle Linda Williams. They were both sentenced to death by Lyle St. Paul, J. The allegation of the prosecution was that they and another (who was acquitted on a no case submission)

intentionally caused the death of Williams by unlawful harm, contrary to S 230 of the Criminal Code Cap. 1 of the 1994 Continuous Revised Laws of Grenada.

The case for the prosecution rested mainly on the evidence of an accomplice Kyron Mc Farline. This evidence showed these appellants in the home of the deceased on Thursday July 25, 1996. The first named appellant held a 5" jagged

bladed knife to the throat of the deceased and forced her to sign a cheque for him for $5,000. After she signed the cheque and the first named appellant had pocketed same, the second named appellant gagged and barred the deceased mouth with a piece of cloth tied around her mouth and knotted at the back of her head. The first named appellant then stabbed the deceased with the knife in the region of her left shoulder bone. The deceased was subsequently found with multiple stab wounds. According to the accomplice, the first named appellant later in the day told him that he (the said appellant) gave "the woman 21 stabs".

This evidence of the accomplice was corroborated by the evidence of Portia Clarke when she testified that later that fatal afternoon, she saw the first named appellant with a knife similar to the one seen on him by the accomplice, and that she saw him washing blood from the knife. She also testified that he had in his possession a cheque for $5,000 and that when he asked her

how he could get it cashed and she told him he would end up in jail, he burnt the cheque in her presence.

Dr. Rukmini Jayaram also corroborated the accomplice's evidence of 21 stab wounds when she testified that the deceased had multiple injuries. So also did the evidence of Cpl. Hackett who visited the scene and found the deceased with her mouth barred with cloth. Witness Trevor Modest and Stephen Williams also gave similar evidence. The appellants' defence was that of an alibi.

THE FIRST-NAMED APPELLANT

Mr. Anthony for the first named appellant raised two issues for our consideration. They relate to (1) causation and (2) the Judge's directions to the jury on standard of proof.

CAUSATION

The evidence against the first named appellant was that he formulated a plan to unlawfully extract a cheque of $5,000 from the deceased with the aid of the second named appellant. In pursuance of that plan, he and the second named appellant entered the house of the deceased with the permission of the deceased. And, with the aid of the knife at the deceased throat, the first named appellant caused her to sign the cheque which he

pocketed. The second named appellant then gagged the deceased mouth after which the first named appellant stabbed her in the region of her shoulder or collar bone.

Dr Jayaram testified that of the multiple injuries found on the deceased, the major wound was on the left side of the neck just below the jaw line and that it severed the left internal jugular vein. She concluded that this wound was the fatal wound that caused the death of Williams. Counsel for the appellant argued before us that, because there were others present at the scene, and because the accomplice testified as to only seeing this appellant inflicting one wound (in the region of the left shoulder or collar bone) and, because the body of the deceased was found in the bedroom and not in the kitchen where the accomplice saw the injury being inflicted, that the first named appellant did not inflict, or that there was reasonable doubt that he inflicted, the fatal blow that killed Williams.

We consider that there is nothing in this submission other than poverty on its merit. Firstly, because the case for the prosecution rested on the concept of joint enterprise it was irrelevant who inflicted the fatal wound once the concepts of foreseeability, participation and a common unlawful enterprise had been established. In this case however, these concepts did not really apply to this appellant as the case for the prosecution was that he was the principal offender. Secondly, to hold as

submitted by Mr. Anthony, that others, other than these appellants, may have inflicted the numerous injuries including the fatal injury on the deceased, would be to indulge in fantasy as there was no such evidence. Mr Anthony made this submission because the accomplice only spoke of seeing one injury being inflicted. But the evidence is that he ran away immediately upon the infliction of that one injury. Finally, it was open to the jury to find that the stabbing of the deceased by this appellant in the region of the left collar or shoulder bone was the fatal stab wound in the neck of the deceased as found by Dr Jayaram. This was the only wound found by the doctor on the left side of the deceased in the region of the neck. I would therefore dismiss this submission as being without merit.

STANDARD OF PROOF

At the commencement of his summation to the jury, St. Paul J., in dealing with the standard of proof expected of the Crown, directed the jury that "the Crown must prove the case against the accused men beyond a reasonable doubt so that you feel sure of their guilt." Mr. Anthony for Bennett had no quarrel with this direction. However, when the learned judge dealt with the law on the issue of corroboration he told the jury:

> "You may however convict the accused if you are satisfied that Mc Farline (the accomplice) was speaking the truth. If you are convinced he was

speaking the truth you may convict the accused persons."

Mr. Anthony argued before us that this was an inadequate and wrong direction to the jury on the requisite standard of proof. He submitted that the judge should have repeated the formula "beyond a reasonable doubt so that you feel sure" and that the word "convinced" did not convey the same meaning. Learned Counsel was of the firm opinion that the word "convinced" could be synonoymic with "you are in doubt". I consider this an alarming submission and I dismiss it with the disrespect it deserves.

Those were the grounds argued on behalf of the appellant Bennett. They have no merit. His appeal is therefore dismissed. His conviction and sentence are affirmed.

THE SECOND NAMED APPELLANT

This appellant objects to his conviction on three grounds: (1) The admissibility of his caution statement to the police; (2) absence of a "Lucas direction" on the issue of lies; (3) the issue of joint enterprise.

THE CAUTION STATEMENT

Mr Clouden for the appellant argued against the judge's ruling to admit into evidence a caution statement given by the appellant to the police, on the ground that it breached certain of the judge's rules, and that the appellant was beaten to give the statement. This issue

will be dealt with some brevity because of its obvious merit from the transcript before us. The learned D.P.P conceded that the judge's rules were breached, the statement having been taken from this appellant one hour and fifteen minutes beyond the requisite 48 hours detention. More seriously however, having perused the evidence given at the Voir Dire held by the judge on the issue of the admissibility of this statement, we are perturbed that the judge could have ruled the statement as being admissible. This appellant's evidence as to the violence used on him by the police to extract the statement was not only overwhelming but it was amply supported by evidence of a doctor and a prison officer. The learned judge should have rejected the statement and I so rule.

THE LUCAS DIRECTION

The statement having been thus ruled inadmissible, the issue of the absence of a "Lucas direction" on lies is no longer relevant as the alleged lies related to this statement when compared with an exculpatory statement this appellant gave to the police.

JOINT ENTERPRISE

Learned Counsel for this appellant then argued that the evidence in the case, did not bear out the prosecution's theory of a joint enterprise involving this appellant, and that the judge's summing up was "dismally deficient in a balanced way to put the defence of the appellant to the jury".

To establish joint enterprise, the prosecution had to prove beyond a reasonable doubt, not only that this appellant was acting in concert with the first named appellant in a common unlawful enterprise to rob the victim, but also that he had foresight of the relevant offence which the first named appellant may have committed as a possible incident of the said common unlawful enterprise, and that with such foresight, he still participated in the enterprise. [See Hui Chi-Ming v The Queen PC (1991) 3 WLR 495. R v Anderson and Morris (1966) 2 All E.R. 608; Alexis Prince and Gregory Valmont v The State Crim. App 12/1992 Dominica].

The evidence against this appellant was that when himself and the first named appellant were in the deceased' home, in his presence the first named appellant robbed the deceased of her cheque by placing a 5" jagged blade knife at her throat. The second named appellant did nothing by way of disapproval of this act of the first named appellant. Instead, at the stage when the first named appellant placed the cheque in his pocket, the second named appellant tied the mouth of the deceased, gagging her, thereby effectively preventing her from screaming as the first named appellant went about severing the victim's internal jugular vein.

In my judgment, this evidence amply satisfied the requirements of the law abovestated on the issue of joint enterprise. It also showed that the second named

appellant was aware of the 5" long jagged blade knife in the possession of the first named appellant, before the robbery and during the robbery and that he actually participated thereafter in preparing the victim for her slaughter by the first named appellant. Mr. Clouden suggested that this appellant might have gagged the victim to prevent her calling the police and that the judge should have left that as an inference for the jury to draw. In my view, unless the evidence showed this to have been a forever gagging, such an inference was not reasonable from that evidence. I have read the judge's directions to the jury on joint enterprise and I can find no real fault with them and no justification for the criticism levelled at them by learned Counsel for the second named appellant. This ground of appeal fails.

CONCLUSION

For all these reasons I would order that the appeal of the second named appellant do also stand dismissed. The conviction and sentence are affirmed. In my judgment, the wrong admission by the judge of the caution statement of this appellant, which by itself, may have amounted to a confession only to manslaughter, did no injustice to the appellant's case. It could have caused no miscarriage, especially when regard is had to the power of the evidence of the accomplice as strengthened by the corroborative evidence.

The appeals of the appellants as therefore dismissed.

Their convictions and sentences are affirmed.

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SATROHAN SINGH
Justice of Appeal

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I Concur **C.M. DENNIS BYRON**
Chief Justice (Ag.)

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I Concur **ALBERT REDHEAD**
Justice of Appeal