Privy Council Appeal No. 54 *of* 1929.

Benjamin Knowles - - - - - - *Appellant*

v.

The King - - - - - - - - *Respondent*

FROM

THE CHIEF COMMISSIONER'S COURT OF ASHANTI (EASTERN PROVINCE).

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH MARCH, 1930.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT DUNEDIN.
LORD DARLING.
LORD ATKIN.
LORD THANKERTON.

[*Delivered by* VISCOUNT DUNEDIN.]

This appeal, for which special leave was granted by His Majesty in Council is against a conviction of the appellant for the murder of his wife, Mrs. Knowles, by the Acting Circuit Judge of Ashanti on the 23rd November, 1928. The case was tried by the Judge without a jury and the appellant was not allowed the assistance of either solicitor or counsel. The grounds of appeal are first, no jurisdiction, and second, that there was no evidence on which a conviction of murder could be maintained.

The Court of Ashanti by which the appellant was tried was established by the Ashanti Administration Ordinance No. 1 of 1902. The sections of the Ordinance, as amended by subsequent ordinances which bear on the method of trial in criminal cases are the following:—

> Section 8: "Where not otherwise provided by some other statute, ordinance, or other law for the time being in force in Ashanti, the Court shall in causes and matters brought or arising before it, be guided by the

law in force in the Gold Coast Colony as set forth in Sections 14–19 of the Supreme Court Ordinance of the said Colony."

Section 9: "So far as it is practicable and local circumstances permit, the procedure in the Court, civil and criminal, shall be the same as the procedure in the Supreme Court of the Gold Coast Colony."

Section 10: "In no cause or matter, civil or criminal, shall the employment of a Barrister or Solicitor be allowed."

It is unnecessary to quote the various sections of the Acts which regulate procedure in the Gold Coast, as it is clear that if the trial had been in the Gold Coast it would have been imperative to have a jury for a capital case and the prisoner would, if he chose, have had the assistance of counsel and solicitor.

The appellant therefore contends that a jury for a capital case was a *sine qua non*, and that a conviction by a Judge sitting alone cannot stand.

The Attorney-General stated, and it was not denied by the appellant, that as a matter of fact there never has been hitherto trial by jury in Ashanti.

Now the direction that in Ashanti the criminal procedure of the Gold Coast shall be the guide is not absolute, but is qualified by the provisions of Section 9. If jury trial is not practicable, or not permitted by local circumstances, then the direction does not apply. Practicability and the state of local circumstances are questions which can only be determined in Ashanti on the spot. It is impossible for their Lordships of this Board to form a conclusion on such matters, and it is not for them to turn themselves into a local tribunal. They are of opinion that this is a matter to which the maxim *Omnia praesumuntur rite et solemniter acta* clearly applies, and they are therefore unable to sanction this ground of appeal.

Before dealing with the question of the evidence their Lordships think it necessary emphatically to repeat what has been said on many occasions, that they do not sit as a Court of Criminal Appeal. To allow criminal proceedings to be reviewed, to use the words of Lord Watson in *Dillet's* case, 12 A.C. 459, at p. 467, there must have been "substantial and grave injustice done." In the present case if it had turned out that it was against the law for a judge to try a capital case without a jury, that would have been substantial injustice, for it would have been conviction without jurisdiction, and it was on that ground that leave of appeal was manifestly granted. But the case once brought up it is incumbent on their Lordships to examine the judgment as given. Even in this somewhat exceptional case, however, their Lordships are still not sitting as an ordinary criminal court of appeal in which case they would be entitled to consider what would have been their own verdict. Though the criterion is hardly as strict as it would have been on an application for leave based on the simple ground that the evidence did not support the verdict, yet they must be satisfied to use the words of Lord

Sumner in *Ibrahim* v. *The King* [1914] A.C. 599, at p. 615, " there is something which in the particular case deprives the accused of the substance of fair trial."

Now the facts of the case as proved are simple enough. The appellant and his wife were alone in their bedroom after luncheon. There had been guests at luncheon, and they had gone away shortly after 2 p.m. without anything noticeable having happened. Their native servants heard loud voices suggestive of quarrelling. The appellant and his wife it was proved lived generally on good, and, indeed, affectionate terms, but had occasional quarrels which were greatly induced by the fact that both the appellant and his wife were addicted to the taking of too much liquor, and the appellant drugs, and were often in a drunken or semi-drunken and dazed condition.

The evidence as to the time is confused and contradictory, but somewhere between 4 and 5 the native servants heard a shot and a cry. They were frightened and one of them ran off to the District Commissioner, who had been one of the guests at the luncheon and said what he had heard. The District Commissioner took his car and went off to the house of the accused, whom he saw, and asked if there had been an accident. The accused said it was all right. The District Commissioner then went away. The native servant went back again later and two hours later the District Commissioner wrote a note saying the native servants were very excited, and asking if he could be of any service. To this letter he got no reply. About the same time the native servant was called into the room and told to clean up a pool of blood. The accused said to his wife he would like to send her to the hospital. He then said he would go himself, and went. When he was gone the cook, by desire of Mrs. Knowles, lifted a revolver which was by the bed and put it into a box, locked it, and gave her the key. While clearing up the blood he picked up something which he did not recognise, but which was a revolver bullet.

That evening the accused got a sleeping draught containing morphia from the dispensary of the hospital. Next evening he got a repetition of the medicine and a hypodermic syringe with two ampoules of morphia. About 3 o'clock that day Dr. Gush, who lived at Kumasi, heard that something had happened and in consequence drove down to Bekwai, where the accused lived. He found the accused in a somewhat dazed condition and bearing signs of the results of alcohol and the drugs above referred to. The accused volunteered the information that there had been " a domestic fracas," and showed him his left leg covered with bruises which he said had been inflicted by his wife with an Indian club. He also said that she had been nagging him and he had said if she didn't stop he would put a bullet in her. Dr. Gush asked to see Mrs. Knowles, and heard her say she would like to see him. He then went into the bedroom with the accused and examined the wounds, which he found had been treated with iodine by the accused—a proper, though in the

circumstances, scarcely a sufficient treatment. The wound was such a wound as would be inflicted by a revolver bullet. It was in a peculiar direction. The bullet had entered the left buttock and proceeded in an upward direction, and making its exit at the lower side of the abdomen on the right side, having, as was afterwards disclosed at a post-mortem, pierced the intestine, the bladder and the uterus. It was not bleeding directly when Dr. Gush saw it, but there was some blood coming from the vagina.

He asked Mrs. Knowles how the accident happened and she said she had been examining her husband's revolver which had been recently cleaned by the police, that she had put the revolver down on a chair, and shortly after sat upon it, that she tried to remove it from underneath her, but the open-work sleeve of her dress caught in the trigger and the revolver went off.

Dr. Gush said she must go to the hospital but had better have a bath first. He found the accused at the fire quite dazed. He went to fetch his car, and on coming back got the revolver from Mrs. Knowles, and found in it five cartridges and one empty shell. He noticed a hole in the mosquito net which covered the two beds. Mrs. Knowles died the next day, but before she died she made a dying declaration. This was to the same effect as to what she had said to Dr. Gush with two small differences. She mentioned that the revolver had been cleaned, but did not say " by the police," and she said that before it happened the boy had come in with afternoon tea. Other matters to be mentioned are that the mosquito net had several holes in it : that the accused said that on one occasion his wife had put a bullet past him while he was in bed ; that another bullet was found by the police and certain marks on the furniture. Further, on the 22nd October the Acting and Assistant Commissioner of Police went to Bekwai and found the accused in bed lying in blood-stained sheets and having on blood-stained pyjamas. He was weak and ill, but they considered him rational. They told him that they were going to detain him on a charge of causing grievous bodily harm and that a dying declaration was to be taken from his wife. He then made several remarks, viz. : " I think she will roll up " (*i.e.*, die), " This is a bad business, I may go to prison," " If she rolls up I am afraid I am for it." He went with them to Kumasi, and in the Assistant Commissioner's bungalow, while the Acting Commissioner went for a warrant, he said, " I don't care what happens to me, I am worried about my wife," and then, " If my wife rolls up it means a murder case," and again, " If my wife rolls up I will be hung by the neck until I am dead."

Their Lordships must now examine the judgment. In the judgment of the Circuit Judge is to be found what to a jury would have been the summing up, and then the verdict. Now the judge examines at great length the possibilities as to which bullet of the two bullets found, one of which had made dents in the furniture, was the bullet which caused the wound. Upon

this question he comes to no certain conclusion, being oppressed by the difficulties as to either theory. In their Lordships view this enquiry is quite by the mark. It is quite certain that the deceased was killed by a revolver bullet, and there being no certain evidence as to the position of the parties at the time, no conclusions can be drawn from the possible indicia as to the flight of the bullet. The Judge next takes up the story of the deceased as given in the evidence of Dr. Gush, and as given in the wife's dying declaration, and along with it the story as given by the prisoner himself when he gave evidence at the time. That story, abbreviated, is as follows : That he had had a quarrel with his wife about nothing, which ended, that he then went to bed to sleep, that he saw his wife come in and start to undress and afterwards went to sleep, that there was a shot fired which woke him, and he heard his wife say she had been shot, that he jumped up and said, " show me, show me " (this was a remark heard by one of the servants behind the door), that he plugged the wound and put her to bed, and she said " People will think I have done this purposely," to which he replied she had only to lie quiet and he would take the blame. That he did not trouble about the District Commissioner's note, as being a medical man himself he had done what was needful and that he did not want her disturbed. That afternoon he took drink and drugs, and to use his own words, " I had the fixed idea of protecting my wife, and didn't realise until later that my statements were dangerous. I had an idea fixed that I would take any punishment if I could save my wife."

As regards the revolver he said that he usually kept it under his pillow fitted in a holster ; that on this occasion he took it out of the holster cocked it and laid it on the book case. The Judge then examines these accounts and finds them unsatisfactory. He is particularly pressed by the statement of Mrs. Knowles as to the servant bringing tea, which was not true, and he saw no reason for the appellant taking out the revolver and cocking it, and points out the discrepancy as to its place, the appellant saying it was on the book case, while Mrs. Knowles said it was on the chair. He lays stress on the various remarks made by the appellant after the event, which he considers were not made, except as to those on the 22nd when in a dazed condition. He thinks it proved that there was a domestic fracas, and considers the remark that he would put a bullet through his wife if she did not stop, very significant. He therefore comes to the conclusion that the wife's story was not true, and then he says, " Taken as above the evidence against the prisoner is overwhelming."

Now the learned Judge was entitled to draw his own conclusions as to whether Mrs. Knowles's account was true, and their Lordships, not being as above stated, an ordinary Court of Criminal Appeal, would not consider themselves entitled to set that aside upon the ground that they would come to a different conclusion on the facts as found. Having come to the conclusion

that the story of an accident could not be substantiated, and the position and direction of the wound excluding all idea of deliberate self-infliction, he was driven to the conclusion that the shot was fired by the appellant. That there was criminality in what happened is a necessary result of that conclusion. In a fit of drunken recklessness to fire a shot to silence a nagging woman, which shot the woman, even though the shot was not intended to hit her, is a crime. But the fatal flaw in the judgment is that having set aside Mrs. Knowles's account of the occurrence as accident he at once assumed that the only alternative to accident is murder. There is not the slightest inquiry into whether assuming that the shot was fired by the accused, the act amounted to manslaughter and not murder. There is no attempt to face the question of whether the standard of proof required to prove murder as against manslaughter, has in this case been reached. If the case had been before a jury and the Judge had not explained to them the possibility of a verdict of manslaughter, but had said if not accident the only alternative is murder, that would have been an erroneous summing-up. That is what is to be found in the judgment. The question as between manslaughter and murder is entirely undealt with, and their Lordships are therefore, as the learned Judge failed to consider the question, bound to consider whether the evidence here reached the standard of proof necessary to involve a conviction for murder. They are clearly of opinion that it did not. A conviction for manslaughter might have been a different matter, but that is not before their Lordships. They have therefore humbly advised His Majesty to quash the conviction.

In the Privy Council.

BENJAMIN KNOWLES

v.

THE KING.

DELIVERED BY VISCOUNT DUNEDIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1930.