

Joseph Connell - - - - - Appellant

v.

The King - - - - - Respondent

FROM

HIS MAJESTY'S CRIMINAL COURT FOR THE ISLAND
OF MALTA AND ITS DEPENDENCIES

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
5TH MARCH, 1947

Present at the Hearing :

LORD THANKERTON
LORD UTHWATT
LORD DU PARCQ
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

This is an appeal *in forma pauperis* by special leave from a conviction and sentence, on the 9th October 1945, of the appellant by His Majesty's Criminal Court for the Island of Malta and its Dependencies (Sir George Borg, C.J., and E. Ganado and W. Harding, J.J.) sitting with a jury, whereby the appellant was convicted of complicity in the wilful homicide of his wife, Carmela Connell, and was sentenced to death, under Articles 43, 44 and 218 of the Criminal Laws for the Island of Malta and its Dependencies, which may be conveniently referred to as the Criminal Code.

The appellant was tried together with two other persons, namely John Connell (the appellant's brother) and Edward Burnell on an indictment charging John Connell and Edward Burnell with maliciously and with intent to kill causing the death of Carmela Connell, the appellant's wife, between the 10th and 11th of September 1944, and charging the appellant with commissioning and inciting the other two accused to commit the crime. The joint trial was provided for by Article 567 of the Criminal Code, but separation of trials may be ordered by the Court under Article 570, on the application of the public prosecutor, on the ground of inconvenience. Their Lordships cannot help feeling some regret that that course was not taken in the present case, as some of the defects to which it will be necessary to call attention might well have been avoided thereby.

The evidence for the prosecution against the appellant may be summarised as follows:—

(1) That the appellant's wife was found dead in the sea on the 11th September 1944 by Golf Tat-tafal, and that her injuries were consistent with her having fallen down the cliff there.

(2) That the appellant had promised a man of bad character named Mercieca £70 if he would murder the appellant's wife.

(3) That he had approached another man of bad character named Joseph Attard, and offered him money if he would give a thrashing to an unnamed woman.

(4) That both in the case of Mercieca and Joseph Attard the appellant in the first place asked the man in question if he would give a thrashing to a man, and then, in the case of Mercieca, specifically asked him to murder his wife, and make a plan with him by which Mercieca was to take the appellant's wife under a pretext of meeting the appellant and then to throw her down a bastion.

(5) That Mercieca, in accordance with the plan, took out the appellant's wife for the apparent purpose of murdering her, but that instead he had sexual intercourse with her and gave her his sandals, and that, subsequently, although again requested by the appellant to murder the latter's wife, Mercieca refused to do so.

(6) That the appellant was seen in company with John Connell and Edward Burnell and also with Mercieca, on various days shortly before the appellant's wife was found dead.

(7) That the appellant admitted to Superintendent Calleja that, after he had heard that Mercieca had sexual intercourse with his wife he made up his mind to do away with her, and that, prior to his hearing this, he had only half a mind to do so, and that the appellant did not dispute this admission when it was reported by Superintendent Calleja in the presence of the appellant, Inspector Agius and Inspector Attard although he refused to repeat it himself when asked to do so.

(8) That the appellant admitted to Sergeant Fenech that he had three times attempted to rid himself of his wife and that on the third occasion the plot materialised.

(9) That a pair of sandals was found in the appellant's dwelling house.

(10) That the appellant on arrest was found to have on his person the sum of about £62.

(11) That the appellant admittedly had a mistress who at the time when the appellant's wife died was with child, and that the appellant might have been its father.

The prosecution had further alleged that the appellant and the other two accused went in a truck borrowed by the accused from Joseph Schembri to choose the place for the crime a few days before it was committed. No evidence was called by the prosecution to prove this allegation.

The substance of the evidence given by the appellant, which was partially corroborated in respect of the matters referred to in heads 5 to 9 by other witnesses called on his behalf, was as follows:—

(1) That he was in no way a party to the death of his wife.

(2) That he had conversations with Mercieca, Joseph Attard and the other two accused not long before the discovery of his wife's body. He said that his discussions with Mercieca were partly on the subject of sand which he said Mercieca wished to take from the seashore and partly to obtain information from Mercieca about his (the appellant's) wife. He said that his discussions with Joseph Attard were about a man who was in the habit of lurking by his (the appellant's) house, and that he asked Attard if he would help him to identify the man. He said that he spoke to John Connell about their father's estate and to Edward Burnell about some work that he wanted Burnell to do for him at his (the appellant's) house, viz. to dismantle an oven.

(3) That at no time did he offer Mercieca, Joseph Attard or the other two accused any money for the purpose of killing his (the appellant's) wife, or ask them to kill his wife, and at no time did he make any of the alleged confessions to Superintendent Calleja, Inspector Agius or Sergeant Fenech.

(4) That he had borrowed a truck from Joseph Schembri in order to fetch Mercieca for the purpose of obtaining information from him about his (the appellant's) wife, but that he had never been to the scene of the alleged crime either in that truck or at all, until the police took him there after his wife was found dead.

(5) That his wife used sometimes to leave home and not come back until the next day. (According to the evidence of Inspector Agius the appellant had reported to Sergeant Abdilla that on one of these occasions she came back bruised and scratched.)

(6) That suspicious looking persons had been seen outside his house.

(7) That he had received anonymous letters relating to his wife.

Their Lordships desire to state that this summary of the evidence for the prosecution and the appellant is taken from the appellant's case, and was accepted by the respondent's counsel as a fair and accurate summary.

Counsel for the appellant, in his able and lucid argument, submitted that the summing up of the learned Chief Justice was so defective as to deprive the appellant of his right to a fair trial, and that there was a substantial miscarriage of justice. In support of these contentions, he submitted four main heads of criticism of the summing up; he also submitted several subsidiary points of criticism, but these were rather of a supplementary or auxiliary nature, and, in view of the decision to which their Lordships have arrived on the main points, these minor points do not need to be dealt with otherwise than incidentally.

The four main heads of criticism are as follows,

I. That the appellant's defence was excluded from the consideration of the jury.

II. That, while leaving to the jury the question whether the appellant's confessions were voluntary or not, the learned Judge treated the confessions as having in fact been made.

III. That the learned Judge not only did not submit to the jury the question whether, as against the appellant, the prosecution had established beyond reasonable doubt that the deceased woman had been murdered, but he treated the fact of murder as already established, and dealt at some length with the question of the proof of intent to murder.

IV. That the learned Judge did not state strongly enough the burden on the prosecution to prove their case beyond reasonable doubt.

The learned Chief Justice began his summing up by stating that it was the duty of the Court "to make a review of all the points raised by the prosecution and the defence as well as of the evidence that has been brought in favour or against the accused." Before dealing with the case made against each of the three accused, the learned Judge dealt generally with three topics, viz. (a) intent to murder, (b) the necessity of confessions being voluntary, and (c) the right of the accused to the benefit of any doubt. He then dealt in turn with the evidence against John Connell and the evidence against Edward Burnell. Neither of these two accused had given or led any evidence, and in each case the prosecution had proved oral confessions, along with certain other evidence. The learned Judge rightly pointed out that, as provided by Article 630 of the Criminal Code, an admission by one of the accused is evidence only against himself, and has no probative force at all in regard to the other accused. Thirdly, the learned Chief Justice dealt with the case of the appellant, and detailed the evidence for the prosecution, in course of which, in reference to the appellant's illicit relations with a woman called Marie of Cospicua, he mentions the fact of the appellant having given evidence, merely to make a point adverse to him. He then said, "All these are circumstances which you cannot neglect in considering whether there was a motive which

induced the accused Joseph Connell to commit the crime which he commissioned others to perpetrate. Gentlemen of the jury, this is all the evidence."

Thus there was not a word of the appellant's denials in the witness box, or of the evidence for his defence, an omission which their Lordships feel bound to characterise as a contravention of the elementary principles of fair trial and the due administration of justice. The appellant was entitled to have the evidence in his favour submitted to the jury, which would be consistent with the opening statement of the learned Judge. In the opinion of their Lordships this matter, by itself, involves a substantial miscarriage of justice such as justifies the sustaining of this appeal.

Their Lordships do not find that the statement of the learned Chief Justice as to the burden of proof on the prosecution is open to criticism, as suggested in the fourth head by the appellant, but they desire to deal with the second and third heads.

As regards the second head, the language of the learned Judge clearly refers to the confessions as in fact made by the appellant, and does not leave to the jury whether they were satisfied that they had been proved beyond reasonable doubt. It seems that this may be another aspect of the omission to put the case for the defence, which has been already dealt with, but, in their Lordships' opinion, this matter is also open to the same serious criticism.

The third head of criticism is also equally serious, and all the more so because of the very important necessity in a joint trial to keep clearly separated the evidence against each of the accused. The only material evidence against the appellant as to whether the deceased died by accident or by murder, as distinguished from the question of intent to murder, was in the evidence of Sergeant Fenech as to the short conversation he had with the accused, which the appellant denied, and he was entitled to have this matter submitted to the jury, whereas the learned Judge uses such expressions as "the crime which was in fact committed", "the crime committed in his (the appellant's) interest", and, in relation to Marie Cospicua, "although he said these relations stopped some time before the crime." Indeed throughout the trial, and in the reference note of the architect and civil engineer to the Court, after examination of the locus, the fact of murder is assumed, a most regrettable manner of conduct of a trial for murder. Their Lordships find it unnecessary to deal with any of the subsidiary matters referred to by the appellant's counsel, for, in their opinion, the first three main points, with which they have dealt, afford amply sufficient reasons for the advice which they have already humbly tendered to His Majesty that the conviction should be quashed and that there should be no order for a new trial.



In the Privy Council

JOSEPH CONNELL

v.

THE KING

DELIVERED BY LORD THANKERTON