15, 1952

No. 47 of 1951.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

B E T W E E N

LEJZOR TEPER ... Appellant

AND

THE QUEEN ... Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from a verdict and sentence, dated the 7th February, 1951, of the Supreme Court of British Guiana (Hughes, J. and a jury), whereby the Appellant was convicted of arson of a shop with intent to injure or defraud, and was sentenced to penal servitude for seven years. p.162

2. The issue in the appeal is whether the Appellant was properly convicted, or whether his conviction should be quashed because evidence (to which counsel for the Appellant took no objection at the time) was given by a police constable, Thomas Cato, that while he was standing about one and a half blocks from the burning shop, he "heard a woman's voice shouting 'Your place burning and you going away from the fire'; immediately then a black car which was proceeding west along Regent Street turned north into Camp Street; in the car was a fair man resembling accused". p.63

3. The law applicable in all material respects appears to be identical with the law of England. Subject to the provisions of local legislation for the time being in force, the Evidence Ordinance (Laws of British Guiana 1930 c.25) by section 5 provides that the rules and principles of the common law of England relating to evidence shall, so far as they are applicable to the circumstances of the Colony, be in force therein; and the Criminal Law (Offences)

Ordinance (Laws of British Guiana 1930 c.17) by section 4 provides that the rules and principles of the common law of England relating to indictable offences and other criminal matters shall, so far as they are applicable to the circumstances of the Colony, be in force therein.

p.13,11.9-11; p.26,11.35-37; p.27,11.8-10; p.28,11.6-15; pp.68-72; p.73; pp.76-80; pp.81-90; pp.22-25

p.41,11.26-29; p.17,11.8-10; p.42,11.18-22, 31-33; p.21. 11.3-30; p.35, 11.19-21

pp.50-51

pp.35-38

p.22,11.4-12

p.10,11.25-39; p.20,11.35-37; p.57,1.25 p.58,1.37

p.10,11.33-34; p.12,11.36-39; p.58,11.18-19; p.13,11.18-25; p.26,11.11-14;

p.26,11.11-14;

p.63

4. The prosecution sought to prove that the Appellant had insured a shop in which he carried on a dry goods business and which was burned down in the early hours of Monday 9th October, 1950, for more than its value, and the stock in the shop for several times its real value. The prosecution also sought to prove that the Appellant had, after the shop had been duly secured by the Appellant and his assistants at closing time on Saturday 7th October, 1950, returned to the shop and had removed the internal bar securing the back door. Evidence was given for the prosecution that late on Sunday night a club manager occupying the premises above the shop had seen behind the shop a person whom he took to be the Appellant; that a police constable in the early hours of Monday morning had heard sounds from the back of the shop which he eventually thought were made by a rat; that the shop had been set on fire in the back part of the premises; that straw, petrol and packing cases had been used to start the fire; that the petrol had been in a jug of which the broken pieces were found and which had been one of two jugs in a furnished house let to and occupied by the Appellant; that a burnt hatbox found between the packing cases contained the charred remains of the Appellants stock book; and that the above mentioned incident to which the police constable spoke showed that the Appellant was at the scene of the fire when the outbreak was being dealt with by the fire brigade.

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5. The Appellant was entitled to give evidence on oath, but he did not do so. Instead he exercised his right to make an unsworn statement from the dock. p.99,l.4

6. Witnesses were called for the defence. They included one Gerald de Silva who in effect suggested that the police constable saw him and not the Appellant going away from the scene of the fire. The evidence for the defence also included that of a neighbour of the Appellant (Mona Khan) who said that on Sunday 8th October she had a cough and therefore spent the night in the sitting room without sleeping at all, and that she did not hear the Appellant's car go out or come in that night. Other evidence for the defence showed that the Appellant had earlier on the evening of Sunday 8th October been at a band concert with his bicycle on which he left after the concert; and that no one of his witnesses was prepared to put a value on his stock even at retail prices, which was not substantially below the sum for which the stock was insured. pp.133-115 pp.126-127 p.128,ll.6-10 p.121,ll.26-28 p.123,ll.15-17, 31-32

7. The Respondent submits that the evidence relating to the motorcar leaving the scene of the fire was of trifling importance when considered with all the other evidence in the case, and that whether or not it was permissible for the police constable to state what he had heard an unidentified woman say, a reasonable jury properly directed would, on the evidence properly admissible, without doubt have convicted the Appellant.

8. For the purpose of his summing up, the learned trial judge made a full note in which he summarised the relevant evidence both for the prosecution and the defence under various headings. In dealing with motive, he dealt with the value of the buildings and the value of the stock. He then pp.133-161 pp.135-147

referred to the evidence of the destruction of the stock book and other material for checking the value of the stock. The learned judge then dealt with the evidence relating to the Appellant's opportunity to set his shop on fire and to the physical circumstances relating to the condition of the shop, and the fire. According to an unofficial note quoted in the petition for special leave to appeal, the judge referred to the evidence of Police Constable Cato in the following words:

pp.147-161

> Well, that evidence is certainly by no means conclusive but it is some evidence which, if coupled with other evidence might point in one direction. It is so vague that it might be anybody else. It does not necessarily mean it was not the accused. Perhaps the woman Cato heard say that, might have mistaken someone else for the accused. You may think, well, the evidence infers that he was there and that other bit of evidence seems to tie up with other evidence I have heard but it is so vague and uncertain that it does not help me at all in my deliberations.

p.161,11.33-42 The learned Judge's note concluded with a warning to the jury not to ask themselves whether the facts were consistent with the accused's guilt, but whether they were inconsistent with any other rational conclusion. It was only on the last hypothesis that they could safely convict. The circumstances must be such as to produce moral certainty to the exclusion of reasonable doubt. He made a note to explain reasonable doubt and to tell the jury that they might return for further directions.

p.162,11.7-9 9. The jury unanimously found the

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Appellant guilty, after an absence of one hour and fifty minutes.

10. The Appellant made an application to the judge to have a case stated for the opinion of the Supreme Court on fifteen grounds, of which the first was an objection to the admissibility of the evidence of Police Constable Cato, and the second was complaint of misdirection in respect of that evidence. The learned trial judge refused to state a case, holding that the evidence was admissible, and that the police constable was entitled to state what he heard a woman say, because it was a contemporaneous remark forming part of the res gestae.

pp.163-168

pp.173-178

11. The Respondent submits that the learned trial judge was right in so holding. If, however, the evidence is held to be inadmissible, the Respondent submits that when all the evidence is considered this inadmissible evidence could have had a very slight effect upon the mind of the jury. The Respondent's contention is that the evidence of over-insurance, of the Appellant returning to his shop after it had been closed on Saturday 7th October 1950, of the bar of the back door having been put properly in place but having been removed before the fire, of the use of petrol and straw to set the fire, of the presence of someone in the building without any sign of forcible entry, and of the destruction of the Appellant's books, all pointed irresistibly to the conclusion that the Appellant had committed the crime. The Appellant did not give evidence on oath to explain any of the suspicious circumstances. In his statement from the dock he did not seek to deny the evidence that the premises had been deliberately set on fire, but he suggested that they might have been set on fire by one or other of two persons whom he named. In the Respondent's submission the suggestion that either of these persons set the building on fire was demonstrably absurd.

p.104,l.28
p.105,l.5

12. The Respondent therefore submits that this appeal should be dismissed for the following amongst other

R E A S O N S

1. Because the evidence of the police constable, Cato, properly included evidence, as part of the res gestae, of the contemporaneous remark which caused him particularly to notice the passing motorcar and its driver

2. Because the effect of the evidence relating to this motorcar was such as to make Cato's evidence of no great importance, so that if it were inadmissible this evidence caused no miscarriage of justice.

3. Because apart from the evidence of police constable Cato the guilt of the accused was proved beyond any reasonable doubt.

FRANK GAHAN

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