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IN THE PRIVY COUNCIL

No. 51 of 1970

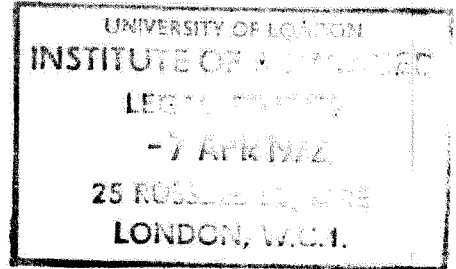
ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN :-

RUPERT ANDERSON Appellant

- and -

THE QUEEN Respondent



CASE FOR THE APPELLANT

Record

- 10 1. This is an appeal by Special Leave in forma pauperis from the Judgment of the Court of Appeal of Jamaica (Waddington, J.A., Eccleston, J.A. and Luckhoo, J.A.) dated the 20th day of March 1970, which dismissed the Appellant's appeal from his conviction for murder in the Port Antonio Circuit Court (Robotham, J. sitting with a jury) on the 3rd day of July 1969 when he was sentenced to death. pp.220-231
- 20 2. The Appellant was charged with murder, in that on either the 23rd or 24th day of December 1968, in the parish of St. Mary, he murdered Huie Foster. p.1
- 30 3. The case for the Crown, which depended entirely on circumstantial evidence, was that the Appellant, motivated by jealousy arising out of his affection for Carmen Walden, way-laid the deceased around midnight on the 23rd December 1968 at the entrance of the Port Maria Hospital, and there chopped him to death. The body of the deceased was found at about 7 a.m. on the 24th December lying near to the side of a house at the

Record

entrance of the roadway leading to the said hospital. The body had some 16 incised wounds consistent with infliction by a machete.

pp.220-225
1.6

4. The circumstantial evidence presented by the Crown is summarised in the Judgment of the Court of Appeal at pp.220 to 225 line 6 of the Record.

pp.157
1.18 - 1.62

5. The defence was an alibi. The Appellant made an unsworn statement from the dock in which he admitted that he was in Port Maria on the night of the 23rd December, but left for home at about 10.30 p.m. and was in fact at home by 11.30 p.m. The statement made by the Appellant is summarised in the Judgment of the Court of Appeal at p.225 line 8 to p.226 line 30 of the Record.

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pp.225 1.8 -
226 1.30

6. In his summing-up the learned trial Judge directed the jury on the law of murder, on onus of proof, on circumstantial evidence and the inferences to be drawn therefrom and then directed them on the facts, reading out, almost verbatim, the evidence of each witness and the inferences to be drawn therefrom.

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pp.163-210

7. The Appellant respectfully submits that in a case of this nature it is not sufficient for the trial Judge merely to read out verbatim the evidence of witnesses. It was his duty to direct the jury on how to evaluate such evidence and also to deal with basic inconsistencies and contradictions in the evidence of the prosecution witnesses and in particular the evidence of Oscar Fairweather, Andrea Walker, Linette Walker and Carmen Walden.

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8. In particular, it is submitted that the learned trial Judge failed to direct the jury that the evidence of Oscar Fairweather, the principal prosecution witness, should be regarded as highly unreliable for the following reasons:-

- (a) He was a Constable who failed to do anything when he heard 'murder, murder' and saw somebody chopping another, but instead went home;

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- (b) He had been drinking at a bar for the last three hours before he witnessed the incident;
- (c) He had made a statement on oath at the preliminary inquiry which was inconsistent with his evidence at the trial;
- (d) His identification of the voice of the accused from three words only "you fucker you", could not be relied on.
- (e) His evidence conflicts with the evidence of Andrea Walker as to what she saw and heard.

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Indeed, the learned trial Judge, far from criticising Fairweather, appeared to justify his conduct by describing him as "a diminutive little man".

p.188 l.12

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9. Although the learned trial Judge gave the jury general directions on circumstantial evidence, he failed to tell them when he dealt with the evidence and the inferences to be drawn therefrom, that it is necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. Indeed, in relation to each inference which could be drawn from the evidence, the trial Judge invited the jury to draw the adverse inference and refrained from drawing their attention to any favourable inference. The Appellant will rely for this purpose on various passages in the summing-up and in particular:-

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- (a) p.179 lines 1 to 9
 (b) p.181 lines 13 to 20
 (c) p.182 line 45 to p.183 line 12
 (d) p.185 line 32 to p.186 line 10
 (e) p.187 lines 29 to 37
 (f) p.189 line 26 to p.190 line 14
 (g) p.193 line 30 to p.194 line 9

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Record

- (h) p.198 lines 1 to 22
 (i) p.206 line 39 to p.207 line 4.

10. It is respectfully submitted that the trial Judge also misdirected the jury in telling them that the penlight with the red rim which the witness Fairweather saw was the same penlight which was found at the Appellant's home.

11. It is submitted further that the trial Judge also erred (as the Court of Appeal later found) in his directions to the jury on the blood found on the piece of cardboard and boots of the Appellant. 10

pp.211-212 12. On the 3rd July 1969, the jury unanimously found the Appellant guilty of murder and he was sentenced to death.

pp.212-219
 pp.220-231 13. The Appellant appealed to the Court of Appeal on the same grounds relied on in this case and on other grounds, but in a judgment delivered by Waddington, J.A. on the 20th March 1970, the Court dismissed the appeal. 20

14. With regard to the ground of appeal relating to the unreliability of the evidence of Oscar Fairweather and the basic contradictions and inconsistencies in his evidence and other prosecution evidence, the Court of Appeal, held, wrongly it is submitted, as follows:-

p.228
 11.5-25 "It is unnecessary to refer specifically to the bits of evidence to which Counsel referred the court. We have given careful consideration to Counsel's submissions, and having examined the evidence, we are of the view that the so-called contradictions, inconsistencies and conflicts in the evidence were more specious than real, and even if they could be said to have been contradictions, inconsistencies or conflicts, they were not, in our view, on matters of such substance as would warrant any special treatment by the learned trial Judge. It is true that the learned trial Judge did 30 40

not give the jury any directions generally as to how they should treat contradictions, inconsistencies and discrepancies, but, as was submitted by learned counsel for the Crown, there is no rule of law requiring any such directions, although it is customary to do so. We do not think that the absence of such directions could have caused any miscarriage of justice having regard to the evidence in the case."

15. In connection with the ground of appeal relating to the blood found on the cardboard and Appellant's boots, it is submitted that the Court of Appeal rightly held that the learned trial Judge misdirected the jury and "should have told the jury that in so far as the cardboard and the boots were concerned there was no evidence implicating the accused". The Appellant respectfully submits, however, that the Court of Appeal were wrong in holding that despite this misdirection no substantial miscarriage of justice had actually occurred, because it cannot be said that a jury properly directed, would without doubt have convicted. In the respectful submission of the Appellant the Court of Appeal, in this connection, erred in saying that the "Crown had presented a very strong case of circumstantial evidence against the Appellant". In fact, the circumstantial evidence presented by the Crown was not such as to raise a prima facie case of murder, or alternatively, if it did so raise, it was so highly unsatisfactory that no reasonable jury, properly directed, could have convicted.

16. The Appellant humbly submits that this Appeal should be allowed and that his conviction and the sentence passed upon him be quashed for the following among other

R E A S O N S

1. BECAUSE the learned trial Judge failed to direct the jury that the evidence

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of the principal prosecution witness, Oscar Fairweather, should be regarded as highly unreliable.

2. BECAUSE the learned trial Judge failed to direct the jury on basic conflicts, contradictions and inconsistencies in the evidence of the prosecution witnesses and in particular the witnesses Oscar Fairweather, Andrea Walker, Linette Walker and Carmen Walden. 10
3. BECAUSE the learned trial Judge failed to tell the jury that it is necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.
4. BECAUSE the learned trial Judge repeatedly invited the jury to draw adverse inferences and repeatedly made prejudicial comments and failed to draw to the attention of the jury those inferences which were favourable to the accused. 20
5. BECAUSE the learned trial Judge misdirected the jury in telling them that the penlight with the red rim which the witness Fairweather saw was the same penlight which was found at the accused's home. 30
6. BECAUSE the trial Judge misdirected the jury in relation to the blood found on the cardboard, and the accused's boots, and the Court of Appeal were right in so holding.
7. BECAUSE the Court of Appeal were wrong in applying the proviso to section 13(1) of the Judicature 40

(Appellate Jurisdiction) Law (No. 15 of 1962) in this case.

8. BECAUSE the Court of Appeal wrongly held that there was strong circumstantial evidence against the Appellant in this case.
9. BECAUSE the evidence presented by the Crown was not such as to raise a prima facie case of murder, or alternatively, that no reasonable jury, properly directed, could have reached a verdict of guilty.
10. BECAUSE the motive for the crime advanced by the Crown was not supported by the evidence and the learned trial Judge ought so to have told the jury.
11. BECAUSE the Judgment of the Court of Appeal is wrong.

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EUGENE COTRAN

No. 51 of 1970

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- and -

THE QUEEN Respondent

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