Privy Council Appeal No. 40 of 1975

Donald Parkes – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

DELIVERED THE 20TH JULY 1976

Present at the Hearing:

LORD DIPLOCK
LORD MORRIS OF BORTH-Y-GEST
LORD SALMON
LORD EDMUND-DAVIES
LORD FRASER OF TULLYBELTON

[*Delivered by* LORD DIPLOCK]

The accused was convicted of murdering a young woman, Daphne Graham. He was tried in the Circuit Court for the Parish of Kingston before the Chief Justice and a jury. The evidence against him was circumstantial and given mainly by Mrs. Graham, the mother of the deceased. The accused and the deceased lived in separate rooms of a house owned by Mrs. Graham. She lived in the adjoining house. According to her evidence Mrs. Graham left her house on the morning of 14th September 1971 at about 7.30 a.m. in order to go to work. She then saw the deceased standing at her room door. Before she left she had seen the accused standing on the verandah on to which the deceased's room opened. As soon as she had got on to the road outside the house she was told something which caused her to return. She found her daughter in her room bleeding from two stab wounds from which she died three days later. She was assisted to her bed and said something to her mother as a result of which Mrs. Graham went out of the room to the yard which was common to the two houses. There she found the accused with a rachet knife in his hand. The knife was at that time closed. Mrs. Graham said to the accused "What she do you—why you stab her?" The accused made no reply nor did he reply when she repeated the question. Mrs. Graham then boxed him twice and seized him by the waist-band of his trousers saying she would keep him there until the police came. The accused then opened the knife and made to strike Mrs. Graham with it. She noticed that it had blood stains on the blade. She put up her arm to defend herself and her finger was cut requiring five stitches. A Mr. Jarrett, the uncle-in-law of the accused, who had by then arrived upon the scene told the accused to hand over the knife to him. The accused did so, and Mr. Jarrett subsequently handed over the knife to the police.

The accused called no evidence. He did not go into the witness box himself, but elected to make an unsworn statement from the dock. In the course of the statement he said that he had just woken up and gone out to wash his face in the yard when Mrs. Graham approached him and held him by the waist. In substance, he confirmed Mrs. Graham's account of what was then said and explained that he said nothing in reply because he did not know what she was speaking about. He denied that he had stabbed at Mrs. Graham and accounted for the cut on her finger by saying that she had searched his pocket for the knife, had found the knife in it, opened it and said that she was going to stab him with it because he had stabbed her daughter. He took the knife from her and while he was doing so she cut her finger with it.

After a long and detailed summing-up by the Chief Justice, the jury brought in a verdict of murder against the accused.

On appeal to the Court of Appeal of Jamaica, the principal point argued on behalf of the appellant appears to have been that the Chief Justice was wrong in instructing the jury that the failure of the accused to reply to the accusation twice made against him by Mrs. Graham that he had stabbed her daughter, coupled with his conduct immediately after that accusation had been made, were matters from which the jury could, if they thought fit, draw an inference that the accused accepted the truth of the accusation. Before their Lordships, however, equal reliance was placed on a submission that in his summing-up the Chief Justice had mis-stated to the appellant's prejudice the effect of the evidence of Mrs. Graham that she had seen the accused on her daughter's verandah before she, Mrs. Graham, left the house on the morning of the murder. There was also a general submission that taken as a whole the evidence against the accused was insufficient to justify a conviction.

The Court of Appeal dealt very shortly with the two latter submissions. Their Lordships propose to emulate their brevity. The appellant's contention is that Mrs. Graham's evidence as recorded on the shorthand was equivocal as to how long it was before she left that she saw the accused on her daughter's verandah, whereas the learned Judge in reminding the jury of her evidence had stated unequivocally that she said that she had seen him there when she was actually leaving the premises. In view of the accused's denial in his statement from the dock that he had been out of his room at all before Mrs. Graham approached him and seized him by the waist-band of his trousers, minutes do not matter. Their Lordships agree with the Court of Appeal that this minor error in the summing-up, if it was one, can have had no influence on the jury's verdict. The further submission that there was insufficient evidence was based on absence of confirmation by any other witness of Mrs. Graham's evidence that when the accused opened the flick knife to stab her there were already blood stains on it; but if, as they were entitled to, the jury accepted the evidence of Mrs. Graham on this and the other matters to which she had deposed the circumstantial evidence against the accused was overwhelming.

In support of the argument that the accused's failure to answer Mrs. Graham's accusation that he had stabbed her daughter was not a matter from which the jury were entitled to draw any inference that the accused accepted the truth of the accusation the appellant relied on the following passage in the Judgment of this Board in the case of *Dennis Hall v. The Queen* [1971] 1 W.L.R. 298 at p.301:

> "It is a clear and widely known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. A fortiori he is under no obligation to comment when he is informed that someone

else has accused him of an offence. It may be that in very exceptional circumstances an inference may be drawn from a failure to give an explanation or a disclaimer, but in their Lordships' view silence alone on being informed by a police officer that someone else has made an accusation against him cannot give rise to an inference that the person to whom this information is communicated accepts the truth of the accusation."

As appears from this passage itself, it was concerned with a case where the person by whom the accusation was communicated to the accused was a police constable whom he knew was engaged in investigating a drug offence. There was no evidence of the accused's demeanour or conduct when the accusation was made other than the mere fact that he failed to reply to the constable. The passage cited had been preceded by a quotation from a speech of Lord Atkinson in *Rex v. Christie* [1914] A.C. 545 at 554, in which it was said that when a statement is made in the presence of an accused person

> " He may accept the statement by word or conduct, action or demeanour, and it is the function of the jury which tries the case to determine whether his words, action, conduct or demeanour at the time when the statement was made amount to an acceptance of it in the whole or in part ".

In the instant case, there is no question of an accusation being made by or in the presence of a police officer or any other person in authority or charged with the investigation of the crime. It was a spontaneous charge made by a mother about an injury done to her daughter. In circumstances such as these, their Lordships agree with the Court of Appeal of Jamaica that the direction given by Cave J. in *R. v. Mitchell* (1892) 17 Cox C.C. at p.508 (to which their Lordships have supplied the emphasis) is applicable:

> " Now the whole admissibility of statements of this kind rests upon the consideration that if a charge is made against a person in that person's presence it is reasonable to expect that he or she will immediately deny it, and that the absence of such a denial is some evidence of an admission on the part of the person charged, and of the truth of the charge. *Undoubtedly, when persons are speaking on even terms,* and a charge is made, and the person charged says nothing, and expresses no indignation, and does nothing to repel the charge, that is some evidence to show that he admits the charge to be true."

Here Mrs. Graham and the accused were speaking on even terms. Furthermore, as the Chief Justice pointed out to the jury, the accused's reaction to the twice-repeated accusation was not one of mere silence. He drew a knife and attempted to stab Mrs. Graham in order to escape when she threatened to detain him while the police were sent for.

In their Lordships' view, the Chief Justice was perfectly entitled to instruct the jury that the accused's reactions to the accusations including his silence were matters which they could take into account along with other evidence in deciding whether the accused in fact committed the act with which he was charged.

For these reasons their Lordships have humbly advised Her Majesty that the appeal be dismissed.

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In the Privy Council

DONALD PARKES

v.

THE QUEEN

DELIVERED BY
LORD DIPLOCK

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