Harold White Vs. the King

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Court : Privy Council

Decided On : Jun-06-1945

Reported in : AIR1945PC181

Judge : Lord Porter, Lord Goddard, Sir Madhavan Nair &Amp; Sir John Beaumont

Appeal No. : Privy Council Appeal No. 80 of 1944 (From Jamaica)

Appellant : Harold White

Respondent : The King

Advocate for Pet/Ap. : Frank Galian for Appellant; S.A. Kyffin for the King. Solicitors for Appellant, Gard Lyell and Co.; Solicitors for the King , Burchells.

Judgement :

Sir John Beaumont:

This is an appeal by special leave from the judgment of the Court of Appeal at Jamaica, dated 6th January 1944, dismissing the appellant's appeal on his conviction before Watts J. and a jury at Sav-la-Mar on the Northern Circuit for the Parish of Westmoreland, Jamaica, on 26th November 1943, for the murder of Lamton Woolcock on 2nd September 1913.

The appellant was arraigned on indictment before Watts J. with the murder, on 2nd September 1943, of Lamton Woolcock in the Parish of Westmoreland. He

pleaded "Not Guilty" and a jury of 12 men was sworn to try the case. The trial proceeded from 22nd to 26th November 1943, when the appellant was found guilty and convicted and sentenced to death. He appealed to the Court of Appeal in Jamaica, and on 6th January 1944, his appeal was dismissed without any reasons being given by the Court. At the conclusion of the argument, before this Board their Lordships announced that they would humbly advise His Majesty that the appeal should be allowed and the conviction quashed, and that they would state their reasons in writing at a later date. This they proceed to do.

According to the evidence of the widow of the murdered man, he left his house, in accordance with his usual custom, at about 3.30 p.m. on 2nd September to go to a piece of land called "Confusion" on which he grew cocoanuts and kept cattle, and which was rather less than half-a-mile from his house. The deceased usually returned to his home at about 5 P.M. and when he did not come on the day in question his wife went to look for him, and at about 5.45 P.M. she found his dead body lying on. "Confusion." from the wounds on the body, which included 7 incised wounds, it is obvious that the man had been brutally murdered. This evidence has been accepted by both parties and makes it clear that the murder must have been committed at some time between 3.45 P.M. and 5.45 P.M. on 2nd September.

There were found close to the body 2 machettes or cutlasses, one of which (Ex. 1) was stained with human blood and was identified as having belonged to the deceased. The other (ex. 4) was identified by a witness -Distin-who will be referred to more particularly later, as belonging to the accused. There were also found, on the next day, close to where the body lay, the husks of 26 cocoanuts of a kind similar to those grown by the deceased.

The principal witness for the Crown was one, Clifton Williams, aged about 21, apprenticed to a tailor at Sheffield, who stated that he saw the accused at about 7 P. M. on 1st September, when the accused asked him to sell 25 cocoanuts for him. For certain reasons the accused said he would not carry the cocoanuts to Sheffield Square where Williams worked, but would carry them to the Springvale crossroads, and the two men arranged to meet there about the same time the following evening. Williams said that on the next day, about 1 P.M., he saw the

accused on a track leading from Springvale to Sheffield not very far from "Confusion," and that he was running with a machette in his hand. Later that evening, that is, on the day of the murder, Williams said that he went to the place where the accused and he were to meet at about 7 P. M. and found the accused in a, cemetery behind a tree. The accused told him he had brought the cocoanuts which proved to number 26 husked nuts. Williams put the cocoanuts into a basket, took them to Sheffield and sold them to Mrs. Alice Campbell for a sum of 3s. He returned with the money and handed it over to the accused who gave him 6d. and said to him, "I got in a trouble to fart, for I kill somebody." On being asked by the witness, "Who you kill man?" the accused said "Then you nuh hear?" to which the witness replied, "Oh, Lammie" meaning the deceased, of whose death he had heard earlier that evening. The witness then said that the appellant said that he was going to have the last time with Winnie, and made a threat as to what he would do if he heard anybody say anything or ask about it.

It is necessary to notice the evidence of some other important witnesses. Amos Smith, a Police Constable, who was on duty in Sheffield Square on 2nd September said that around 5 minutes past 3 P. M. he saw the accused at Sheffield Square wearing khaki pants and a khaki shirt. The accused left the Square and about half an hour later came back wearing white trousers and a print shirt. The accused and a witness-Winifred Barrett -have explained why the accused changed his clothes. Smith then continues: "I left him about half-past four, pretty near 5 o'clock and went home." This evidence seems to suggest that the witness had seen the accused in the Square from 3.80 until the witness left at near 5 o'clock and, if that evidence is true, it is clear that the accused could not have committed the murder. In his summing up the learned Judge told the jury that Smith said he saw the accused at half-past 8 and last saw him from 4.30 to 5 P.M., leaving the jury to infer that during the vital period from half-past 8 to 5 P.M. the accused was not seen by the witness. Their Lordships think that this is not the effect of the evidence which does not suggest that the accused left the Square after 8.30 and whilst the witness was present. The learned Judge failed to point out to the jury that Smith as a police constable was a man whose duties would require him to appreciate the importance of noting times correctly and that as a witness for the prosecution his evidence could not be lightly disregarded, nor did

he allude to the difficulties in the way of holding that the accused could have left the Square and committed the murder between 3.30 and 5 P.M. Sheffield Square is about half-an-hour's walk from 'Confusion,' and it would have been necessary for the accused to get to 'Confusion,' to murder the deceased, collect and husk 26 cocoanuts, take them to and conceal them in, the cemetery where he is said to have met Williams later (since he could not have removed the cocoanuts after the alarm as to the murder had been given and people collected on the site), wash away the blood which the murderer must almost certainly have got on to his hands and clothes, and then return to the Square without any witness having observed him performing any one of these operations. Moreover, it would be strange if the accused, a local man, minded to steal the deceased's cocoanuts, should have effected his purpose at a time when the deceased, according to the evidence of his widow, was in the habit of being on 'Confusion.' If it be suggested that the theft may have taken place earlier in the day, then the difficulty arises that no reason is shown for the accused's return to 'Confusion' in the afternoon when the murder must have been committed.

The next witness to notice is the detective -Woolaston. He said that he found two machettes (Exs.1 and 4) on 'Confusion'; that he asked the accused if he had a machette; and he said he had but had loaned it to his cousin Volney White. The witness sent for the machette and recovered it from Volney White and that machette, which is Ex. 7, the accused claims to be his only machette. According to Woolaston it is more worn than Ex. 4. Woolaston also collected some clothes at the house of the accused and sent them to the pathologist, whose certificate stated that no human blood was found upon them. This fact is ignored by the learned Judge in his charge to the jury, though there were two pools of blood by the body, and it would have been very difficult for the murderer to have avoided getting some blood on his clothes.

The next witness is Distin who identified Ex. 4, as being the machette belonging to the accused. He said that the accused had often come to his tannery with this machette, which he recognised because it had a broken handle and because it was much worn, its length being reduced. The learned Judge observed that Ex. 4 had a chip on the handle. It is most unfortunate that ex. 7 was not put to this

witness. His reasons for being able to distinguish with certainty Ex. 4 as being the machette of the accused are not convincing, and he might well have hesitated if he had been asked to explain why he was certain that Ex. 7 was not the machette of the accused. In his summing up the learned Judge asked the jury whether they thought Distin had come there with the deliberate object of deceiving them. This is a plain misdirection, since it is obvious that Distin may have been an honest witness who was mistaken in his identification of the machette.

The next witness to notice is Cyril Gooden, a butcher, living at Sheffield and a friend of the accused. He said that he saw the accused on the 2nd September around 4 o'clock in the Square. This corroborates Smith's evidence as to where the accused was at that time. The witness then says that he saw the accused on 3rd September at the Chinese shop, which is presumably in the Square, at about 10 o'clock in the morning. The accused complained that he and Gooden were unpopular because they had handed over a man named Clifford Williams to the police and that, because of this unpopularity, a detective had searched his (the accused's) house though the accused said he had done nothing. After some further conversation the witness alleged that he said to the accused: "Harold, I would like to know how soon Lammie got dead" and the accused replied " Really, what happen, after I kill him I sorry for him." Later that day witness again met the accused at Zada Blackwood's house where they seem to have sung a hymn which, it is suggested, implies that the accused was guilty of the murder. Zada Blackwood was called by the accused and she said that the accused said that they were accusing him of having killed Woolcook but that he would " like to know or see the son of a bitch that kill Lamton."

The accused gave evidence on his own behalf. He denied the whole of the evidence of Clifton Williams and the alleged conversation with Gooden.

The evidence discussed above is the most material in the case. The learned Judge in his summing up told the jury that it was a case of circumstantial evidence, and he explained to them the nature of such evidence, and at the conclusion of his charge he told them that if they found any gaps in the chain of evidence placed before them then the prosecution had failed to accomplish what it had undertaken

to do, and the accused must be acquitted. But the learned Judge omitted to point out to the jury that the so-called chain consisted almost entirely of gaps. No one saw the accused going to Confusion before the discovery of the murder; no one saw him removing or husking cocoanuts on Confusion, no one saw him removing them to the place where he is said to have handed them over to Williams, and no one heard him threaten the deceased. The evidence of Williams, apart from the direct evidence of a confession is consistent with the accused having gone to 'Confusion' on the morning of 2nd September, stolen 26 cocoanuts and concealed them in the cemetery to be handed to Williams later in the day, and that it was on his return from such an expedition that Williams saw him at 1 P.M. Even if the accused's machette was found on 'Confusion,' that would not establish his presence there at the crucial time. When the evidence is analysed the case appears to rest, not on circumstantial evidence, but on the direct evidence of the confessions alleged to have been made to Clifton Williams and Gooden. Gooden's evidence as to the confession is vague and confusing. Apparently, at one and the same time the accused was complaining that he was being wrongly suspected because of local enmity, and saying that he wished to know who had committed the murder, and then that he was sorry for the man after he had killed him. The alleged confession to Clifton Williams is more detailed and is expressed in the sort of language which one might expect a man like the accused to use. But the learned Judge did not point out to the jury that Williams was in a dangerous position, since he had sold cocoanuts which appear to have been stolen from the deceased's

land on the day of the murder, and he therefore had a strong motive for implicating someone else in the murder. The jury should have been warned that it would be dangerous in the extreme to act on a confession put into the mouth of the accused by a witness so situated and uncorroborated from any other source. Their Lordships would observe further that even if the statements attributed to the accused by Williams and Gooden were in fact made, they seem to be the boastings of a vain and foolish man anxious to acquire notoriety by claiming responsibility for a murder which had excited much local interest, rather than serious confessions of guilt. Neither statement explains how, why or when the murder was committed, or mentions a single fact which would have been within

the special knowledge of the murderer. The jury should have been cautioned that confessions are not always true, and that they must be checked, more particularly in a murder case, in the light of the whole of the evidence on the record in order to see if they carry conviction. The jury were given no guidance of this nature.

There is one other matter to be noticed which, indeed, Mr. Gahan in his argument on the appeal placed in the forefront of his case, and that is that questions as to his character were improperly put to the accused. Under the Jamaica Evidence Law, 1938, chap. 468, S. 9, an accused person is a competent witness in his own defence, but sub-s. (f) provides that he shall not be asked any question tending to show that he is of bad character except in circumstances which do not arise in this case. In the course of his examination, counsel for the Crown put it to the accused that he lived by stealing. This question had no relevance to the case and was apparently made in order to suggest that the accused was a man of bad character and, therefore, likely to be guilty of the offence charged, and the question was obviously most improper. It is to be observed, however, that the question was quite general; no objection was taken to it by counsel for the accused, and the point does not seem to have been pressed. If, apart from this matter, the evidence for the Crown had been so cogent that the board felt that any jury would have been bound to convict, and that no injustice had been done by the putting of this improper question, they might have thought it unnecessary to interfere. The Court of Appeal in Jamaica, under S. 16, sub-s. (1), Court of Appeal Law, is empowered to adopt such a course. In view, however, of the weakness of the evidence in this case it is impossible to be confident that the jury were not in any way influenced by this question. However, apart altogether from this difficulty, their Lordships are of opinion that in view of the errors and omissions in the summing up the case of the accused was never properly put to the jury and their minds were never directed to the real issues in the case. In these circumstances their Lordships are clearly of the opinion that the conviction cannot stand, and as already stated have humbly advised His Majesty that this appeal should be allowed and the conviction and sentence quashed.

Appeal allowed.