Privy Council Appeal No. 40 of 1995

Michael Gayle *Appellant*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.
Delivered the 12th June 1996

Present at the hearing:-

Lord Keith of Kinkel
Lord Griffiths
Lord Jauncey of Tullichettle
Lord Steyn
Sir Iain Glidewell

*[Delivered by **Lord Griffiths**]*

On 22nd May 1990 the appellant was convicted of the murder of Mary Smith on the night of 3rd and 4th April 1988. The Court of Appeal of Jamaica dismissed the appellant's application for leave to appeal, and he now appeals with special leave against that decision of the Court of Appeal.

The facts.

The deceased, Mary Smith, was a widow aged seventy eight who lived on her own in a two bedroom apartment on the ground floor of a house in the village of Hatfield. Audrey Smith, a cousin of the deceased, had for the last five years visited the deceased twice a day, once in the morning to tidy the house and to help prepare breakfast, and once in the afternoon. On the afternoon of 3rd April she left the deceased's house at about 4.30 p.m. at which time the deceased was fit and well and alone in the apartment. When Audrey Smith returned to the house at about 6.00 a.m. the following morning she found the body of the deceased in a water tank outside the house, and the door of the house ajar.

The deceased's bedroom had been ransacked and a lock broken on a locker, but there was no evidence that any property had been stolen. There were signs of a struggle, and traces of blood were found in the bedroom and outside the house, which together with impressions in the earth between the front door and the water tank indicated that the deceased's body had been dragged by that route to the water tank. The post mortem report revealed that the deceased had suffered a number of abrasions about the head and face and had been killed by strangulation before her body entered the water tank.

The police found fingerprints on two of the glass louvres of the bathroom window at the rear of the premises. There were fragments of glass on the window sill inside the bathroom. The window was some eight feet above the ground and marks were found on the window sill that corresponded to a ladder leaning against an adjacent tree. Audrey Smith said that she had washed and polished the window about fourteen days before the murder. A clear impression of the appellant's right thumbprint was identified on one of the glass louvres. Audrey Smith also gave evidence that although she knew the appellant she had never seen him visit the house. There were no other signs of a forced entry to the deceased's apartment.

From this evidence the prosecution invited the jury to conclude that whoever murdered the deceased had broken into her apartment through the bathroom window at the rear of the house and left their fingerprints on the glass louvres in so doing. And, as the evidence showed it was the appellant's thumbprint on the bathroom window, they could safely conclude that he was the murderer.

The appellant made a statement from the dock in which he said he had been stabbed in the chest on 3rd April and had come out of hospital on 4th April. No other evidence was called on behalf of the defence, and no explanation offered for the presence of his thumbprint on the window.

The jury, from their finding of a verdict of guilty, must have been satisfied by the forensic evidence that the appellant's thumbprint was correctly identified on the window and Mr. Blake has not sought to challenge that finding. Nevertheless he has submitted that, despite the fact that the appellant's counsel did not make a submission that there was no case to answer at the end of the prosecution case, the judge should have stopped the case and discharged the appellant on the ground that no reasonable jury could convict on the prosecution evidence. This submission did not form one of the grounds of the appellant's application for leave to appeal to the Court of Appeal, but it is apparent from the

following passage in the judgment of the Court of Appeal that it would not have succeeded if it had been made:-

> "There is no evidence in the case to indicate that the applicant had legitimate cause to visit the home of 78 year old Mrs. Smith. There is nothing to suggest that he visited her home at any period in the past and the evidence that the blades were dusted and polished some two weeks before must give rise to the inference that the fingerprint found thereon was placed there after they were cleaned. The condition of the home on the morning of the 4th April 1988 indicated that an unwarranted invasion of the premises had occurred in the interval between the departure of Audrey Smith on the 3rd and her return on the 4th. This evidence coupled with the isolation and identification of the fingerprint as that of the applicant was presumptive evidence of the applicant's involvement in the crime. His denial is challenged by this evidence. The fingerprint is evidence on which the jury could act in coming to a verdict adverse to the applicant."

Their Lordships find no error in this reasoning of the Court of Appeal, and are satisfied that the judge was right to allow the case to go to the jury.

Furthermore, it is not the function of the Judicial Committee to act as a second Court of Criminal Appeal. Matters such as the weight properly to be given to evidence, and inferences that may or may not legitimately be drawn from evidence and whether a presumptive or final burden of proof has been discharged, are to be determined by the Court of Appeal in the local jurisdiction, and save in exceptional circumstances the Judicial Committee will not enter upon a rehearing of such issues (see *Muhammad Nawaz v. The King-Emperor* (1941) 68 I.A. page 126, *Badry v. D.P.P.* [1983] 2 A.C. 297 at pages 302, 303 and *Buxoo v. The Queen* [1988] 1 W.L.R. 820 at page 822). Although leave to appeal was given in the present case, appellants should not be encouraged to think that it is likely to be repeated in similar circumstances in future cases.

Finally complaint was made of a passage in the summing up in which the judge said:-

> "Now, Detective Inspector McGhie told you that when he examined the window sill inside he saw fragments of broken glass, small bits of broken glass. He said he formed the view that the blades had been removed from the louvre frame and replaced and these fragments went there on the window sill at that time."

In fact Inspector McGhie did not give that as his opinion. He was clearly about to do so, but the judge stopped him from giving it. However the whole basis of the prosecution case was that the appellant had broken in through the bathroom window and the factual evidence was there to support it. This one slip in an otherwise full and fair summing up cannot possibly have affected the outcome of the trial.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed.