

J A M A I C A

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 137/72

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BEFORE: The Hon. Mr. Justice Fox, Presiding,
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Hercules, J.A.

JOSCELYN MARKS v. REGINA

Mr. W. L. Morris for Crown

Dr. A. Edwards for Applicant

1st March, 1973

FOX, J.A.:

This is an application for leave to appeal against conviction of murder in the Hanover Circuit Court on the 20th of July, 1972. At the trial no witness was produced by the crown to say that the applicant was seen to have inflicted the injuries which caused the death of the deceased. The crown endeavoured to prove the guilt of the applicant by way of circumstantial evidence. This evidence consisted of conduct on the part of the applicant on Monday, 15th of November, 1971, on Thursday the 18th of November, and on Sunday the 21st of November when the deceased was killed.

The chief witness for the crown was Lorraine Crooks. She said that she once lived with the applicant as man and wife and bore him a son who was four years old at the time of these events. After the birth of this boy, the applicant went to work in America. During his absence she became pregnant. When he returned her condition was apparent to him. This displeased him. He showed his displeasure by assaulting her. At the time of the events relating to this case, that second child was born and Lorraine Crooks had moved to live at Campbell Hill, near to the home of her mother.

On the early morning of the 15th of November Lorraine Crooks said that she was awakened by her door being torn off by the applicant. A quarrel then took place between them in which the applicant assaulted her and also made statements to the effect that he had come there at that hour of the night for "Mr. Miller" (the deceased) because "Mr. Miller coming there before day". Lorraine Crooks said that the applicant remained there at her

house until dawn. When he was leaving he said, "If I don't hang this year I not hanging again." This evidence of Lorraine Crooks was substantiated in part by the evidence of Edward Walcott, the occupant of an adjoining room in the house. Walcott, however, did not hear the applicant say anything about hanging or about having come there "for Mr. Miller."

On Thursday the 18th of November Lorraine Crooks was working at the farm of Mr. Miller, the deceased, when she said that the applicant came there. He had a cutlass with him. She called out loudly to Mr. Miller and the applicant ran away. On Sunday morning the 21st of November the deceased came to the home of Lorraine Crooks at about 10.00 a.m. to assist in wattling her house. He remained there until about 3.30 p.m. During this period the applicant was seen by Lorraine Crooks and her sister, Cordel Clarke. He did not come to the house but he remained in the bushes nearby. Both witnesses said they saw him with a machete in his hand standing up in the bushes and overlooking the activity which was taking place at the house.

A witness, George Brown, gave evidence of having seen the applicant about 11.00 o'clock that Sunday morning on Cove Road near to the spot where the body of the deceased was discovered at about 4.30 p.m. on that Sunday. This witness said that at that time the applicant was carrying a machete.

The deceased was last seen alive by Cordel Clarke who accompanied him from the house to the road at about 3.30 p.m. on that Sunday. She saw him set out on the road on his bicycle. The body of the deceased was discovered by a fisherman, Dennis James, at about 4.30 p.m. on the Sunday. The body was in a trench on the left side of the road going towards Cove, about three chains away from the spot where the witness, George Brown, had seen the applicant earlier in the morning. The deceased had received several wounds with a sharp cutting instrument. His bicycle was over the bank of the road.

Levi Stanley, a Detective Constable stationed at Sandy Bay Police Station, went to the scene where the body was discovered. Later that same day, in the course of his investigations, the detective spoke with the applicant, and asked him where he was that Sunday. The applicant said that he was in the village of Lances Bay from the morning up to

about 9.00 a.m. He returned to his home at about 11.00 a.m. and was engaged in playing dominoes at his home from that time up to the time he heard of Mr. Miller's death. The applicant gave the names of the persons with whom he had been playing. These included John Johnson and Eric Dickson, fishermen, of Cousins Cove.

These two witnesses gave evidence at the trial, the effect of which was to contradict the statement of the applicant. They said that when they went to the home of the applicant in the afternoon of the Sunday, the applicant was not there. They remained there playing dominoes. The applicant came home at about 4.30 p.m. from the direction in which the body of the deceased was later found. He was carrying a machete and was perspiring. He went into his house, put down his machete and joined the playing of dominoes. Shortly after that the announcement was made of the discovery of the deceased's body on the road.

Upon examination by the Forensic Analyst traces of human blood was discovered on the machete of the applicant, upon his shirt, and upon a sheet and a spread which were on his bed.

The essential contention on appeal was that this evidence was not sufficient to give rise to a sure inference that the accused was guilty. Dr. Edwards accepted as correct the definition of circumstantial evidence which was given by the learned trial judge in his summing up in this passage:-

".....a body of facts may be of so conclusive a character as to warrant a firm belief that there is no other way in which those facts can be accounted for other than the basis that the accused is the man, no other way you can account for those facts. The thing is so, the coincidences are too many, the chain of circumstances is too strong, pointing to the guilt of the accused for any other rational explanation to be given on the facts put before the Jury."

At other places in the summing up the learned trial judge also gave satisfactory definitions of what constituted circumstantial evidence. Dr. Edwards said that the evidence did not point conclusively to the guilt of the accused. We cannot agree. It is true that taken by themselves separately the evidence of the events on the three relevant days would not be sufficient to establish the guilt of the applicant, though, in respect

of this, a qualification should be added that the evidence on the Sunday was perhaps sufficient for that purpose. However that may be, we are of the view that when all the evidence is looked at it was capable of pointing to the guilt of the accused beyond a reasonable doubt. The jury was properly directed in this respect and there is no substance in the contention which has been made before us.

In coming to this conclusion, we have not overlooked the submission that the evidence of Lorraine Crooks as to what occurred on the 15th of November is seriously questioned by the evidence of Edward Walcott as to two critical matters which Crooks alleged, namely, that the accused said he had come there for Mr. Miller and, secondly, that he had said, "If I don't hang this year, I not hanging again." In our view, the evidential situation did not go beyond one in which, by virtue of the advantage they had of seeing and hearing the witnesses, the jury could determine the **truthfulness** or otherwise of the evidence they had heard, and in doing so, accept the damaging testimony given by Lorraine Crooks. Accordingly this application is refused.