Judgment

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 161/90

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

R. v. CALVIN HUNTER

Dennis Daly, Q.C. and Paul Ashley for the Applicant

Mrs. Lorna Errar-Gayle, Assistant Director of Public Prosecutions for the Crown

May 26, 27 & June 30, 1992

WOLFE, J.A. (AG.)

This is an application for leave to appeal against convictions for murder in the St. Mary Circuit Court on 15th November, 1990 before Ellis, J and a jury.

This tragedy, to put it euphemistically, occurred on the 23rd day of August, 1988. All the principal dramatis personae lived at the home of Mrs. Miriam Brown Hunter, the estranged wife of the applicant, at Tower Isle in the parish of St. Mary.

The principal witness for the prosecution Mr. Clinton Nelson related a narrative which indicates that on Monday 22nd day of August, 1990 at about 8.30 p.m. he along with all the persons who occupied the house at Mrs. Hunter's premises were at home. Upon a request by the applicant he went and purchased a half Q of rum and two Craven A cigarettes. On his return from the shop the applicant repaired to a nearby wall where he and the witness engaged themselves in what might be referred to as small talk, until about 11.00 p.m. when the witness and the applicant retired to their respective rooms.

Sometime later that night the witness heard and recognized the voice of Miss Yvonne Green calling out "murder, murder, Clifton help come, help me. Him have knife and gun." He opened the top of his window and observed that Yvonne's door was half opened and there was the sound of wrestling in the room and "glass breaking up and things." After about some six to seven minutes all became quiet and then he heard the voice of Dalbert Green a child aged 4 years, crying and going towards the back of the house.

About some ten minutes after he heard footsteps outside. He half opened his window and observed the shadow of a person passing by. Ten minutes after the shadow had passed he heard a knock on his door. He enquired as to the identity of the knocker and he heard the applicant answer "Me, Me, Calvin." He enquired as to the purpose of the visit. The applicant said he wished to speak to him. He opened his door, whereupon the applicant "stuck him up" at gun point. He observed that the applicant had blood on his clothes. The applicant said:

> "I kill Yvonne already and me a go kill Miss Mirrie now."

Mr. Nelson entreated him in the following terms "No you can't do it." The response of the applicant "You nuh fi seh nothing". He was also armed with a spring blade and forced Mr. Nelson into the house and ordered him to sit on the floor. Mr. Nelson obliged. After about five minutes he was ordered by the applicant to stand up and was pushed by the applicant towards Miss Mirrie's room. Miss Mirrie was awakened. She opened her door and the applicant pounced upon her and began to batter her head with the spring blade. Miss Mirrie fell to the ground as if dead. The witness ran from the house, leaving Hunter, and went to his room. He dressed himself. Whilst still in his room he saw Hunter leaving Miss Mirrie's room. Hunter who was still armed with the gun,

threatened him that "if I talk him going to kill me" and "If I made him get arrested him going to make him friend kill me." Hunter threw the gun into Yvonne's room. The children of both Yvonne Green and Miss Mirrie were crying. Mr. Nelson left for the Prospect Police Station where he made a report. He later returned to the premises with the police.

On arrival at the premises, along with the police he entered Miss Mirrie's room and saw her covered all over in blood and lying on the floor. She appeared to be dead. She was removed from the room and taken to the hospital. On his return from the hospital there were a number of policemen present. Along with the police he entered Yvonne's room where her body was discovered. A search was conducted and in a pond some distance away from the house the dead body of Dalbert Green was discovered.

Under cross-examination the witness admitted that about some three weeks before the incident Miss Mirrie had lost a ram goat and that both Miss Mirrie and the deceased Yvonne Green had accused him of stealing the goat. He denied that he had any quarrel with Miss Mirrie and the deceased Yvonne Green about the missing goat. He also denied telling the applicant that he, the witness, was not going to jail over the goat. His only discussion with the applicant about the goat was to this effect, "Only what I tell him seh. I tell him say the goat missing and dem say is me or him can take the goat."

Reginald Roberts, a J.U.T.A. bus driver and a neighbour of Mrs. Miriam Brown-Hunter, testified that at about 2.00 a.m. on August 23, 1988 he was awakened by the barking of his dogs. He looked through his window and observed his dogs acting strangely. He turned on his outside lights and kept observing his dogs as they ran around the place. At about 4.00 a.m. he heard shouts of murder coming from the back of Mrs. Brown-Hunter's house. The

voice was that of a female. He summoned the police and kept observing and after a little while he saw the applicant walk from the back of the house, enter his room, turn on the lights, come back out of the house and again go towards the back of the house. This was about 5.30 p.m. Sometime later that morning about 6.00 a.m. he saw Clifton Nelson walking from the back of the house to the applicant's door. He Nelson, then returned to the back of the house and subsequently returned to the applicant's door. He called the applicant and asked him if he was not coming and then left towards the gate, and went out of sight.

Miriam Brown-Hunter, a J.U.T.A. taxi driver, recounted an incident which occurred on the early morning of August 23, 1988 when she was attacked by the applicant, with a spring blade, in her bedroom. She lost consciousness. When she regained consciousness, she was in the St. Ann's Bay Hospital where she remained for three weeks.

Detective Sergeant White of Area 3 Headquarters in St. Mary visited the scene of the crime sometime after 7.00 a.m., having received a report from Prospect Police Station. On his arrival at the premises he saw the applicant, Clifton Nelson and Cpl. Douglas of Prospect Police Station. In the presence of the applicant, Douglas told him that "a woman was inside the house dead and Miss Brown was in her room unconscious and a little boy who usually sleep with the woman, that was dead, was missing". The applicant said nothing. Det. Sgt. White asked him what had happened, whereupon he said "It seem like thief come in kill Yvonne and beat up Miss Brown."

Det. Sgt. White entered a room to the back section of the house and saw the dead body of Yvonne Green. The body had multiple wounds all over. The room was ransacked. Blood was spilled over the room and "everything mash up." A shine firearm was lying on the floor. From that room he entered a passage where he observed

pools of blood on the floor as also a spring blade which had blood on it. In a nearby room Mrs. Brown-Hunter was seen lying on a bed. She had blood all over her face. There was blood on the spread and bed. She was removed from the room and sent off to the hospital. There was no visible sign of forceful entry to the room of Yvonne Green or the room of Mrs. Brown-Hunter.

A search of the applicant's room, in his presence, led to the discovery of blood-stained clothing in the trunk of a bed. All the items were wet, as if recently washed. To account for their condition the applicant explained that he had been wearing the clothing while sweeping the yard and "sweat and rain dew down on him." All the articles were taken into police custody, as well as the firearm. The accused was detained. Det. Sgt. White testified that when he saw the applicant, he was suffering from a wound to his left little finger. This was a freshly sustained wound which was still bleeding. The applicant explained that he had sustained the injury some days before whilst he was cutting wood.

A search on a nearby property led to the gruesome discovery of Dalbert Green's body in a pond. The body was retrieved from the pond. The neck appeared to have been broken.

On 25th August 1988 the applicant was arrested and charged for the murder of Yvonne Green and Dalbert Green. Upon being cautioned he said:

> "A same like how me tell you it go. A long time me should a left the yard and you see what me mek happen to me now."

On August 26, 1988 further search of the premises led to the finding of a black handle knife about a chain to a chain and a half in the rear section of the premises, going in the direction of the pond. The knife was shown to the accused, after he had been cautioned, and he was asked if he knew the knife. He replied "it was the same knife Yvonne had used to cut at him and she fell on it."

Mrs. Yvonne Cruickshank, Government Forensic Analyst examined articles submitted to her. Among these articles were the items of clothing removed from the bed trunk of the applicant. Human blood was detected on the pair of pants, a cream colour T-Shirt, a blue T-Shirt and the portion of a white bath towel. Apart from the blood which was found on the pair of pants and identified as Group B the other blood was inconclusive as to grouping.

Dr. David Crawford, Medical Officer for Gayle performed the post mortem examination on the body of the deceased persons. The body of Yvonne Green had the following injuries:

1. 4" laceration on the left side of the face.
2. 4" penetrating laceration over the upper end of the left breast extending into the left axilla.
3. 2" laceration of the anterior aspect of the left upper arm.
4. 4" laceration of the left side of the upper abdomen 1" below the left 12th rib, with intestines protruding from the wound.
5. 1" laceration of the anterior aspect of the neck, just to the right of the mid-line 1" above the medial aspect of the right clavicle.
6. Numerous superficial incised wounds of both shoulders, upper anterior chest wall and over left lower ribs.
7. A 1" x ½" oval puncture wound slightly to the right of the midline at the level of the fifth rib, leaving a pathway medially and inferiorly into the thoracic cavity.
8. 3½" incised wound over the upper end of the left scapula, penetrating to a depth of 1".
9. Superficial laceration over the right trapezius muscle.

On dissection wound No. 7 was seen to slice into the left ventricle of the heart and on into the substance of the left lung producing massive intra-thoracic haemorrhage. Wound No. 4 entered the abdomen and severed branches of the spinic vein. Death was due to intra thoracic haemorrhage from stab wounds with a hard, sharp object. Excessive force was required to produce the injuries.

The body of Dalbert Green, upon examination, showed that the head moved with abnormal freedom on the cervical axis. There were superficial abrasions of the nose, anterior aspect of the left thigh, both knees, left shoulder, right forearm and the right side of the chest posteriorly over the right 7th and 12th ribs. Upon dissection of the neck a fractured cervical vertebra was observed consistent with spinal shock. Death was due to spinal shock.

In a statement from the dock the applicant denied any involvement in the killings of the two deceased persons as well as the attack upon his wife. Further, he denied being present when Det. Sgt. White allegedly found the "wet clothes with blood" in his room. On the other hand he related an incident in which Clifton Nelson was accused of stealing a goat belonging to his wife, who along with the deceased Yvonne threatened to have Clifton Nelson arrested. Nelson, he said, showed great anxiety about the threats and himself vowed to kill Yvonne Green and Miriam Brown-Hunter if they caused him to be arrested by the police. Up to the night before the alleged incident, says the accused, Nelson voiced his resolve to take steps to prevent Miriam Brown-Hunter and Yvonne Green from making a report to the police.

Four grounds of appeal were argued before us:

Ground 1

> "That the learned trial judge erred in law in failing to warn the jury of the dangers of acting on the uncorroborated evidence of the witness Clifton Nelson the main prosecution witness, either on the basis that he was an accomplice or on the basis that he had an interest to serve."

Mr. Daly, Q.C., submitted that the following factors, when considered, brought the witness Nelson within the designation of an accomplice vel non or a person with an interest to serve:

(i) The witness had the opportunity to commit the killings.

(ii) He was present at the house throughout the likely period when the killings were committed.

(iii) The discrepancy between Miriam Brown-Hunter and the witness Nelson as to how Mrs. Brown-Hunter received her injuries.

(iv) The subsequent behaviour of the witness in not attempting to ascertain if anything had happened to Yvonne Green and in failing to go to her assistance when she summoned him for help.

(v) The fact that he was taken into "protective custody" by the police.

R. v. Lincoln Golding S.C.C.A. No. 134/83 dated April 28, 1986 (unreported) was relied on in support of this ground. Kerr, P. (Ag.) having to consider whether the trial judge had acted properly in failing to leave the issue of accomplice vel non or person with an interest to serve for the consideration of the jury opined that there was sufficient evidence of motive, opportunity and suspicious behaviour for the issue to have been properly left to the jury. In that case there was evidence to support such a conclusion. The witness whose testimony was being impugned had himself confessed to being present when the applicant killed the deceased and that he had accompanied the applicant to the deceased's premises to assist in the slaughtering of a stolen goat. Further, he had failed to make any report to the police prior to being taken into custody. In addition thereto there were other witnesses whose testimony was capable of implicating the main prosecution witness.

Golding's case is readily distinguished from the instant case. The opportunity, of which Mr. Daly, Q.C., speaks, must be viewed in the context that the witness resides at the premises. Anyone residing at those premises would have had opportunity. Does that place all such persons in the category of an accomplice vel non or person with an interest to serve?

Further, there is the evidence of Miriam Brown-Hunter that it was the applicant who attacked her on the morning of the alleged incident. Also, it was the witness Nelson who himself went and reported to the police what had taken place. There was, too, the finding of wet clothes with blood in the room of the applicant as well as his telling the police that the knife which was shown to him was the knife which Yvonne Green had used to cut at him and that she had fallen on it. All this evidence pointed unmistakably in the direction of the applicant.

In our view the evidence referred to by Mr. Daly, Q.C., when compared with the other evidence in the case entitled the learned trial judge to come to the view that the witness did not fall in any of the categories which would require him to warn the jury about acting upon his uncorroborated evidence.

In **R. v. Prater** [1960] 1 All E.R. page 298 Edmund Davies, J in the course of his judgment said:

> "This Court, in the circumstances of the present appeal, is content to found itself on the view which it expresses that it is desirable that, in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given. But every case must be looked at in the light of its own facts. ..."

Four years later Winn, J in considering **Prater's** case supra in **R. v. Stannard** [1964] 1 All E.R. 34 said at page 40:

> "The rule if it be a rule, enunciated in **R. v. Prater** [1960] 1 All E.R. 298; [1960] 2 Q.B. 464 **is** no more than a rule of practice. I say deliberately 'if it be a rule' because, reading the passage of the judgment as I have just read it, it really seems to amount to no more than an expression of what is desirable and what, it is to be hoped, will more usually than not be adopted, at any rate where it seems to be appropriate to the learned judge. It certainly is not a rule of law, and this court does not think that it can be said here that there was any departure in this respect from proper procedure of trial; still less does it seem that any injustice can possibly have flowed from the undoubted fact that no such warning was given in the present trial." [Emphesis added]

In more recent times Ackner, L.J., in **R. v. Beck** [1982] 1 All E.R. 807 when considering the dicta in both **Prater** and **Stannard** in the light of **Davies v. D.P.P.** [1954] 1 All E.R. 507 opined:

> "Merely because there is some material to justify the suggestion that a witness is giving unfavourable evidence, for example, out of spite, ill-will, to level some old score, to obtain some financial advantage, cannot, counsel for the appellant concedes, in every case necessitate the accomplice warning, if there is no material to suggest that the witness may be an accomplice. But, submits counsel for the appellant, even though there is no material to suggest any involvement by the witness in the crime, if he has a 'substantial interest' of his own for giving false evidence, then the accomplice direction must be given. Where one draws the line, he submits is a question of degree, but once the boundary is crossed the obligation to give the accomplice warning is not a matter of discretion. We cannot accept this contention. In many trials today, the burden on the trial judge of the summing up is a heavy one. It would be a totally unjustifiable addition to require him, not only fairly to put before the jury the defence's contention that a witness was suspect, because he had an axe to grind, but also to evaluate the weight of that axe and oblige him, where the weight is 'substantial', to give an accomplice warning with the appropriate direction as to the meaning of corroboration together with the identification of the potential corroborative material."

In **R. v. Champagnie et al** S.C.C.A. Nos. 22, 23 & 24/80 dated September 30, 1983 (unreported) Kerr, J.A., delivering the judgment of this Court approved the principles laid down in the cases cited above.

The evidence adduced in the instant case, in our view, did not even raise a mere suspicion that the witness Clifton Nelson was particeps criminis or that he had any interest to serve in the matter and therefore might have fabricated his evidence.

Ground 2:

(a) That the evidence of Sergeant Robert White that he took the witness Clifton Nelson into protective custody was patently false and the learned judge erred in giving credit to it instead of instructing the jury to disregard it.

At page 209 of the summing-up the learned trial judge had this to say:

> "You remember he told you that he was detained and he was at Annotto Bay. I explained to you this thing about protective custody, and he says he told the police that the accused said if he did this, if he caused him to be arrested, he was going to kill him or get his friends to kill him, and you must ask yourselves, Madam Foreman and members of the jury, if, as reasonable people, a policeman would not be doing his duty to put a person like that in protective custody. It is a matter for you."

Clearly the judge left it for the jury to decide whether or not the witness Nelson was taken into protective custody or detained as a suspect. To have done otherwise, as the ground of appeal advocated would have been a usurpation of the jury's function by the learned trial judge.

(b) At page 45 of the transcript the following narrative appears when the witness Nelson is cross-examined:

> "Q. So while the car was taking you to the police station ... which police station, by the way?
>
> A. Oracabessa.
>
> Q. Oracabessa ... you talked with the police.
>
> A. Yes.
>
> Q. And when you say you talked to the police do you mean that what you told the court today was what you told the police while you were in the car?
>
> A. Yes sir.
>
> Q. So what you are telling the Court today is what you told the police in the car going towards Oracabessa?

"A. Yes."

Also at page 157-158 of the transcript the following appears when Sergeant Robert White is examined in chief:

> "Q. Now Sergeant White, for the benefit of the jury, what exactly do you mean by 'protective custody?'
>
> A. He gave me a statement and told me some things.
>
> Q. He told you certain things?
>
> A. Yes, and I thought it wise to keep him for a while.
>
> Q. What do you mean by 'protective custody'?
>
> A. He said he was afraid.
>
> Q. You can't tell us what he said. What you mean ...?
>
> A. Because of fear of threat on his life, ma'am.
>
> Q. And why was it that you released him after four days?
>
> A. I was satisfied at the time that there would be no danger to him, ma'am.

These extracts from the evidence clearly indicate, in our view, that the witness Clifton Nelson had told the police about the threats issued by the applicant. We find this ground to be devoid of any merit whatsoever.

Ground 3

This ground complains that the learned trial judge's direction on discrepancies placed too heavy a burden for discrediting a witness.

The directions given by the trial judge in respect of how the jury ought to approach discrepancies were in our view the usual form given by trial judges throughout the ages and approved by appellate courts from time immemorial.

The trial judge in dealing with the matter of discrepancies clearly pointed out to the jury the difference between the evidence of Clifton Nelson and the evidence of Mrs. Brown-Hunter as to the place where Mrs. Brown-Hunter was attacked by the applicant. He ended his direction to the jury on this point by saying:

> "You must make up your mind if a discrepancy as to where she was attacked is so serious that you cannot believe who did it."

In this statement the credibility of both Nelson and Mrs. Brown-Hunter was left for the jury to make up their minds as to whether or not either or both of them were to be believed. The complaint lacks merit consequently this ground of appeal also fails.

Ground 4

This ground which may be appropriately referred to as a sweeper complained that the learned trial judge was unfair and biased in his summing-up.

(a) In dealing with the applicant's reaction to his estranged wife's ordeal the judge said:

> "When the police come back - the police and Clifton come back. I was outside in the yard." You must look at this, Madam Foreman and members of the jury because his wife is inside, albeit apparently estranged, but he has not turned the proverbial black of his eye to go and look at this lady up to now. Even when she was going to hospital is not him going with her or things like that. He is out in the yard sweeping. It is a matter for you to say what complexion you put on that."

However when dealing with the failure of Clifton Nelson to respond to Yvonne Green's calls for help the judge said:

> "He says the wrestling or 'wrassling' according to him, in the place lasted for about six to seven minutes; he did not go and do anything as he was afraid. Perhaps, Madam Foreman and

> "members of the jury, you must look at that. If you hear somebody saying, 'murder, murder, come and help me, him have knife and gun' and you hear wrestling like that, would you be afraid? He said he was afraid? He said he was afraid?"

The extracts make abundantly clear the difference in the two sets of circumstances. In the case of the applicant there was no apparent danger which could have ensued had he gone to see what had happened to his wife, albeit estranged. In the case of Nelson there was obvious danger involved, in Nelson who was unarmed going to the assistance of Yvonne Green who had made it clear that her attacker was armed with knife and gun.

The comments of the learned trial judge disclosed no bias and were reasonable in the circumstances. In any event these were mere comments on the evidence and the trial judge had given the jury proper directions on how to approach comments made by him.

(b) The complaint in this ground is that the learned trial judge failed to direct the jury, that the witness Reginald Roberts had given evidence that he had seen Clifton Nelson coming from the back of the house about 5-10 minutes after he had seen the applicant come from the back of the house.

It has not been specifically argued that the trial judge's failure led to any miscarriage of justice. However this failure, the applicant contends, indicates that the trial judge was unfair and biased.

We, for our part, are satisfied that the failure of the trial judge to remind the jury of this portion of the evidence in no way resulted in any miscarriage of justice and is in no way any indication of unfairness or bias.

(c) At page 208 of the transcript the learned trial judge is recorded as saying:

> "I am going to make a suggestion to you. You remember Nelson said he ran away, you know, and when he put on his clothes and coming outside he saw the accused coming from Miss Mirrie's room. Could it be that Miss Mirrie was attacked viciously at her door, she fell down unconscious and somebody took her up into the bed and when she sort of come out she see this individual or whatever it is? All sorts of things can happen, but in the circumstantial evidence you have to look at the two persons, Miss Mirrie and Nelson are positive on their evidence, if you accept it, that it was the accused."

This direction by the trial judge is referred to as far-fetched speculation and has the effect of rehabilitating the credit of the witness Clifton Nelson. There was nothing far-fetched about the observation. The judge was merely putting forward a possible view for the difference between Clifton Nelson's evidence and Mrs. Brown's evidence as to where Mrs. Brown was when she was attacked by the applicant. This was a possible view which the jury could have come to on the evidence. In any event what the learned trial judge seemed to have been emphasizing was the question of the identity of the person who attacked Miss Mirrie. In other words whichever version you accept are you satisfied that it was the applicant who attacked Miss Mirrie?

We find the allegation of "unfair and bias" to be totally unfounded.

(d) Clifton Nelson testified that he heard Yvonne Green calling out and saying "Clifton, help come, help me. Him have knife and gun." Reginald Roberts said "I heard somebody bawl out for murder, help." In reviewing the evidence the trial judge said:

> "... this is part of the circumstances that the Crown is putting before you, this statement about, 'murder, murder, Clifton come help mi him have knife and gun'. You remember, Mr. Roberts who we are going to deal with later on also heard this statement, this statement, murder, murder come and help me."

The complaint is that the judge unfairly sought to equate what Reginald Roberts heard the deceased call out with what Clifton Nelson said he heard, without pointing out to them the important difference and its significance between the two witnesses as to what the deceased had said. The difference in what both witnesses said is so patently obvious that to require the trial judge to point out this difference to twelve reasonable Jamaicans would be to underestimate the intelligence of the jury.

(e) This is the final complaint which is that -

> " 'He failed to point out to the jury that the blood found on the accused's trousers was B type blood (p 160) and consequently could not have come from the deceased. On the contrary, he told them (p 218) that the finding of blood on the accused's clothes was incriminating evidence notwithstanding that the type was inconclusive'."

Quite clearly this complaint ignores the realities of the situation in which the prosecution's evidence sought to put the applicant. Having regard to the very extensive injuries inflicted upon the deceased as well as upon Mrs. Miriam Brown-Hunter it is more than likely, indeed it is to be expected, that blood would be found on the assailant's clothes. The prosecution says the applicant was that assailant and that blood was found on his clothes in what must be regarded as rather strange circumstances. The time was just past 7.00 a.m. when Detective Sgt. Robert White visited the scene of the crime and in the trunk of the bed in the room identified by the applicant as his the Sergeant said he found:

> "Clothing including a red and white striped pants - the pants had on what appeared to be blood stains; piece of whitish colour wash rag, a blue T Shirt marked 'Cool Runnings' and some other things including a pair of black laced up shoes. All these were wet as though they were just recently washed or something. They were wet."

Then this:

> "I asked him why he had so much wet clothes in his bed foot and he told me that those were the clothes he was wearing and they got wet while he was sweeping the yard and sweat and rain dew down on him."

The Forensic Analyst, Mrs. Cruickshank identified human blood, Group B on areas of the red-and-white pin stripe trousers while human blood of inconclusive grouping was found on other areas of the same trousers. Human blood of inconclusive grouping was also found on the blue T Shirt, a brown and white plaid shirt, a cream coloured T Shirt and a white bath towel. The blood was present in drops, droplets and pale brown and serosanguineous stains on the various articles. Cross-examination revealed that the inconclusive grouping resulted from a mixture of several groups. The blood of the deceased proved to be Group A while human blood Group B was found on the spring blade with which the witness Nelson said the applicant hit his wife. Because the applicant was seen with a bleeding finger it is not unlikely that his blood could also be among those groups.

In the circumstances such as obtained is it not incriminating for the applicant to have several human blood groups on his clothes found in those circumstances? What was the applicant's response? He denied that any wet clothes were found in his presence. He said it was on the following day that the police officer informed him that he had found some wet clothes with blood in his room and he promptly denied having any such clothes in his room.

It is in those circumstances that the complaint must be regarded. The learned trial judge was rounding off his summation when he said at age 218:

> "Remember what I told you about circumstantial evidence, the opportunity, he was there, the subsequent behaviour, and we are dealing with Yvonne Green, the subsequent behaviour. If you accept 'I have killed Yvonne Green,' and his forcing this other man to go to Miss Brown's room door and incriminating material found after, if you accept what Sergeant White tells you, that he found the wet clothes in the presence of the accused man, in the accused's room, that is incriminating evidence, although Mrs. Cruickshank told you that the blood found on that was inconclusive, the grouping, and she told you the deceased's blood was group A. So if you don't believe the accused when you are looking at the Crown's presentation of circumstantial evidence, that is how you have to look at it, you cannot come to a conclusion adverse to the accused unless you are satisfied that the Crown has proven the case so you are sure."

That the material found was incriminating is beyond argument, but bearing in mind the applicant's denial, it is clear that the learned trial judge left it to the jury to decide whether it was true that the incriminating material was found in the applicant's room. With such a course we can find no fault. Accordingly this ground, too, fails.

Since points of law are involved in the application we have treated the hearing of the application as the hearing of the appeal. The appeal is dismissed and the convictions and sentences are affirmed.