JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 205/87

BEFORE: The Hon. Mr. Justice Carey, P. (Ag.)
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Gordon, J.A.

R. v. CEDRIC GORDON

Frank Phipps, Q.C. for Appellant

Ms. Yvette Sibble for Crown

November 14 & December 6, 1988

FORTE, J.A.

On the 14th November, 1988 we granted leave to appeal against conviction and treated the application as the hearing of the appeal. We allowed the appeal, quashed the conviction, set aside the sentence and in the interest of justice ordered a new trial. We promised then to put our reasons in writing. This we now do.

The appellant was convicted of the offence of murder in the Home Circuit Court, on the 9th of November, 1987 before McKain J., sitting with a jury.

Before us two grounds of appeal were argued, both of which are set out hereunder:

"(i) The learned trial judge misdirected the jury as to their functions in the trial of a criminal case, by telling them:

'you are ladies and gentlemen of our society and the only thing you can do is to try and get rid of criminal and criminality as best we can. The only thing we can do is when any case comes up, you decide whether that person is good enough to stay in the society or whether he is to be removed.'

(ii) The learned trial judge wrongly admitted in evidence the following statement of the prisoner 'Officer when I tell you how it go, you tell me if you wouldn't do the same thing,' without permitting the jury to hear the subsequent explanation given by the prisoner in his narrative oral and/or in writing."

Having regard to the decision of the Court to order a new trial, and because it is unnecessary for the purposes of these reasons, the facts leading to the conviction of the appellant will not be set out herein.

The duties of the jury sworn to try a person accused of a crime is not better stated than in the words of the oath each juror takes before embarking on the trial. These words are;

"I swear by Almighty God that I will well and truly try the several issues joined between our Soverign Lady the Queen and the prisoner at the bar and a true verdict give according to the evidence."

The jury's finding must never be influenced by any extraneous matters, and must always be the result of an impartial assessment of the evidence presented in Court, using the cardinal rule of the criminal law i.e. that every man is presumed to be innocent until proven guilty. From time immemorial Judges have always had the duty of charging jurors as to the utmost importance of applying those principles in arriving at their verdict. It has never been, and we dare say, will never be the function of a jury to determine guilt on the basis that they have a responsibility to 'get rid of criminals and criminality' as best they can.

In our view, the directions complained of in this ground of appeal, are not only incorrect, but amount to a grave miscarriage of justice. We are aware that the learned trial judge did direct the jury correctly as to the burden and standard of proof, and did caution them not to take into account, matters they may have heard, outside of the evidence in court, but after careful and anxious consideration we are unable to say that the jury in determining guilt were not influenced by the learned trial judge direction, as it placed upon them a function which was not theirs, and could have been interpreted by them as placing a duty on them to convict the appellant for the purpose of discharging that function. On this ground therefore, we were of the opinion that the appeal should be allowed, and in the interests of justice, ordered a new trial.

Consequently, nothing need be said in relation to the complaint made in ground 2, except to say that the circumstances of this case differ from those of the cases cited to us and could be distinguished. As the arguments were not developed in any detail, and having regard to our decision on ground 1 of the appeal, we will not embark on any analysis of such an important area of law, which has been considered in the cases of R. v. Sharp (1988) 1 All E.R. 65 (a decision of the House of Lords) on the one hand, and Leung Kam-Kwok v. R. (1984) 81 Cr. App. Report 83 (a decision of the Privy Council) on the other hand and which appear to be at variance with each other. Of equal importance is the decision of this Court in R. v. Colin Johnson S.C.C.A. 89/85 dated 19th June, 1987 (unreported) which declares the opinion of this Court as to the proper treatment of mixed statements i.e., statements containing admissions as well as exculpatory statements where an accused adopts no part of the statement.

In conclusion, we express the hope that the new trial will take place as soon as possible.