

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 127/87

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

REGINA v. DESMOND AMORE

Mr. D. Chuck for the Appellant

Mr. Emil Usim for the Crown

March 8, and 23, 1988

KERR, J.A.

This is an application for leave to appeal against a conviction for murder in the Home Circuit Court on 23rd July, 1987 before Morgan J. and a jury. On conviction, he was sentenced to death.

This was an atrocious crime. In a house at 15 Charlemount Mews, St. Andrew, in October 1985, there lived the deceased, Christopher Jones, his wife, Angella and their 16 year old daughter. On the night of the 2nd October, 1985, the deceased, wife and daughter after returning from the Alpha Parent Teachers' Association meeting, retired to bed at about 10:30 p.m. - husband and wife to their matrimonial bed. According to Mrs. Jones, about 2:30 a.m., she was awakened by a crashing noise and as she approached the door leading to the bathroom, she was confronted by a burglar armed with a gun who said, "I have a gun, get back in bed and don't move". She obeyed, resuming her place beside the deceased who was then awake. The gunman ordered them to cover their faces and this they did with the sheet. He asked "where is the \$U.S.?" and switching

on the bedside fluorescent lamp, he searched and from her wallet, took Ten Dollars (\$U.S. 10.00). He threatened to kill them, and, enraged that it was only Ten Dollars (\$10.00) he found, demanded sex of Mrs. Jones and proceeded to rape her. The deceased who protested was beaten over the head with the gun and the gun was held to his head while the burglar proceeded to do his brutal act. But Mrs. Jones was made of stern stuff. She kicked him in the belly and as he fell back she and her husband wrestled with him and as they struggled, a shot rang out and the deceased fell to the floor mortally wounded. The appellant wrestled free of Mrs. Jones and with gun in hand, picked up his blue shorts and left the room. He tried to get back in but Mrs. Jones locked the door and then sounded an alarm whistle as was pre-arranged between the neighbours of Charlemount Mews. She also yelled for help. By the time the neighbours came, the burglar had gone. Dr. Joseph Fredrick, Registered Medical Practitioner and a neighbour said he was awakened by the sound of a gunshot and went to the Jones' house where he saw the deceased who was then dead. He had a penetrating wound in his chest and in his opinion, death was due to massive haemorrhage resulting therefrom. Richard Jones said the deceased was his brother and was a Farm Manager, thirty-five (35) years of age.

A key ring bearing the tag "Remi Martin" was found in the bedroom where the struggle with the burglar had taken place. A key on that ring fitted the front door. Apart from the family, the only other person with a key so far as Mrs. Jones could say was the helper, Raymond Sutton. How the burglar came in possession of such a key remains a mystery.

The issue was one of identification. Mrs. Jones said that from time to time, she removed the cover from her face to speak with the burglar and saw him from head to knee. When he was raping her she could see his face. She identified the applicant at an identification parade held on Friday, 18th April, 1986 at the

Half-Way-Tree Police Station. She said she had been to an earlier parade but he was not on it. From the brief cross-examination, she said he was in the room for what seemed a very long time - about forty-five (45) minutes. She had never seen him before. She said, "there is no question in my mind whatsoever that that man up there is the man that shot my husband".

Sergeant Dumont, the officer in charge of the identification parade gave evidence that the wishes of the applicant were met. These included covering the heads of all members of the parade, permitting him to change his clothes and to select his position in the line and having his Attorney present.

Although it was never put to Mrs. Jones that she had an opportunity of seeing the applicant before the parade, the Sergeant was cross-examined in an endeavour to show that while in custody, the applicant was exposed to the risk of being seen. The Sergeant had no personal knowledge of this and this was not pursued in the applicant's statement from the dock.

In that brief unsworn statement from the dock the applicant said:

".....on the 15th of April, 1986, I was walking while I saw a jeep, four policemen stopped me while walking and said to me that them would like a search. Meanwhile searching me them said that them going to check me out. Carry me to Halfway Tree Station, detained me. On the 18th I been on an identification parade. I get to understand that I been pointed out by a lady of Miss Angela Jones. I did not know her. I don't rape she and I did not kill his (sic) husband. I know nothing about the murder of Miss Jones. Take care of that My Lady and members of the jury"

On the specific issue of identification, the learned trial judge said:

"Now before I go on to look at the evidence which you heard this morning, you will recall, and I just said to you that the issue in the case, the main issue in the case, is identification, and I think defence counsel has stressed on it. Now, caution has to be

"exercised when you rely on the correctness of any identification because indeed it is always possible, two things, for a mistaken witness to be a very convincing witness, and it is always possible that one person can be mistaken for another. Because of that you must examine very closely, the circumstances in which the identification came to be made, and in trying to determine identification, the frankness of the witness is very important. You have seen the witness, you heard the witness and you will have to determine that"

She then adverted them to important factors for their consideration and carefully reviewed the evidence and in particular the evidence concerning the identification parade. She concluded her summation by reminding them of the burden and standard of proof resting on the prosecution. Mr. Chuck advised that from his instruction and information from Mr. Dennis Morrison on the records as Attorney-at-Law for the applicant, there is nothing he could usefully urge in support of the application. We are of the same view. The issue was eminently one for the determination of the jury and the directions of the learned trial judge were faultless.

For these reasons, the application was refused.