C.A. Criminal Law - Murder - Trial - Prima facie case - evidence - circumstantial evidence - fingerprint evidence equivocal - Whether judge erred in ruling that Crown had made out prima facie case - whether judge misdirected on circumstantial evidence inadequate - Appeal against conviction for murder allowed. Case referred to. R v Court (1962) 4 W Indian Reports 242

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 61/90

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. V. GRANVILLE THOMAS

Dennis Morrison for the Applicant

Lloyd Hibbert and Miss Deborah Martin for the Crown

SEPTEMBER 23, 1991

ROWE P.:

The applicant Granville Thomas was convicted in the Clarendon Circuit Court on the 5th of April 1990 for the murder of Emmanuel Brown which is alleged to have taken place on the 28th of July, 1988 and he was ordered to suffer death in the manner authorised by law.

He challenges his conviction before us through Mr. Dennis Morrison, his attorney, on two grounds:

1. That the learned trial judge erred in law in ruling at the end of the Crown's case that a prima facie case had been made out against him.

2. That the learned trial judge's directions on the rules relating to circumstantial evidence were inadequate in the light of the evidence in the case.

The case which was presented by the Crown was that on the morning of the 28th of July 1988 at about 9 o'clock Emmanuel Brown was discovered outside of his house lying on the ground and he was severely injured. This was at a district called Guava Ground in the Crofts Hill police area in Clarendon. It appears that he died on that same day but the exact time of his death was not ascertained or, if ascertained, was not given in evidence.

During the course of the trial the prosecution attempted to adduce evidence of a statement made by the deceased shortly before his death and also of a conversation between the applicant and a witness, Mr. Golding. Both pieces of evidence were objected to by the defence and the trial judge in his wisdom directed that those pieces of evidence ought not to be admitted. By the end of the day the evidence for the Crown rested on two pieces of evidence: (1) the police found three panes of louvre glass outside of the window on the eastern side of the deceased's house and when one pane of that louvre glass was dusted for finger-prints, it was found to have the impression of the left thumb print of the applicant; (2) when the applicant was first interviewed by the police his remark was that he knew nothing about the incident with Mr. Brown; that he was at home with his mother in Chapelton and had not been to Crofts Hill for a long time.

The applicant's denial therefore, of his presence in the Crofts Hill area on the 28th of July and the presence of his finger-print on the pane of glass which, from the police's evidence, appear to have been taken from a window of the house, led the prosecution to aver that the applicant was one of the persons, who burgled the house of Mr. Brown and injured him so that he came to his death.

During the course of the prosecution's case Mr. Golding, one of the witnesses for the Crown, who knew the deceased well and knew the applicant well, gave evidence that the applicant had been seen by him several times at the premises of the deceased because the deceased

kept a shop at his house where he sold dry goods and that the applicant was a frequent customer of the deceased.

At the end of the Crown's case the defence made a no case submission to the effect that there was ample opportunity for the finger-print of the applicant to be placed on a pane of glass at the deceased's premises, having regard to the frequency with which he had attended at those premises. The learned trial judge rejected that submission and the applicant gave his account in an unsworn statement.

Mr. Morrison submitted the case ought not to have been left to the jury because the evidence from the Crown implicating the accused was manifestly unreliable; that although finger-print evidence could give rise to an inference of guilt in the circumstances of this case the presence of the finger-print was at best equivocal and in the light of the clear evidence that the accused had been to the premises on several previous occasions, the case ought not to have been left for the jury's consideration. He referred in passing to a decision of the Court of Criminal Appeal in England R. v. Court [1960] 44 Cr. App. Reports at 242.

In the course of his reply to the submissions made by Mr. Morrison, Mr. Hibbert was forced to concede that there was a possibility that the finger-print of the applicant could innocently have been impressed upon a pane of glass on the premises on one of the occasions that he was there lawfully. He said, however, that in the circumstances of this case that ought not to be the only conclusion or the logical conclusion to be drawn because it could be inferred from the evidence, that the part of the premises from which Mr. Brown sold goods was not the portion of the house from which the louvre blade was taken.

It is somewhat unclear to us on the evidence as to the position from which Mr. Brown sold from his two room house, but that is really of no significance. On the state of the evidence which the judge in his wisdom admitted, there was clear opportunity

for the finger-print of this applicant to be present on any part outside of the deceased's premises and there was absolutely nothing on the Crown's case to suggest otherwise. Therefore we think that there is merit in ground 1 as argued by Mr. Morrison.

The second ground of appeal was that the learned trial judge dealt inadequately with circumstantial evidence in the course of his summing-up to the jury. We think too that there is merit in that submission because at no point in his treatment of the circumstantial evidence did the learned trial judge juxtapose the contention of the Crown with the clear position of the defence as to the possible innocent impression of the finger-print. The defence contended that the applicant's finger-prints could have been impressed upon the pane of glass in three different circumstances. Firstly, on an occasion within the past twelve months when the applicant went to the deceased's premises to purchase goods; secondly, that he handled some louvre blades in the police station at the invitation of the police; and thirdly, that the panes of glass could have been brought from elsewhere and placed on the deceased's premises. Nowhere in his summary did the learned trial judge bring these matters to the attention of the jury in such a way that they could determine whether the circumstantial evidence of the finding of the finger-print impression pointed inexorably to the guilt of the applicant.

We find therefore, that there is merit on both grounds argued by Mr. Morrison. We will treat the hearing of the application for leave to appeal as the hearing of the appeal. We will allow the appeal, quash the conviction, set aside the sentence and enter a verdict of acquittal.